

Smt. Saiyada Mossarrat

Vs

Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai (M. P.) And Others

Writ Petition (Civil) No. 3615 Of 1978

(M. P. Thakkar, K. N. Singh JJ)

31.10.1988

JUDGMENT

THAKKAR, J. –

1. A Seven Judge Constitution Bench decision in Hari Singh case (Hari Singh v. Military Estate Officer, (1972) 2 SCC 239 : (1973) 1 SCR 515) upholding the constitutionality of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Act 40 of 1971) (Act) notwithstanding, the petitioner has renewed the challenge by way of this petition under Article 32 of the Constitution of India. Of course the epicentre of the present challenge has shifted and is now located in the plea that Parliament does not have the legislative competence to legislate on the subject of the impugned legislation which dimension was not in focus in Hari Singh case (Hari Singh v. Military Estate Officer, (1972) 2 SCC 239 : (1973) 1 SCR 515).

2. The petitioner was allotted a piece of land on licence by the respondents. The licence was cancelled on the allegation that petitioner had illegally made encroachment on further land and had illegally raised a structure on the land granted on licence. The respondent terminated the licence. Proceedings were initiated against the petitioner under the Act. The competent authority passed an order of eviction against the petitioner. Petitioner's appeal to the appellate authority under the Act was dismissed. The High Court also dismissed the petition referred by the petitioner. This Court refused to grant special leave and dismissed petitioner's special leave petition. Petitioner even so filed a civil suit which came to be dismissed for default of appearance. Meanwhile the petitioner had approached this Court by way of a special leave petition against an interlocutory order passed by the civil court. The said special leave petition also came to be dismissed for default of appearance. And thereafter the present writ petition has been instituted under Article 32 of the Constitution of India. In the petition as originally framed the constitutionality of the Act was not challenged. The said challenge was interpreted (sic) by amending the petition. When the matter came up for hearing this Court issued a rule nisi limited to the question of constitutionality of the Act as is evident from the relevant part of the order extracted hereinbelow :

Application for amendment allowed. Rule nisi on the question of constitutional validity of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
Notice to the Attorney-General and the Union of India ordered.

3. Thus the only question before the court presently is as regards the constitutional validity of the Act. The scheme of the Act as set out in Hari Singh case is as under : (SCC pp. 244-45, para 10)

The scheme of the 1971 Act is that it confers power on Estate Officer to issue notice to persons who

are in unauthorised occupation of any public premises to show cause why an order of eviction should not be made. 'Unauthorised occupation' under the Act in relation to any public premises means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. 'Premises' are defined to mean any land or any building or part of a building and includes the garden, grounds and outhouses, appertaining to such building or part of building and any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. 'Public premises' means any premises belonging to or taken on lease or requisitioned by, or on behalf of the Central Government as enumerated in Section 2(e) of the Act. The notice to show cause against order of eviction shall specify the grounds on which the order of eviction is proposed to be made. The Estate Officers under the Act are appointed by the Central Government. The Estate Officers are Gazetted Officers or officers of equivalent rank. 'Corporate authority' under the Act means any company or Corporation or any committee or the Authority as mentioned in the Act. The estate Officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of matters mentioned in Section 8 of the Act. These matters are summoning and enforcing the attendance of any person and examining him on oath; secondly, requiring the discovery and production of document; and thirdly, any other matter which may be prescribed. Section 10 of the Act provides for finality of orders in circumstances mentioned in Section 10 of the Act therein.

4. The learned Solicitor General has raised a preliminary objection on the threshold. It is contended that the Constitution Bench in Hari Singh case (Hari Singh v. Military Estate Officer, (1972) 2 SCC 239 : (1973) 1 SCR 515) has already pronounced that the legislature had the legislative competence to enact the impugned Act. Reliance in this context is placed on the following passage from the majority judgment of Ray, J. : (SCC p. 249, paras 21 and 22)

Therefore, a validating law is upheld first by finding out whether the legislature possesses competence over the subject matter, and, secondly, whether by validation the legislature has removed the defect which the courts had found in the previous law.

The legislature had legislative competence to enact the 1971 Act. It means that it could legislate on the subject of providing a speedy procedure for eviction of persons in unauthorised occupation of public premises.

5. Now a perusal of the judgment reveals that the debate centred on the issue as to whether Section 15 of the Act provided only one procedure for ejection of all persons in unauthorised occupation of the public premises or whether there was the further option to make recourse to the ordinary law. This Court has concluded that Section 15 of the Act provides only one procedure for ejection of persons in Unauthorised occupation of the premises for public purposes, unlike Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 which was held to be unconstitutional in Northern India Caterers Pvt. Ltd. (Northern India Caterers Pvt. Ltd. v. State of Punjab, (1967) 3 SCR 399 : AIR 1967 SC 1581) Debate did not at all centre around the issue of legislative competence. While it is true that in Hari Singh case (Hari Singh v. Military Estate Officer, (1972) 2 SCC 239 : (1973) 1 SCR 515) it has in terms been stated that the concerned legislature, that is to say the Parliament, has legislative competence to enact the impugned Act, as is evident from the passage extracted hereinabove, it is equally true that the legislative competence of the Parliament to enact the Act does not appear to have been debated at all before the court as is

evident from the circumstance that there is no discussion whatsoever as to under which entry of which list the subject matter of the Act would fall. In the present matter the petitioner has contended that the subject matter does not fall under any entry either in List I (Union List) or List III (Concurrent List), but it squarely falls under entry 18 of the List II, that is to say, the State List. It has been argued that since the subject matter falls squarely under the State List (List II) and it does not fall under any entry under List I or List III, the Parliament has no competence to legislate in respect of the subject matter. Since this specific aspect was not debated before the Constitution Bench, it would not be proper to shut out the petitioner from raising the plea by recourse to the argument that the point was concluded in Hari Singh case (Hari Singh v. Military Estate Officer, (1972) 2 SCC 239 : (1973) 1 SCR 515) regardless of whether the matter was debated or not. Accordingly we will deal with this point in the light of the submissions urged before us bearing in mind that the Constitution bench has categorically observed that the Parliament has legislative competence to enact the Act, albeit in the absence of any debate on this point.

6. Before turning to entries in List I, List II and List III, with a view to ascertain under which entry the Act in question would fall, it is necessary to ascertain what is the subject matter of legislation applying the 'pith and substance' test. Now so far as this question is concerned, the Constitution Bench in Hari Singh case (Hari Singh v. Military Estate Officer, (1972) 2 SCC 239 : (1973) 1 SCR 515) has in clear and unequivocal terms pronounced that the subject matter of the legislation is "providing a speedy procedure for eviction of persons in unauthorised occupation public premises". As is evident from the passage extracted earlier.

7. Apart from the name of the Act, the preamble to the Act itself makes it abundantly clear that the Act is designed to "provide for the eviction of unauthorised occupants from the public premises and for certain incidental matters". The scheme of the Act also indicates that the central theme of the legislation is to provide for speedy procedure in order to evict persons in unauthorised occupation of public premises. The scheme of the Act shows that apart from the dictionary of terms and expressions used in the Act, the vital provisions of the Act pertain to eviction of unauthorised occupants in exercise of powers conferred by Section 5 after following the procedure under Section 4. The incidental provisions are : (1) with regard to the disposal of the property left in the public premises by the unauthorised occupants and (2) recovery of arrears referable to the point of time prior to the occupation becoming unauthorised and damages in respect of the period of unauthorised occupation as provided in Section 7. Section 8 pertains to the incidental powers of summoning witnesses etc. And Section 9 provides for the appeals. Section 15 excludes the jurisdiction of the civil courts. There are similar provisions in regard to incidental and ancillary matters. It is, therefore, evident that the whole Act revolves around the issue of eviction of unauthorised occupants and incidental matters. In any view of the matter it is not open to contend that the subject matter of the legislation is other than the designing of speedy procedure for eviction of persons in unauthorised occupation of public premises and incidental matters in view of the law declared by the Constitution Bench of this Court in Hari Singh case (Hari Singh v. Military Estate Officer, (1972) 2 SCC 239 : (1973) 1 SCR 515). It is in the light of this perspective that the question as to under 'which entry' of 'which list' the subject matter falls, will have to be examined.

8. It has to be realised that if the subject matter of the legislation falls under List I, the Union of India will have jurisdiction to legislate on the subject, having regard to the mandate embodied in Article 246(1) (Article 246(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in list I in the Seventh Schedule (in this Constitution referred to as the "Union List") of the Constitution of India which provides that the Parliament has exclusive power to make laws with respect to any of the matter

enumerated in List I of the Seventh Schedule. We must, therefore, address ourselves to the issue as to whether the subject matter of the legislation falls in any of the entries in the Union List (List I).

9. A scrutiny of the contents of entry 32 of List I is essential in this connection. The entry is in the following terms :

Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save insofar as Parliament by law otherwise provides.

On an analysis of the entry, it emerges that :

(1) The Parliament can legislate in respect of property of the Union and revenue therefrom regardless of whether the property is situated in Union Territory or in a State.

(2) But as regards the property situated in a State the property will be subject to legislation made by the State subject to the rider which follows.

(3) While the State can legislate in respect of Union property situated in a State, with regard to such legislation in respect of the Union property Parliament can enact a legislation in respect of the property belonging to the Union of India and the revenue therefrom and in that event the legislation enacted by the Parliament will prevail as against the law enacted by the State.

10. Insofar as the legislation for "providing a speedy procedure for eviction of an unauthorised occupant of public premises" is concerned, it is not shown that there is any legislation enacted by the State legislature which deals with this subject insofar as the property belonging to the Union of India is concerned. When the challenge to the Act came up for scrutiny in the Madhya Pradesh High Court in *L. S. Nair v. Hindustan Steel Ltd., Bhilai* (AIR 1980 MP 106 : 1980 MPLJ 429 : (1980) Ren LR 553) it was not the basis of the challenge that there was any State legislation in regard to this subject matter. Nor has it been contended before us that there is any legislation for eviction of unauthorised occupants enacted by the State legislature which deals with the aforesaid subject matter, or that the properties belonging to the Union of India are covered by any such State Act. Since there is no such legislation, the legislation enacted by the Centre under the authority of entry 31 of List I cannot be successfully assailed. What is more, even if there was such a legislation, the Act enacted by the Parliament would prevail as per proposition 2 and 3 which have emerged on the analysis of entry 32 made a short while ago. It may be mentioned that in *L. S. Nair* case (AIR 1980 MP 106 : 1980 MPLJ 429 : (1980) Ren LR 553) it was contended before the Madhya Pradesh High Court that the Madhya Pradesh Accommodation Control Act of 1961 would prevail as against the Public Premises (Eviction of Unauthorised Occupants) Act of 1971 enacted by the Parliament inasmuch as the Madhya Pradesh Accommodation Control Act was enacted later. The High Court rightly repulsed the plea. In the first place, the Madhya Pradesh Accommodation Control Act has an altogether different perspective. It is an Act for the regulation and control of letting on rent accommodation in respect of tenants as revealed by the Preamble. In the second place the Act does not apply to property which is the property of the government having regard to the provision contained in Section 3(1) (a) (3. Act not to apply to certain accommodations. - (1) Nothing in this Act shall apply to - (a) accommodation which is the property of the government;). Since the Madhya Pradesh Accommodation Control Act does not apply to the property of the government,

there is no question of the said Act prevailing vis-a-vis the Central Act. What is more the Madhya Pradesh Accommodation Control Act not pertain to the subject matter of providing a speedy remedy for eviction of "unauthorised occupants" from public premises belonging to the Union of India. It deals merely with eviction of tenants from premises owned by landlords other than the government. Under the circumstances, there is no question of the Madhya Pradesh Accommodation Control Act prevailing vis-a-vis the Public Premises (Eviction of Unauthorised Occupants) Act. It cannot be gainsaid that even if both the legislations pertain to the same subject matter, the legislation enacted by Parliament in regard to the property belonging to Union of India would prevail having regard to the mandate contained in entry 32 as had been discussed earlier. Under the circumstances it is futile to contend that the Parliament has no legislative competence to legislate in respect of providing for a speedy remedy for eviction of unauthorised occupants from the property belonging to the Union of India. Entry 32 is wide enough to cover all legislations pertaining to the property of the Union of India including the legislation for eviction of unauthorised occupant from the property belonging to the Union of India. Once the conclusion is reached that the legislation falls under entry 32 of List I, it is unnecessary to examine the scope of entry 18 of List III, pertaining to land that is to say rights in or over land tenures including the relationship of landlord-tenant and the collection of rents, transfer and alienation of agricultural land, land improvement, agricultural lands and acquisitions. Again, as explained by this Court in *Indu Bhushan Bose v. Ram Sundari* ((1969) 2 SCC 289 : AIR 1970 SC 228 : 1969 Ren CR 889) "the relation of landlord and tenant" as mentioned in this entry, is with reference to land tenures which would not appropriately cover tenancy of buildings or of house accommodation and that the expression is only used with reference to relationship between landlord and tenant in respect of vacant lands.

11. At the cost repetition it may be stated that the 'pith and substance' of the legislation under scrutiny viz. Public Premises (Eviction of Unauthorised Occupants) Act of 1961 is eviction of unauthorised occupants from properties belonging to the union of India and incidental and ancillary matters. It does not pertain to any matter relating to rights in relation to landlord and tenants for eviction of tenants from lands which have been leased. The Public Premises Act is concerned with the eviction of those persons who have no authority in law to remain in possession of the land belonging to the Union of the India. The unauthorised persons may be squatters, persons having no right whatsoever, or persons who were in occupation by virtue of any agreement but whose right under the agreement had come to an end. Thus, there is no substance in the contention that the Parliament had no legislative competence to enact the Public Premises Act.

12. The learned counsel for the petitioner had however urged an argument in the context of the definition of 'Public Premises' as embodied in Section 2(e)(1)(i) of the Act. The definition envelops premises belonging to or taken on lease by or on behalf of any Company as defined in Section 3 of the Companies Act of 1956 in which not less than 51 per cent of the paid-up capital is held by the Central Government. This contention was raised before the Madhya Pradesh High Court in *L. S. Nair* case (AIR 1980 MP 106 : 1980 MPLJ 429 : (1980) Ren LR 553) and has been repulsed by the High Court on the reasoning unfolded in the passage extracted from paragraph 4 of the judgment :

The first contention raised by the learned counsel for the petitioner is that the Act insofar as it includes in the definition of public premises "any premises belonging to or taken on lease by or on behalf of any company as defined in Section 3 of the Companies Act, 1956, in which not less than 51 per cent of the paid-up share capital is held by the Central Government," is ultra vires and void, as to that extent the Act is beyond the legislative competence of Parliament. The argument of the learned counsel is that the Act was enacted under entry 32, List I of the Seventh Schedule to the Constitution, which relates to "property of the Union and the revenue therefrom", and that this entry

cannot be construed to include the property of a government company which is a different and distinct legal entity from the Union. It may be conceded that the expression "property of the Union", as used in entry 32, List I, cannot be construed to include the property of a government company. But if entry 32 gives jurisdiction to Parliament to enact the Act in respect of government premises, as contended by the learned counsel for the petitioner, entry 43 which relates to incorporation, regulation and winding up of trading jurisdictions read with entry 95 which relates to jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in List I, can be construed to confer power on Parliament to enact the Act in respect of premises belonging to a government company. It seems, however, more appropriate that insofar as the Act deals with a lessee or licensee of premises belonging to a government company, the subject matter of the Act would be covered by entries 6, 7 and 46 of List III. These entries broadly deal with transfer of property, contracts and jurisdiction and powers of courts with respect to an of the matter in List III. Taking either view, in our opinion, it is not correct to say that the Act insofar as it relates to premises belonging to a government company suffers from want of legislative competence.

Learned counsel for the Petitioner has not been able to show that there is any infirmity in the reasoning of the High Court. Besides, a legislation pertaining to a government company including one pertaining to eviction of trespassers, or unlawful occupants of properties belonging to government companies speedily can be enacted by the Parliament. Government companies are governed by the Indian Companies Act which had itself been enacted in exercise of the legislative authority conferred by entry 43 of the Union List (List I) of the Seventh Schedule of the Constitution. It is idle to contend and it has accordingly not been contended, that a State can legislate under the authority to legislate conferred by the State List (List II) in regard to properties of a government company which may have properties in more than one State and even in Union territories. The need to speedily evict trespassers or unauthorised occupants of such properties is self-evident. The States cannot legislate for such properties in respect of properties situated in more than one State or government companies situated in different States all over India. Surely, the Parliament, in obeisance to its obligation to protect and safeguard the national and overall public interest, can legislate in this respect under the residuary all-pervasive entry - entry 97 of the Union List (List I) of the Constitution of India which clothes the Parliament with the requisite legislative authority in regard to "any other matter not enumerated in List II or List III including any tax not mentioned in either of these lists". It has not been shown that any of the entries in List II or List III would be attracted to the subject matter of speedy eviction of unauthorised occupants from properties belonging to a government company wherein Central Government has more than 51 per cent of the paid-up share capital. The source of authority can thus in any case be traced to entry 97 read with entry 95 of the Constitution of India.

13. In any view of the matter therefore it is futile to contend that Parliament had no legislative competence in this behalf. We therefore concur with the conclusion reached by the High Court in L. S. Nair case (AIR 1980 MP 106 : 1980 MPLJ 429 : (1980) Ren LR 553) and repel the challenge unhesitatingly.

14. The petition accordingly fails and is dismissed. The interim order will stand vacated. No costs.

</html