ANDHRA PRADESH HIGH COURT

Haradevi

Vs.

State of Andhra

Writ Appeal No. 30 of 1956, in W.P. No. 330 of 1954

(Subba Rao, C.J. and Viswanatha Sastry, J.)

30.11.1955. 03.04.1956

JUDGMENT

Viswanatha Sastry, J.

1. This Is An Appeal Against The Order Of Satyanarayana Raju, J., Dismissing An Application For The Issue Of A Writ Of Certiorari Quashing The Order Of The Collector And Additional District Magistrate, Kurnool, Dated 31-12-1953, Requisitioning A House Alleged To Belong To The Petitioner And Made Under Section 4 (1) Of The Requisition Of Buildings (Andhra Area) Ordinance (1 Of 1953). The Petitioner Before The Learned Judge, Who Is Also The Appellant Before Us, Is Haradevi, The Wife Of Pamandas Sugnaram, A Banker And Money-Lender, Residing And Carrying On Business In Kurnool Town. At The Relevant Date The Petitioner And Her Husband Were Either The Owners Or The Lessees Of Four Houses In Kurnool Town Which Have Been Referred To, For The Sake Of Convenience, As Houses A, B, C And D In The Judgment Of The Learned Judge. Houses A and C were rented building in which Sugnaram, the lessee, was carrying on his business. The title of the houses B and D stands in the name of Haradevi. On 14-9-1953 the Collector and the Additional District Magistrate, Kurnool, the 2nd Respondent, requested Sugnaram by a notice, to vacate house B and occupy house A for his residence and business. On 17-9-1953 Sugnaram made a representation to the 2nd respondent with reference to the notice dated 14-9-1953. His objections to complying with the notice were that house B had been the residential house of his family and servants consisting of fifteen members, that he had four horses and carts and large personal belongings which could not be accommodated elsewhere and that he had let out house D to a tenant in August 1953 for a long period and that the tenant had also taken possession of the house, thereby making it impossible for him to move into house D which was the only alternative accommodation to be thought of. On 19-11-1953 he supplemented these objections by a further statement to the effect that he was unable to vacate the house B in view of the recent demise of his mother and the near prospect of his daughter's marriage. On 21-12-1953 an order under Section 4 (1) of the Ordinance signed by the 2nd respondent who was 'the competent authority'under the Ordinance, was issued to Sugnaram described as 'the landlord'of house B requisitioning the said house for a period of one year. On 27-12-1953 Sugnaram addressed a communication to the 2nd respondent reiterating his objections to the requisition and requesting that he might be allowed to continue in house B. On

the same day he sent a petition to the Dy. Chief Minister to the Government of Andhra praying that he might be allowed to continue to live in house B and also referring to the fact that the house stood in the name of his wife. Thereupon, the 2nd respondent, the competent authority under the Ordinance, issued an order under Section 4 (1) that house B was required for a public purpose and that Haradevi, the appellant, who was in possession thereof, should occupy houses A and C. She was described in the order as 'the landlady'of the house and was directed to deliver vacant possession thereof to the Special Engineer, P. W. D., Kurnool, on 3-1-1954. This order under Section 4 (1) of the Ordinance requisitioning the house B was served on the appellant on the evening of 31-12-1953 and the 2nd respondent took possession on the morning of 3-1-1954.

2. The validity of this order of requisition made by the 2nd respondent under Section 4 (1) of the Ordinance is impugned in these proceedings. The learned Judge held that the appellant was disentitled to relief by reason of her silence and inaction at the time when the requisitioning authority purported to deal with her husband as the owner of house B. The learned Judge observed as follows :

> "When the petitioner's husband was dealing with the Government as the owner of house B, she stood by and allowed the Government to deal with him as the owner, and it is not now open to her to contend that she is the owner of the premises and that her rights have been affected in the manner stated in the petition."

3. It is possible that though the ostensible title stood in the name of the appellant, her husband might have had a beneficial interest in the house. It is also possible that as the appellant's husband was living in the house along with her, the requisitioning authority dealt with the husband as if he were the owner of the house. Later on, the competent authority realized that the title to the house stood in the name of the appellant and therefore issued the order of requisition dated 31-12-1953 to the appellant treating her as the landlady in possession of house. When the appellant seeks to question the validity of the order of requisition issued to her on the footing that she was the owner of the house, her objections cannot be overruled on the ground that she had not put forward her title, at a time when the Government was corresponding with her husband with a view to enter into an arrangement enabling the Government or its officers to occupy the house. In the notice issued by the 2nd respondent under Section 4 (1) of the Ordinance, the appellant alone is recognised as the 'landlady having possession'of the house. Under Section 4 (1) of the Ordinance the order of the competent authority requisitioning a house has to be served on the 'landlord'. In Section 2 (g) of the Ordinance 'landlord'is given the same meaning as in the Madras Buildings (Lease and Rent Control) Act, 1949 (XXV of 1949). In Section 2(3) of that Act 'landlord'is defined as a person who would receive the rent or be entitled to receive the rent if the building was let to a tenant. The 2nd respondent issued the order of the requisition to the appellant, evidently because the title stood in her name, though she and her husband were living in the house. Having served the order of requisition upon the wife treating her as the owner of the house, it is not open to the respondents when the wife challenges the validity of the requisition order, to plead that the real owner of the house was her husband on whom an earlier order of requisition had been served. It is not, therefore, possible to support the order of the learned Judge on the grounds stated by him.

4. The objections of the appellant to the validity of the order under Section 4 (1) of the Ordinance

have now to be considered. It need hardly be stated that the power given by the Ordinance to requisition a building and thereby deprive the owner of his possession and enjoyment thereof, can be exercised only in accordance with the provisions of the Ordinance and in no other manner. Where a power is given to requisition a building subject to the fulfilment of certain conditions they should be strictly complied with before a person can be lawfully deprived of the possession and enjoyment of property. Objection is taken to the order of requisition on three grounds. The first objection is that the appellant was not in possession of more buildings than one in Kurnool town as required by Section 4 (1) of the Act, as a condition for the exercise of the power of requisition. House D the title to which stood in the name of the appellant had been leased out for a long term in August 1953 and when the requisition order was made on 31-12-1953, the appellant was not entitled to immediate possession of house D. Therefore the position was that the appellant had possession only of house B on 31-12-1953 and that house was requisitioned by the 2nd respondent. The appellant was neither in possession, nor was she entitled to Immediate possession of more buildings than one in Kurnool town at the time when the order of requisition was made and therefore the order contravened Section 4 (1) of the Ordinance.

5. The second objection of the appellant is that the order of requisition merely stated that the house was required for a public purpose without setting out the specific purpose for which the house was requisitioned. Section 4(1) of the Ordinance gives power to 'the competent authority ‘to requisition a building if, inter alia, he is of the opinion that the building is needed for a public purpose. It is no doubt true that the foundation of the power to requisition a building is the existence of a public purpose and the existence of such a purpose is a justiciable issue. All that Section 4 (1) of the Ordinance requires is that before it issues the order pursuant to which it takes possession of the property of the subject, 'the competent authority' must have reached the conclusion that it was required for a public purpose. Section 4 (1) does not say that the particular public purpose for which the building is required should be recited in and form part of the order. Nor does it require that the grounds on which the competent authority came to entertain the opinion that the building was required for a public purpose, should be stated in the order of requisition. Reliance was placed on behalf of the appellant on the decision in *State of Bombay v. Mohanlal Kapur*[1], for the position that it was obligatory on the requisitioning authority to state in its order the specific purpose for which the building was required. For one thing, the language of Section 4 (1) of the Ordinance does not make it obligatory on the competent authority to state in its order the specific public purpose for which requisition of the building is made. Secondly the decision of the Supreme Court in *State of Bombay v. Bhanji Munji*[2], is against the appellant's contention. The Supreme Court observed that though the order of requisition could only be upheld if it conformed to the provisions of the

[1] AIR 1951 Bom 404

[2] AIR 1955 SC 41

Bombay Land Requisition Act, that is to say, if it was made for a State or a Public purpose as set out in Sections 5 (1) and 6 (4) of that Act, still it was not necessary to set out the purpose of the requisition in the order. The omission to set out the particular purpose of the requisition in the order was not fatal so long as the fact could be established to the satisfaction of the Court in some other way. If the notice does not set out the public purpose, proof of it, when challenged, could be given in other ways. In view of this decision of the Supreme Court, we must reject this part of the appellant's contention.

6. The further objection taken to the order or requisition is that it does not give three days'time

from the date of the service of the order for delivery of possession of the building by the appellant. Under Section 6 (c) of the Ordinance every order of requisition shall be in writing and shall specify the date on which possession should be delivered, the said date 'not being earlier than three days from the date of the service of order'. It is common ground that possession of the house was taken on the morning of 3rd January 1954, and that the order was served on the appellant on the evening of 31st December 1953. The objection to the validity of the order is that it did not give three clear days to the appellant for delivering possession of the house. In our opinion the words 'not being earlier than 3 days from the date of the service of the order in Section 6 (c) mean that three whole days must elapse between the date of the service of the order and the date fixed for delivering possession. We cannot accept the contention of the respondent that it is a sufficient compliance with the terms of Section 6 (c) if three periods of 24 hours calculated from the hour of the day on which the order was served, are allowed before possession is taken or required to be delivered. It is enacted in Section 9 of the General Clauses Act of 1897 and Section 9 of the Madras General Clauses Act (1 of 1891) that it shall be sufficient for the purposes of excluding the First in a series of days or any other period of time, to use the word 'from' and for the purpose of including the last in a series of days or any other period of time, to use the word 'to'. In *Ramanasari v. Muthuswami Naik*[3], it was held that the seven days which, in fixing the day of sale under Section 18 of the Rent Recovery Act, must be allowed from the time of notice were seven whole days. Section 18 of that Act used the words 'not less than seven days' which is practically the same as the expression 'not being earlier than three days 'used in Section 6 (c) of the Ordinance. The Court interpreted the words 'not less than seven days' as meaning the same thing as 'seven clear days' and held that seven whole days must elapse between the day of the notice and the day fixed for sale under Section 18 of the Rent Recovery Act. The learned judges relied upon the decision in *McQueen v. Jackson*[4], in support of their conclusion. To the same effect are the observations of a Division Bench of the Madras High Court in the *Official Receiver of Malabar v. Padmanabha Menon*[5], The learned Judges regarded it as a well-established principle applicable to the construction of Statutes that, ordinarily, in computing time, the rule to be observed was to exclude the first and include the last day. The learned Judges also referred to the decisions of the other High Courts as supporting their view. In *Ramachandra Govind v. Laxman Savleram*[6], the expression '15 days'granted by a judicial order for making a deposit was held to mean 15 clear days and the date of making the order was excluded in computing the period allowed by the order. We are therefore of the

[3] ILR 30 Mad 248 [5]1954-2 Mad LJ 44
[4](1903) 2 KB 163 [6] ILR 1938 Bom 734

opinion that this last contention of the appellant must be accepted as correct.

7. For these reasons, we reverse the decision of the learned Judge and direct the issue of a Writ of Certiorari as prayed for by the appellant. In view of the fact that the appellant and her husband should have been acting in concert during all the time when the 2nd respondent was negotiating with the husband for taking possession of the property and in view of the inaction of the appellant with knowledge that the Government was negotiating with her husband, we direct that there be no order as to costs either here or before the learned Judge.
Appeal allowed.