

CALCUTTA HIGH COURT

A.C. Mohamed

Vs.

Sailendra Nath Mitra

Writ of Certiorari No. 60 of 1949

(Harries, C.J. and Banerjee, J.)

24.05.1950

JUDGMENT

Banerjee, J.

1. In or about October 1947, the Government of West Bengal proposed to rent a portion of the structure then under construction at P. 17, Mission Bow Extension in Calcutta, belonging to the petitioners and for the purpose of expediting the completion of the construction agreed to give them facilities for procuring cement, steel and other building materials by the issue of necessary permits, the said materials being then controlled goods.
2. It is alleged in the petition that the Government after giving the facilities for some time stopped them.
3. On 9-12-1948, the petitioners through their attorney wrote to the Secretary, Government of West Bengal, that if the Government was serious in taking the property on lease, facilities for obtaining the materials should be forthwith given and rent fixed. If on the other hand, the Government was unwilling to give such facilities, the petitioners would have no other alternative but to put an end to the negotiations with the Government for renting the structure to the Government and would take steps to secure the materials otherwise and complete the buildings and let them to other persons.
4. There was no reply to this letter. Nor did the Government take any steps for rendering such facilities.
5. It is further alleged by the petitioners that in January 1949, they negotiated with and obtained a loan of Rs. 7,80,000 from the Hindusthan Co-operative Insurance Society and entered into agreements of tenancy with various persons, the prospective tenants undertaking to advance moneys, for the completion of the structure.
6. On 25-2-1949, the Provincial Government, with a view to requisition the premises (except the ground floor), made an order under Section 3 (3), West Bengal Premises Requisition and Control

(Temporary Provisions) Act, 1947, directing the petitioners not, without the permission of the Government, to dispose of or structurally alter the premises, and by an order dated 7-6-1949, under sub-section (1) requisitioned the first, second and third floors.

7. At the time of such order the building had not been completed. There was no plastering of the walls, only the steel posts of the sixth floor had been erected; doors and windows had not been fixed ; stair-case not completed ; drainage work not done; tube-well not sunk, etc.

8. This is not disputed.

9. The respondent by an order subsequently made, directed the petitioners to make over to him possession of the portion requisitioned. The time to make over possession was extended from time to time and ultimately on 30-8-1949, possession of the portion requisitioned was taken and it was made over to the Works and Buildings Department of the Government of West Bengal ; presumably with a view to complete the requisitioned portion.

10. The Government wanted the premises for the purpose of locating its offices.

11. The petitioners protested against the order and called upon the respondent to cancel the order made by him and demanded restoration of possession of the portion requisitioned. That was not done.

12. The petitioners moved this Court on or about 31-8-1949, for an order directing the respondent to forbear from giving effect to or taking any step under the order dated the 7th June, and subsequent orders and from taking possession of the property; and for a further order that the respondent do restore possession to the petitioners of the portion he had taken possession.

13. There was also a prayer that the order dated the 7th June and subsequent orders be brought up to this Court and quashed.

14. I granted the Rule. But as the case involved substantial question of law of public importance, I made a report under chap. 5, R. 3, Original Side Rules and the Chief Justice has constituted this Bench for the disposal of the Rule. The matter accordingly has come before us for final disposal.

15. The real question is whether the order, d/-7-6-1949 requisitioning the premises is valid.

16. The question turns upon the meaning to be given to the word "premises" in sub-section (1) of Section 3 of the Act which is in the following words :

"Whenever it appears to the Provincial Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing, requisition such premises.

Provided that no premises exclusively used for the purpose of religious worship shall be requisitioned under this section."

17. The decision of the Government that the premises are wanted for public purposes is final and was intended to be final, and could not be questioned in any Court - See *Wijeyesekera v. Festing*¹,

In that case their Lordships of the Judicial Committee construing the words "whenever it shall appear to the Governor that land in any locality is likely to be needed for any public purpose," in a Ceylon Ordinance (III [3] of 1876) expressed that view. The order is also made final by sub-section (4) of Section 3 of the Act : "an order passed under sub-section (1) shall be final....."

18. The Legislature has expressly constituted the Local Government the sole arbiter as to what premises shall be acquired for a public purpose. It suffices for the exercise of the power that the Local Government is satisfied as to the existence of the condition precedent to the exercise of its powers - *Balvant Ramchandra v. Secretary of State*²,

19. It has not been argued before us that the opinion of the Government as to whether the premises are required, for public purposes is not final. What has been argued is that the premises requisitioned are not premises within the meaning of that Act. Premises were defined by the Act of 1947 as follows :

" 'Premises' means any building or part of a building or any hut or part of a hut which is, or is intended to be let - separately for residential or non-residential purposes and includes

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(i) The garden, grounds and out-houses (if any) appertaining to such building or part of a building or hut or part of a hut, and;

(ii) * * * * *

By the amendment Act of 1949, which received the assent of the Governor on 3-3-1949 the words in the definition "which is, or is intended to be, let separately for residential or non-residential purposes," have been omitted and the definition as it now stands and applicable to the case under consideration is this:

"Premises' means any building or part of a building or any hut or part of a hut and includes the garden....."

20. It was further contended before us that the order was not made by the Government in good faith. There is no doubt that if the order made is a colourable exercise of the power given by the Act, the Court has jurisdiction to set aside the order. But it is not competent to the Courts to investigate the grounds or the reasonableness of the decision in the absence of an allegation of bad faith. If it were not so, it would mean that the Courts would be made responsible for carrying on the Executive Government of this country on these important matters. Legislature, which authorises this regulation, commits to the Executive the discretion to decide and with that discretion if *bona fide* exercised no Court can interfere. All that the Court can do is to see that the power which it claimed to exercise is one which falls within the four corners of the power given by the Legislature and to see that those powers are exercised in good faith. Apart from that, the Courts have no powers at all to inquire into the reasonableness, the policy, the sense, or any other aspect of the transaction, *Carltona Ltd. v. Commissioners of Works*³,

¹1919 a. C. 646 : AIR 1919 PC 155

³(1943) 2 all E. R. 560

²29 Bom. 480 at pp. 505-506: (7 Bom. L. R. 497)

at p. 564.

21. On the facts of this case we are satisfied that the Provincial Government did not make the order in bad faith.

22. The only question, therefore, is whether the premises requisitioned come within the definition of "premises" in the Act.

23. Counsel for the petitioners submitted that they did not. According to him an unfinished building does not come within the Act. Counsel in support of his argument referred to the various sections of the Act and in particular to the sections in chap. 3 which provides for the procedure for fixing compensation and matters to be considered in fixing compensation. He submitted that the 'premises' which could be requisitioned under the Act were completed buildings. An unfinished building according to him does not come within the purview of the Act.

24. What does a building mean? It is not possible to give a comprehensive definition of the word "building". It is a word of different meaning in different contexts. It may include a railway embankment, though in ordinary language this would not be spoken of as a building. The word 'building' is sometimes used in a narrow or restricted sense and sometimes in a wide sense. See *Waite's Executors v. Commrs. of Inland Revenue*⁴,

25. In the *Queen v. Manning*⁵, the meaning of the word 'building' in 24 and 25 Viet. C. 97 Section 6, had to be construed. In that case the prisoners were tried upon an indictment, which charged that they "feloniously, unlawfully, and maliciously did set fire to a certain building of one John Rhodes, there situate, against the form of the statute in such case made and provided." The question arose whether the prisoners were guilty. It was necessary to determine the meaning of the word "building" in the statute. Lush J. said (p. 341) :

"A building need not necessarily be a completed structure ; it is sufficient that it should be a connected and entire structure. I do not think four walls erected a foot high would be building. and my impression is that in the case referred to, tried before me, there were only four walls unconnected and not advanced further than a short distance towards completion."

26. Whether a particular structure is a building or not within the meaning of a statute depends on the contexts. Many a structure in which doors and windows have not been fixed or walls not plastered can be utilised for public purposes. There is a great variety of public purposes and it is not necessary that a building within the meaning of the Act in question must be a completed building. In our opinion it is sufficient if it is a connected and entire structure.

27. In this case, though there are many things yet to be done to the building in question, we hold that it is a connected structure and as such comes within the definition of "premises" in the Act.

⁴(1914) 3 K. B. 196 at p. 204; (83 L. J. K. B. 1617)

⁵1 crown Cases Reserved 338

28. We have already said that we cannot enquire into the question as to whether the premises are needed or are likely to be needed for public purposes. We have held that the order requisitioning the premises was not made in bad faith. Having regard to the view we have taken of a building,

we hold that the order has been made within the four corners of the Act and is valid.

29. The learned Advocate-General on behalf of the respondent has said that the Government intends to spend money and complete the structures. We have not considered in this case as to whether the Government would be entitled to realise from the petitioners the expenses it incurs for completing the building. We do not express any opinion on this point.

30. All that we hold in this case is that the Government has not acted in bad faith in making the order requisitioning the premises and the premises requisitioned are 'premises' within the meaning of the Act. So it was within the powers of the Government to make the order.

31. We, therefore, dismiss the application and discharge the Rule with costs. Certified for two counsel.

32. The injunction is dissolved.

Harries, C. J.

33. I agree.

34. There is no evidence upon which we could find that the Government in making this order acted otherwise than properly, and as that is the case it appears to me that the Government are the sole judges of whether these premises were needed or were likely to be needed for any public purpose. The words are precisely the same words as appeared in the ordinance which their Lordships of the Privy Council had to consider in *Wijeyesekere v. Festing*⁶, and the reasons which compelled their Lordships in that case to hold that the Governor was the sole judge compel us, I think, in the present case, to hold that the Provincial Government are the judges of whether these premises are required for a public purpose. Their decision is final.

35. Of course, if what was sought to be requisitioned were not premises within the meaning of the Act then an order for requisition would not be an order made under section 3 (1). As pointed out by my learned brother all that has to be considered is whether or not the structure sought to be requisitioned is a building.

36. A building takes time to complete and at first there are only foundations and disconnected walls, but there comes a time in the erection of any structure when the walls cease to be disconnected and the structure can be regarded as a whole. It appears to me that when the construction can be regarded as a whole and not a series of disconnected structures, such a structure can well be regarded as a building. I am aware that the Court

⁶1919 A. C. 646 : (AIR 1919 PC 155)

of Appeal in England in the case of *Waite's Executors v. Commissioners of Inland Revenue*⁷, were of opinion that a building need not necessarily have a roof. But in the present case this structure had a roof. The flooring of each floor appears to have been complete except for marble tops and I do not think it can be possibly said that the structure was not a building. If it was a building, the structure must be regarded as premises which could in a proper case be requisitioned under Section 3 (1) of the Act.

37. For the reasons given by my learned brother I am satisfied that the order of requisition in this case was lawful and the petition must, therefore, fail.

38. I would also like to say that we do not, in holding as we do, suggest that if the Provincial Government incur any expense upon this building before using it, they would be entitled to recover such from the petitioner. That is a matter which does not concern us at all and we, therefore, express no opinion whatsoever upon it.

Rule discharged.

⁷(1914) 3 K. B. 196 : (83 L. J. K. B. 1617)