BOMBAY HIGH COURT

Jagatchandra N. Vora

Vs.

Province of Bombay

Misc. Appln. No. 243 of 1948

(Tendolkar, J.)

24.01.1949

JUDGMENT

Tendolkar, J.

1.The question that arises for determination in these rules and also in other rules in respect of orders of requisition issued under Section 6, Bombay Land Requisition Act, 1948, is whether a writ of certiorari lies in respect of such an order. It has been argued in all the rules, although this judgment is headed only in some of the rules typical of the two classes of cases which arise under Section 6, viz. (1) where an intimation of vacancy has been given and (a) where no such intimation is given.

2. In *P.V. Rao v. Girdharlal Lallubhai*[1], a Division Bench of this Court, to which I was a party, came to the conclusion that an order of requisition under Sub-Section (4) of Section 4, Bombay Land Requisition Ordinance, 1947, was a quasi-judicial Act, and, therefore, subject to the writ of certiorari. In order to appreciate what actually was decided in that appeal it is necessary to look at the scheme of Section 4 of the Ordinance and the facts of the appeal. Sub-section (1) of that section casts an obligation on the landlord to give intimation of a vacancy to the Provincial Government, vacancy being defined in that sub-section, Sub-section (2) provides for the period during which such intimation should be given. Sub-section (3) prohibits the landlord from letting out the premises for a month after the receipt of the intimation by the Provincial Government. Sub-section (4) enables Government to requisition vacant premises whether or not an intimation has been given. Sub-section (5) prescribes a penalty for not giving the intimation.

3. It is apparent that there are two classes of cases in which vacant premises may be requisitioned by the Provincial Government : (1) where an intimation has been given by the landlord and (2) where no such intimation has been given. The decision in *P.V. Rao v. Girdharlal Lallubhai*[2], was given in a case in which no intimation of vacancy had been given to the Government and

Government had to determine, before they could proceed to requisition, whether a vacancy existed. No argument was addressed to us during the course of hearing of that appeal as to whether an order of requisition made after an intimation of vacancy had been received by Government was or was not a quasi-judicial

[1]51 Bom LR 418 : AIR 1949 Bom 303

[2]51 Bom LR 418 : AIR 1949 Bom 303

Act and that question is, therefore, still open for determination. With regard to the question actually decided in that appeal, it is urged that there has been a change in the law; and even accepting the ratio of our decision, which, of course, the Provincial Government challenges, the order of requisition under Section 6, Bombay Land Requisition Act. (Bom XXXIII (33) of 1948), is not quasi-judicial.

4. It would be nest convenient to consider the provisions of Section 6 of the Act, which takes the place of Section 4 of the Ordinance. The arrangement of the five sub-sections remains the same. Sub-section (1) has been modified in respect of the definition of vacancy by deleting there from the words "by the termination of a tenancy or by the eviction of a tenant", so that while the concept of vacancy under the Ordinance was a legal concept and not merely a physical concept in the sense of non-occupation it may be said that the concept under the new Sub-Section (1) is merely physical. But an explanation has been added to this sub-section which provides that premises shall be deemed to be or become vacant in certain circumstances therein enumerated. So that, reading the sub-section with the explanation, the concept of vacancy still remains legal. There is no material alteration in sub-ss. (2), (3) and (5). The new Sub-Section (4) is in the following terms.

> "Whether or not an intimation under Sub-Section (1) is given and notwithstanding anything contained in Section 5, the Provincial Government may, by order in writing-
> (a) requisition the promises and may use or deal with the premises in such manner as may appear to it to be expedient; or
> (b) require the landlord to let the premises to specified persona or class of persona or in specified circumstance :
> Provided that where an order is to be made under clause (a) or (b) requisitioning or requiring to let premises in respect of which no intimation is given by the landlord, the Provincial Government shall make each inquiry as it deems fit and make a declaration in the order that the premises were vacant or had become vacant, on or after the date referred to in Sub-Section (1) and such declaration shall be conclusive evidence that the premises were or had so become vacant;
> Provided further that no order under clause (b) shall be made without hearing the landlord if the landlord resides in the building of which the premises form a part."

This sub-section up to the end clause (a) is a reproduction of the corresponding sub-section of the Ordinance. The rest is an addition.

5. The first question that has been urged by Sir Jamshedji Kanga on behalf of one of the petitioners is that the power to requisition given under this sub-section relates to "the premises" which can only mean vacant premises as defined in sub- clause (1) read with the explanation. The word '"premises" in its turn has been defined in Section 4(3); and it is only premises which fall within that definition that can be requisitioned. That definition is as follows :

> " 'premises' means any building or part of a building let or intended to be let separately including -
> (i) the garden, grounds, garages and out-houses, if any, appurtenant to each building or part of a building,
> (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging houses."

6. The Advocate-General contends that Section 6(1) talks of "any premises" and the definition of "premises" in Section 4(3) is not applicable because it is repugnant to the subject or context of Section 6(1). According to the Advocate-General the Government are entitled to requisition buildings or parts of buildings whether or not they were let or intended to be let. I am of the opinion that this argument is untenable. A definition given in an Act must be substituted for the word defined wherever it occurs in the Act; and I see no repugnancy in the subject or context of Section 6(1) to induce me to hold that the definition does not apply to the words "any premises" used in that sub-section. Moreover, the only operative part of the Act relating to "premises" is Section 6; and, indeed, the word does not appear in any other section. If, therefore, the definition is not applied to the word "premises" in that section it may as well have not been given in the Act. I am not prepared to hold that Government has, under Section 6, power to requisition vacant premises unless they were let or intended to be let. If that be the correct interpretation, whether or not an intimation of vacancy has been given, Government has, before it proceeds to requisition, got to determine that what it proposes to requisition ace "premises" within the definition. The existence of "premises" within the meaning of the definition is, therefore, a condition precedent to the exercise of the power of requisition and that condition, in so far as premises intended to be let are concerned, is not capable of subjective determination, nor is there any indication in the Act that it is left to the subjective determination of the Government. The order of requisition under Section 6 is, therefore, a quasi-judicial act.

7. This aspect of the matter was not placed before us at the argument of *P.V. Rao v. Girdharlal Lallubhai*[3], but it merely affords an additional ground in support of the decision which we arrived at.

8. This really disposes of the issue before me; but it is as well to consider it by applying the ratio laid down by us in our judgment in *P.V. Rao v. Girdharlal Lallubhai*[4] That ratio is derived from the fact that the power to requisition relates to "the premises," i.e. vacant premises as defined in

the Act. What we held was that the existence of vacancy was a condition precedent to the exercise of the power of requisition; and since the concept of vacancy under the section was legal and not merely physical, in the sense of non-occupation, the Government had to determine it as an objective fact. The position is exactly the same under the Act. But, it is contended by the Advocate-General that in a case where intimation of vacancy is given by the landlord, the existence of vacancy is determined by him; and the Provincial Government have no function to perform except to proceed to requisition the premises to which the intimation relates. If that were the correct position in law, it would lead to some very startling results. Any person howsoever unconnected with the premises can pose to be a landlord thereof and whether are not premises are vacant can give a notice of vacancy even in the case of a building or part of

[3](51 Bom LR 418 : AIR 1949 Bom 303)

[4](51 Bom LR 418 : AIR 1949 Bom 303)

a building which has never been let or intended to be let. Similarly, a landlord can mala fide give intimation of a vacancy in order to oust an existing tenant. If Government were free to act on such intimation it would lead to incalculable hardship. But I have no reason to suppose that such was the intention of the Legislature. It is true that the first proviso to Sub-Section (4) makes a provision for an inquiry only in cases where no intimation was given; but it does not follow there from that Government have to determine nothing in relation to pre raises relating to which an intimation has been received before they proceed to requisition them. In my opinion, Government are bound to satisfy themselves (a) that the intimation relates to premises as defined by Section 4(3), (b) that such premises are vacant within the meaning of that term in Sub-Section (1) read with the explanation and (c) that the intimation is in fact given *bona fide* by the real landlord. These to my mind are objective facts not left to the subjective determination of Government and, therefore, the act of requisition is a quasi-judicial act even in cases in which an intimation of vacancy is given by the landlord.

9. I next come to the class of cases in which no intimation of vacancy has been given. This was the class we dealt with in *P.V. Rao v. Girdharlal Lallubhai*[5] and unless the law has been altered that decision is binding. What is urged by the Advocate-General is that the proviso to Section 6(4) indicates that the determination of the question as to whether a vacancy exists is left to the subjective decision of the Government.

10. It becomes necessary, therefore, to consider the precise scope of proviso 1. It requires the Government (1) to hold such inquiry as it deems fit and (2) to make a declaration that the premises were or had become vacant. It further proceeds to say that "such declaration shall be conclusive evidence that the premises were or had so become vacant."

11. The provision for inquiry is relied upon on behalf of the petitioners as showing that the determination was quasi-judicial, while the words "as it deems fit" qualifying the inquiry are relied upon by the Advocate- General as indicating that the determination is merely ministerial. Neither of these two views appeals to me. As pointed out by me in my judgment in *Rao v. Advani*[6], a provision for an inquiry is by itself quite consistent with the performance of an

executive as well as a quasi-judicial act. It is a matter of common knowledge that the power to hold such inquiry as it deems fit is often conferred on a quasi-judicial tribunal, such as an arbitrator. The provision for inquiry contained in proviso 1, therefore, does not help either side.

12. The next point that has been strongly relied upon by the Advocate-General is that the declaration to be made by the Government is "conclusive evidence." A battle of wits was waged at the bar as to the precise meaning and effect of the words "conclusive evidence." Mr. Munshi on behalf of one of the petitioners contended that "conclusive evidence" is not the same thing as "conclusive proof," and that it is open to anyone to put forward evidence which may lead to a contrary conclusion. In support of his contention he drew my attention to the definition of "evidence" in Section 3 and of "conclusive proof " in Section 4, Evidence Act and also to Section 112 of that Act which provides that the birth of a child during marriage is conclusive proof of legitimacy. I must confess my inability to perceive the difference, if any, between "conclusive evidence" and "conclusive proof" ;

[5]51 Bom LR 418 : AIR 1949 Bom 303

[6]51 Bom LR 342 : AIR 1949 Bom 277

and if such a difference exists it is irrelevant, for, the point to determine is whether other evidence could be led, as Mr. Munshi suggested, to rebut the conclusive evidence. For the proposition that such evidence could be led Mr. Munshi relied upon the case of *Attorney General v. Bournemouth Corporation*[7], In that case the question was whether a corporation had failed to commence work on the construction of a tramway. Section 18, Tramways Act, 1870, provided that a particular type of notice shall be conclusive evidence of non-commencement of work. All that the Court of appeal held was that such a notice had not been rendered the only evidence of non-commencement of work and that in the absence of such a notice other evidence could be led to prove non-commencement. Vaughan Willisms L. J., observed (p. 724) :

> "In my opinion it would not be right to read the words 'conclusive evidence' as if they were "exclusive or the only evidence."

It is impossible to read this observation as an authority for the proposition that even if the notice which had been rendered "conclusive evidence" was forthcoming, other evidence could have been led to show that the work had in fact commenced. Moreover, there is a direct authority negativing the contention of Mr. Munshi. In *Kerr v. John Mottram Ltd*[8]., the articles of association of a company provided that the minutes of any meeting purporting to be signed by the chairman shall be "conclusive evidence" without any further proof of the facts therein stated. A share-holder of the company brought an action against the company for specific performance of an alleged contract and proposed to call evidence to contradict the minutes. Simon, J., observed (p.660) :

> "I have no doubt that the words 'conclusive evidence' mean what they say; that they are to be a bar to any evidence being tendered to show that the statements in the minutes are not correct."

Therefore, in my opinion, where a declaration has been made under the first proviso to Section 6(4), it is not open to anyone to lead evidence in any Court which would lead to a contrary conclusion.

13. It is next urged by Sir Jamshedji Kanga that "evidence" can only relate to matters of fact and not of law; and, therefore, when a declaration is made "conclusive evidence" it is conclusive of the facts thereby determined but not of any law which may be involved in or incidental to such determination. If it were intended that the declaration should be conclusive both as to law and as to fact the words would have been "conclusive" or "final and conclusive" and not only "conclusive evidence." This argument appears to me to be well founded. In In re, Caratal (New) Mines, Limited, (1902) 2 Ch. 498 : (71 LJ Ch. 883) on a petition for winding up, a question arose as to whether a special resolution for winding up had been duly passed. Section 51, Companies Act, 1862, provided "that unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favor of or against the same." Such a declaration was produced before the Court. It gave the number of votes for and against the resolution and added that there were two hundred proxies and declared that the

[7](1902) 2 Ch. 714 : (78 LJ Ch. 730)

[8](1940) 1 Ch. 657 : (109 LJ Ch. 243)

resolution had been passed by the required statutory majority. In law the proxies could not be taken into account; but it was contended that the Court could not go into that question as the declaration was conclusive under Section 51. The contention was overruled by Buckley, J., and it was held that the resolution had not been passed by the statutory majority. The learned Judge in dealing with the effect of Section 51 observed (p. 500) :

> "The respondents contend that the effect of that provision is that the declaration which the chairman here made is conclusive that the resolution for the voluntary winding up was passed by the necessary three-fourths majority. I am asked to affirm the proposition that if the chairman makes a declaration, and in it actually gives the number of votes for and against the resolutions which he is bound to recognize, and adds that there are proxies (which in law he cannot regard), and then declares that the result is that the required statutory majority has been obtained, although the numbers stated by him show that it has not been obtained, the declaration is conclusive. In my judgment that proposition cannot be supported. Suppose, for instance, that fifteen members voted for and fourteen against the resolution at the first meeting, and the chairman declared those figures and added that, as the statute only required a bare majority (in which ho would be wrong in law), the resolution had been duly passed, would the declaration be conclusive ? I think not. Or suppose the chairman said that fifteen voted for the resolution and fourteen against it, but that, as he was the holder of a number of proxies, he could, although no poll had been demanded, count the proxies, and that he therefore declared the resolution carried by a majority of three-fourths : that would not be a good declaration."

The learned Judge then referred to cases in which it has been held that an erroneous but *bona fide* declaration was conclusive and proceeded to observe (p. 501) :

> "But those decisions do not apply to a case where the chairman by his declaration finds the figures and erroneously in point of law holds that the resolution has been duly passed. That is what the chairman has done in the present case. He had no right to count the 200 votes by proxy, and his declaration is not conclusive."

14. The Advocate-General has made no attempt to meet this case; but he has relied on *Moosa Goolam Ariff v. Ebrahim Goolam Ariff*[9], In that case a certificate of incorporation of a company issued under Section 41, Companies Act, 1882, (corresponding to Section 24 of the Act now in force) was sought to be challenged. The circumstances of the case were somewhat unusual. A wealthy gentleman wishing to transfer his property to his two junior wives and five minor children obtained five orders for appointment of one person as guardian of the five children. The memorandum of association of the company was signed by the two wives and the guardian of the five children to satisfy the requirement that it must be signed by seven persons and the company was duly registered. The gentleman then transferred his property to the company in return for shares. The certificate of incorporation was challenged on the ground that there were not seven subscribers to the memorandum of association. Their Lordships held that the certificate was conclusive for all purposes. By Section 41 of the Act of 1882 that certificate was

[9]39 IA 237 : (40 Cal 1 PC)

made conclusive evidence that "all the requisitions of this Act in respect of registration have been complied with." No doubt the certificate is conclusive with regard to any requisitions which relate to matters of fact but is it also conclusive with regard to any requisitions which require legal determination ? In my opinion their Lordships were not dealing with this question. One of the requisites that a company must satisfy under Section 5, Companies Act is that its objects must be lawful. Can it be said that if a company was formed for unlawful objects the certificate of registration can prevent the Court from holding that its objects were not lawful ? The Advocate-General says that it would. But there is high authority of the House of Lords to the contrary. In *Bowman v. Secular Society*[10], it was held that the certificate was not conclusive on the legality of the objects of the company. Lord Finlay observed as follows (p. 421) :

> "It was argued before us that the society could not have been properly incorporated if its objects were illegal, and that, as the certificate is conclusive to show that the company is one authorized to be registered and duly registered, it follows that it cannot for any purpose be contended that the objects are illegal. In my opinion this argument is an attempt to extend the effect of these enactments beyond their fair meaning and manifest object."

Lord Parker of Waddington observed as follows (p. 439) :

> "The section does not mean that all or any of the objects specified in the memorandum, if otherwise illegal, would be rendered legal by the certificate."

Moreover, both Lord Parker and Lord Buck-master pointed out (see pp. 440 and 448) that proper proceedings could be taken for cancelling the certificate on the ground that the objects were illegal. It is obvious that in any such proceedings the certificate could not be conclusive evidence of the legality of the objects, for if it were, the proceedings would be futile. Incidentally, I may mention that although the certificate of registration is made "conclusive evidence", Lord Parker in his judgment states that "the registrar fulfils a quasi-judicial function", (see p. 439), and that a writ of certiorari would lie to cancel a registration. (See p. 440).

15. I am, therefore, of the opinion that when the proviso enacts that the declaration made by Government shall be "conclusive evidence" it makes the declaration conclusive with regard to all facts involved in the determination of vacancy; but the declaration is not conclusive with regard to the inferences to be drawn from or the legal consequences of such facts since these are not matters of evidence. Notwithstanding the proviso, therefore, the legal concept of vacancy is still left for objective determination and the act of requisition under Section 6 is quasi-judicial.

16. I am free to confess that during the course of a long, interesting and full argument my mind wavered a good deal with regard to the pros and cons of this difficult and vexed question. I have ultimately come to the conclusion that I have arrived at, as, in my opinion, the only possible conclusion. But, had I any doubts as to its correctness, and had I taken the view that the arguments for or against it were evenly balanced, I would have bad no hesitation in giving the benefit of such doubt to the subject as the power of

[10](1917) AC 406 : (86 LJ Ch. 568)

requisition restricts the normal rights of the subject in relation to his property.

Order accordingly.