NAGPUR HIGH COURT

Mangilal Karwa

Vs

State of M.P

Misc. Petn. No. 51 of 1954

(Sinha, C.J. and Bhutt, J.)

21.09.1954

JUDGMENT

Bhutt, J.

1. This application under Article 226 of the Constitution by the owner of the residential house in question in the City of Jabalpur impugns certain provisions of the Central Provinces and Berar Regulation of Letting of Accommodation Act (11 of 1946) as also the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, as 'ultra vires' the State Legislature.

2. The facts leading up to this application may shortly be stated in so far as they are necessary for the determination of this case. The petitioner purchased the house in question, as alleged by him, for his own residential purposes in December 1948 for Rs. 65,000. The first floor of the premises, bearing municipal No.300, had been in the occupation of one Shri G.K. Seth, Assistant Engineer, Jabalpur. The petitioner himself resides in a portion of the ground floor. The petitioner's case was that the portion of the ground floor in his occupation was not sufficient for the needs of himself and the family, and that he was in 'dire necessity' of more accommodation for his residential purposes. Shri G.K. Seth aforesaid was transferred from Jabalpur in the middle of December 1953 and vacated the premises in his occupation on the 15-12-1953. Under Clause 22(1) of the Rent Control Order the petitioner gave intimation of that fact in the form prescribed in the Schedule appended to the Order, and in terms of the proviso to Clause 23(1) of the Order prayed 'that the said portion of the house be released for the 'bona fide' use of the applicant'. This intimation was given to 'The Allotment Officer, Jabalpur'. Shri G.K. Seth also sent a letter to the Deputy Commissioner, Jabalpur on 11-12-1953 informing him of his transfer and that the house was being vacated by 15th of December. He also said in the letter that Shri K.L. Malhotra, Assistant Engineer, will be his successor in office. A copy of that letter was also forwarded to the petitioner on the same date. But it appears that before this letter was written to the Deputy Commissioner he had already passed the order of allotment on 10-12-1953 to the effect that the premises in question which were being vacated by Shri G.K. Seth were being allotted to Shri K.L. Malhotra 'holding an office of profit under the Union or State Government'.
A copy of this order was sent to the petitioner and another copy forwarded to Shri K.L. Malhotra directing him to get possession of the house within 7 days of the order and giving him further

directions as to what he had to do if he failed to obtain possession. Shri Malhotra took possession of the premises from his predecessor-in-office Shri G.K. Seth. It also appears that the authorities under the Rent Control Order took action on the petitioner's application praying for permission to keep the entire premises. Respondent 3 held an enquiry into the petitioner's needs on 26-12-1953 and submitted a report to the effect that the petitioner was in possession of six rooms, and that his family consisted of six adult members and two children. In the opinion of the enquiring officer the landlord had not substantiated his need for residence in the entire house. He therefore recommended that the petitioner's application for allotment of the house to him be rejected. This recommendation of the enquiring officer was accepted by the Deputy Commissioner on 29-12-1953.

3. In pursuance of the orders passed by the Deputy Commissioner the petitioner was served with an intimation on 2-1-1954 that his application for leave to occupy the entire premises, including the portion let out previously, had been rejected. But curiously enough, the same day he was served with another order of allotment purporting to have been made under Clause 23(1) in respect of the same portion of the premises and allotting the house to respondent 6 when it was already in the occupation of respondent 5. The petitioner therefore prayed for a writ of certiorari to quash the orders of allotment and writ of mandamus restraining respondents 1 to 3 from taking action under Cls.23, 24 or 24-A, Central Provinces and Berar Letting of Houses and Rent Control Order, 1949.

4. In support of this application the petitioner has contended that the Central Provinces and Berar Regulation of Letting of Accommodation Act (11 of 1946), in so far as it empowers the authorities to 'requisition' premises, is beyond the legislative competence of the Provincial Legislature and that consequently 'S.2(c) of the Act is 'ultra vires' the Provincial Legislature. That being so, it is argued further, the provisions of cls.23, 24 and 24-A of the Rent Control Order, 1949 being based on the power contained in Section 2(c) of the Act are equally 'ultra vires' of the Provincial Government. Section 2(c) of the Act is in these terms:

> "The Provincial Government may, by general or special order which shall extend to such areas as the Provincial Government may, by notification, direct, provide for regulating the letting and subletting of any accommodation or class of accommodation whether residential or non-residential, whether furnished or unfurnished and whether with or without board and in particular,
> ....
> (c) for requiring such accommodation to be let either generally, or to specified persons or classes of persons, or in specified circumstances,.."

The so called power of requisition given to the Deputy Commissioner is contained in cls.23, 24 and 24-A of the Order in the following terms :

> "23(1) On receipt of the intimation in accordance with clause 22, the Deputy Commissioner may, within fifteen days from the date of receipt of the said intimation, order the landlord to let the vacant house to any person holding an office of profit under the Union or State Government or to a displaced person or to an evicted person, and

thereupon notwithstanding any agreement to the contrary the landlord shall let the house to such person and place him in possession thereof immediately, if it is vacant or as soon as it becomes vacant:

Provided that if the landlord has, in the intimation given under clause 22, stated that he needs the house for his own occupation, the Deputy Commissioner shall, if satisfied after due enquiry that the house is so needed, permit the landlord to occupy the same.

(2) If no order is passed and served upon the landlord within the period specified in sub-Clause (1), he shall be free to let the vacant house to any person.

24. If a house is vacant or becomes vacant after the date this chapter is extended to the area in which it is situate and no intimation of vacancy is received in respect of it as provided in clause 22 by the Deputy Commissioner or the specified officer, then without prejudice to any proceedings for the contravention of clause 22, the Deputy Commissioner may order the landlord to let the same forthwith to a person holding an office of profit under the Union or State Government or to a displaced person or to an evicted person, and on receipt of such order the landlord shall comply with the order.

24-A. Notwithstanding anything contained in clause 23 or clause 24, the Deputy Commissioner may, on information received to the effect that a house is likely to become vacant or available for occupation by a particular date, pass any order requiring the landlord of such house to let the same to any person holding an office of profit under the Union or State Government or to a displaced person or to an evicted person, and such order shall be complied with by the landlord unless the house does not become vacant or available for occupation within one month from the date of receipt by him of the order of the Deputy Commissioner or the landlord applies for the cancellation of the said order stating his grounds thereof."

5. Under the impugned provisions of the Act and the Order the Deputy Commissioner has been empowered to order the landlord to let the premises which are likely to fall vacant or which have fallen vacant 'to any person holding an office of profit under the Union or State Government or to a displaced person or to an evicted person'. It is noteworthy that these provisions do not compel the landlord to let his house if he does not intend to induct any tenants into the premises. It is only after the house has already been let out or the landlord intends to let it out that the Deputy Commissioner is empowered to determine who shall be the tenant in such a house. In such circumstances the State does not become the tenant, because the State does not enter into a contract of tenancy by being responsible for the payment of the rent. The Deputy Commissioner has been empowered to intervene by allotting the house to a person who is a public servant or to one who has been thrown out of his home as a result of circumstances beyond his control. But in each case there is privity between the landlord and the person to whom the house is allotted. The law also contemplates that it is open to a landlord who had previously let out his house to a tenant to inform the Deputy Commissioner that he intended to occupy the premises and that no tenant should be brought into the house. But the landlord is not given an unfettered choice, because it is only after the Deputy Commissioner has been satisfied about the needs of the house by the landlord that he is authorized to permit the landlord to occupy the premises. The Legislature thus intended to lay it down that it is not open to a landlord to keep under his direct

control more room than is necessary for his immediate needs and that the surplus accommodation should be at the disposal of the Deputy Commissioner for the benefit of the class of persons specified in cls.23, 24 and 24-A.

6. But it is contended on behalf of the petitioner that the powers contained in cls.23, 24, and 24-A of the Order are powers of 'requisition' of premises and that such powers are not within the legislative competence of the Provincial Government which passed the law impugned in this case. Reference has been made to the celebrated judgment of Bhagwati, J., of the Bombay High Court (as he then was) in - '*Tan Bug Taim v. Collector of Bombay*[1]*',* That case is only an authority for the proposition that the 'requisition' of immovable property under Rule 75A, Defence of India Rules was outside the legislative competence of the Central Legislature in the absence of a notification by the Governor-General under Section 104, Government of India Act, 1935, which authorizes the Governor-General to empower the Federal or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in Sch.7, Government of India Act. That judgment proceeded on the basis that neither item 9 relating to compulsory acquisition of land nor item 21 relating to "land" included the power of 'requisition'. Following upon that decision the Governor-General issued a notification authorizing the Provincial Legislatures to legislate with respect to the 'requisition' of property. It was in pursuance of that power that the Central Provinces and Berar Accommodation (Requisition) Act (63 of 1948) was passed. This Court in - '*Manohar Ramkrishna v. G.G. Desai*[2]*',* upheld the validity of that Act, though certain provisions were held to be 'ultra vires' in view of the Constitution.

7. Unless the petitioner's argument is accepted that the powers contained in cls.23 to 24-A of the Order relate to powers of 'requisition' of immovable property, in our opinion there is no difficulty in holding that item 21 of List II authorizes the Provincial Legislature to legislate on the matters in controversy in this case. The relevant portion of item 21 is in these terms :

> "Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant,....."

As pointed out by this Court at pp.35-36 in the case just referred to above, 'land' includes houses and buildings. Therefore, item No.21 quoted above would also include reference to the relationship of landlord and tenant in respect of houses and buildings. But the learned counsel for the petitioner insisted that the powers in question are powers of 'requisition', and that as the Act of 1946 was passed by the Provincial Legislature without there being any notification in terms of Section 104,. referred to above, cls.23 to 24-A of the Order are 'ultra vires' equally with the provisions of section 2(c) of the Act from which they are derived.

8. The difficulty in our accepting this argument of the petitioner is that the term 'requisition' is not a term of art, as observed at p.562 of Vol.4 of 'Words and Phrases Judicially Defined' by Roland Burrows, K.C. :

> "It should be remembered that the word "requisition" is not a term of art, and, as Pickford, L.J., explained in The Broadmayne 1916 P 64 at p.73, does not connote the same state of things in every particular case."

It also appears that in the older editions of Stroud's Judicial Dictionary the word 'requisition' does

not find a place. In the Third (1953) Edition of his dictionary he has to say the following in respect of this word :

> " "Requisition", in regulations made under Emergency Powers Act, 1920 (10 and 11 Geo. V, c. 55) : See - '*France, Fenwick and Co. v. R*[3].', "Requisition" includes 'the taking of property in full ownership, the taking of the possession of property, and the acquisition of a right to have the property used in a particular manner without any taking of possession'. (Per Latham, C.J., in - '*Australasian United Steam Navigation Co. v. Shipping Control Board*[4]', 'Power to take possession of land was conferred by Reg.51 of the Defence (General)
> Regulations, 1939. This was in effect a power to requisition premises (although the word "requisition" is not used in the regulation) and is so treated in e.g. Circular No.23/52, "Requisitioned Premises Now in Use for Housing" of the Ministry of Housing and Local Government. Power to requisition property other than land was conferred by Reg.53 in terms. By Reg.100 (1), "requisition" means, in relation to any property, "take possession of the property or require the property to be placed at the disposal of the requisitioning authority."

Compensation for taking possession of land or requisitioning other property was authorized by the Compensation (Defense) Act, 1939 (2 and 3 Geo. VI, c.75), Section 17 of which defines the word "requisition" in the same terms as Reg.100(1) above.

> "Requisitioning" is not a term of art and has different meanings. Its usual meaning is nothing more than hiring without taking the property out of the owner although the owner has no alternative whether he will accept the proposition of hiring or not. It may, however, involve the taking over of the actual domination of a chattel (The Steaua Romana, 1944 P.43 (F))".

9. If the term 'requisition' has acquired any technical meaning during the two World Wars it has been used in the sense of taking possession of property for the purpose of the State or for such purposes as may be specified in the statute authorizing a public servant to take possession of private property for a specified purpose for a limited period in contradistinction to acquisition of property by which title to the property gets transferred from the individual to the State or to a public body for whose benefit the property is acquired. In 'requisition' the property dealt with is not acquired by the State but is taken out of the control of the owner for the time being for certain specified purposes. Even for this limited purpose, however, the owner becomes entitled to compensation, because 'requisition' of the property amounts at least to a temporary deprivation of the property. But in the instant case the powers conferred upon the Deputy Commissioner by cls.23 to 24-A are not such powers. The premises dealt with by the Deputy Commissioner under those powers do not vest in the State even for the time being. The State takes no responsibility for such premises, not even for the payment of rent. The powers therefore are not powers of 'requisition' but only powers of regulating the letting of premises and of specifying the class of persons to whom such premises may be let if those premises are available for letting out. Neither

the Act nor the Order (cls.23 to 24-A) authorizes the Deputy Commissioner to deprive the owner of the control of his premises even for the time being; nor does it compel him to let out his premises when they have not been let out in the past, or when the landlord is not inclined to let them out in the future after satisfying the Deputy Commissioner of his personal need. In other words, the powers conferred by these clauses can be exercised only when the landlord has let the premises to a tenant or intends to do so. It is only when the Deputy Commissioner is apprised of the fact that the premises have fallen vacant or are likely to fall vacant or are to be let out that the powers of the Deputy Commissioner to regulate the letting come into existence. Such a power, in our opinion, is not included in the term 'requisition'. If those powers do not come within the term 'requisition' there is no difficulty in holding that those powers are included in the expression 'Regulation of Letting of Accommodation' used in the Act of 1946. It must therefore be held that such powers are included in item No.21 of List II, Sch.7, Government of India Act, 1935, and that therefore the Provincial Legislature was competent to enact the Act of 1946.

10. Alternatively, it was argued that assuming that the legislation was 'intra vires' of the Legislature which enacted it, we must read the powers conferred by Section 2(c) of the Act in the limited sense of regulating the letting of accommodation and no more, and that so read the powers that could be conferred under the Act could not include the power to compel the landlord to let out his premises against his wishes. In this connexion our attention was invited to the observations at p.42 of Maxwell's Interpretation of Statutes, Edn.10 (1953), and pp.181 and 182 of Craies on Statute Law, Edn.5 (1952), that the title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, specially when it is a 'long' title. It is contended that the title of the Act of 1946 'An Act to provide for regulating the letting and sub-letting of accommodation in the Central Provinces and Berar' should be read so as to exclude the power of the Deputy Commissioner to compel the landlord to let out his premises against his wishes. Our attention was also called to the passage at p.189 of Craies to the effect that 'if very general language is used in an enactment, which it is clear must have been intended to have some limitation put upon it, the preamble may be used to indicate to what particular instances the enactment is intended to apply'. In view of that observation it was contended that the provisions of section 2(c) of the Act and of cls.23 to 24-A of the Order should be so construed or even limited in their application as to exclude the power of the Deputy Commissioner to compel a landlord to let out his premises to specified persons or classes of persons. In our opinion, there is no substance in this contention. When the meaning of the Legislature is clear in the enacting part of the statute there is no necessity to refer to the title, long or short, of the Act or to the preamble. It is only in cases where the meaning of the Legislature is not clear beyond doubt that recourse may be had to the title of the statute or to the preamble.

11. In this connexion it is also argued on the authority of the decision of their Lordships of the Judicial Committee of the Privy Council in - '*Municipal Corporation of City of Toronto v. Virgo*[6]', that a statutory power to regulate a thing predicates the continued existence of that thing which is to be regulated. With reference to the facts of this case it is argued that as the landlord no more intended to let the premises out to tenants there could be no scope for the Deputy Commissioner to regulate the letting of the premises when the landlord was against such letting. In our opinion, those observations of their Lordships have to be read in the context in which they appear to have been made. In the case before their Lordships of the Judicial Committee they were dealing with

the question whether the power to regulate included the power to prohibit, and it was in that context that their Lordships observed that the continued existence of the thing to be regulated was necessary in order to invoke the power of regulation. That case has no application to the facts of the instant case, because on the finding by the Deputy Commissioner that the accommodation in the direct occupation of the landlord was sufficient for his purposes it follows that there was surplus accommodation in the petitioner's house which had been let out in the past and which could therefore be presumably let out to tenants if a vacancy occurred. In our opinion, therefore, there is no substance in the contention that if the landlord expressed his desire to occupy the premises himself there was no scope for the Deputy Commissioner to regulate the letting of it. The wishes of the landlord, according to the statute, count only so long as he has not decided to let out the premises or any portion of them. But once he has exercised his volition of letting out the premises he has deprived himself of his absolute right to say 'No', and the power of the Deputy Commissioner to intervene and regulate the letting would come into existence. Thereafter, it is for the Deputy Commissioner to consider and determine after due enquiry whether the premises are really required by the landlord himself or whether they are open to be let out to tenants, and if so to whom. In view of these considerations it must be held that the provisions neither of the Act nor of the Order are 'ultra vires', and that the Deputy Commissioner did not exceed his powers in making the allotment as he did.

12. Coming to the merits of the case after having overruled the petitioner's contentions relating to the 'vires' of the Act and the Order, it cannot be said that the Deputy Commissioner did not make due enquiry. He gave notice to the petitioner, and the Rent Controller took down the statements of the landlord and then reported how matters stood. It was for the Deputy Commissioner to exercise that power, and it is not for us to tell him how that power has to be exercised. It has not been shown that he has taken any extraneous matters into his consideration. Hence, it is not a case where it can be said that there is any error apparent on the face of the proceedings attracting our special powers under Article 226. It is true that the Deputy Commissioner has passed two inconsistent orders about whether the premises should go to respondent 5 or to respondent 6. But, so far as the landlord is concerned, he is
out of the picture. We have not been told that there is any controversy as between respondents 5 and 6. The Deputy Commissioner will certainly, if he has not already done so, rectify the mistake arising out of some misapprehension.

13. This application must therefore be dismissed with costs. Hearing fee Rs. 100. The petitioner shall be entitled to a refund of the outstanding amount of security after payment of the costs ordered.
Application dismissed.

Cases Referred.

[1] AIR 1946 Bom 216
[2] AIR 1951 Nag 33
[3]1927-1 KB 458
[4](1946) VLR 82 at p.85
[6]1896 AC 88