

The State of Bombay Vs. M.C. Menon

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Court : Mumbai

Decided On : Feb-25-1958

Reported in : (1959)61BOMLR75

Judge : M.C. Chagla, C.J. and ;S.T. Desai, J.

Appeal No. : O.C.J. Appeal No. 60 of 1957 and Miscellaneous No. 165 of 1957

Appellant : The State of Bombay

Respondent : M.C. Menon

Disposition : Appeal allowed

Judgement :

M.C. Chagla, C.J.

1. This is an appeal from a judgment of Mr. Justice Coyajee by which he held that the Accommodation Officer had no jurisdiction to pass the requisition order which was impugned by the petitioner. It is sufficient to state a very few facts in order to decide the two contentions that arise in this appeal.

2. One Nair was a monthly tenant of the premises, which is a flat on the first floor of a building at Hormusji Adenwalla Road, Matunga, and it appears that in January 1949 this Nair started a commercial institution in one of the rooms of this flat. On September 22, 1955, Nair assigned this business to the petitioner, and the deed of

assignment mentions Rs. 601 as consideration paid by Menon, Rs. 400 being the price of furniture and Rs. 201 being the price for the goodwill of the business. The order of requisition was passed on April 22, 1957, and it recites that on an enquiry, it was found that the premises had become vacant in the month of September 1955 and the order of requisition is passed in exercise of the powers conferred by Clause (a) of Sub-section (4) of Section 6 of the Bombay Land Requisition Act, and there is a declaration that the premises had become vacant-after December 4, 1947. Mr. Justice Coyajee took the view that in view of the assignment in favour of the petitioner, there was in law no vacancy and, therefore, the State Government had no jurisdiction to pass this order. The learned Judge also took the view that on a true construction of the provisions of the Requisition Act, the legal effect of the assignment was that there was no vacancy, and these two conclusions arrived at by the learned Judge have been challenged before us by the Advocate General. Section 6(4)(a) makes the declaration of vacancy conclusive evidence that the premises were or had so become vacant. The question that arises in limine is whether it is competent to this Court to go behind that declaration. If it is not so competent, no further question can arise.

3. Now, Mr. Rajagopal has argued on behalf of the respondent that, although it may not be open to the Court to go behind the declaration in order to ascertain the facts found by the officer who held the enquiry, it is open to the Court to consider whether, in law, there is a vacancy, and if, in law, there is no vacancy, the Court can and, indeed, should hold that the order has been made without jurisdiction. The matter is put this way: The jurisdiction to make an order under Section 6 depends upon a vacancy. If, in law, there is no vacancy, then there is no jurisdiction to make an order. Now, this very point was considered by this Court in *Mohsinali Mahomedali v. The State of Bombay* (1950) 53 Bom. L.R. 94. In that case Mr. Justice Tendolkar had taken the view that the declaration under Section 6 was conclusive as to facts but not as to its legal consequences. The decision of Mr. Justice Tendolkar come up before me and Mr. Justice Gajendragadkar, and we found unable to accept the interpretation put by the learned Judge upon the expression 'conclusive evidence' and what we held was as found at p. 97:. Therefore, in our opinion, on a declaration being made by Government that there is a vacancy, that declaration is conclusive both as to the facts and also as to the

legal requirements which the law makes necessary.

Therefore, not only it is not competent to the petitioner to challenge the facts on which the declaration is based, but it is also not open to the petitioner to challenge the order on the ground that it does not comply with the requirements of vacancy laid down in the Requisition Act, We also pointed out that both the requirements as to law and the facts were questions which the Legislature had left for decision to the Government and the Court could not go behind the conclusion arrived at by the Government. This decision was given fairly a long time ago, but its correctness has been affirmed by the Supreme Court in a recent decision in *Lila Vati Bai v. The State of Bombay* : [1957]1SCR721 the Supreme Court has cited this judgment, presumably with approval, and has itself laid down the law in the following language:..But the special powers aforesaid of this Court or of the High Court cannot extend to reopening a finding by the State Government under Section 5 of the Act that the tenant has not actually resided in the premises for a continuous period of six months immediately preceding the date of the order or under Section 6 that the premises had become vacant at about the time indicated in the order impugned.

Now, Mr. Rajagopal himself relies on the judgment of the Supreme Court, and his contention is that where the Supreme Court speaks of reopening, it only refers to facts and not to law. What is further pointed out by Mr. Rajagopal is that earlier in this passage, the Supreme Court has stated (p. 940) :

But that does not mean that the jurisdiction of the High Court under Article 226 or of this Court under Article 32 or on appeal has been impaired. In a proper case the High Court or this Court in the exercise of its special jurisdiction under the Constitution has the power to determine how far the provisions of the statute have or have not been complied with.

and according to Mr. Rajagopal, if the law laid down what a vacancy is and if the Government declared a vacancy contrary to the provisions of the law, it was not carrying out the statutory requirements and this Court can interfere under Article 226. This, in our opinion, is a total misreading of the judgment of the Supreme Court. It has now become elementary to say that however conclusive the

Legislature may make a particular decision or a particular finding, it is always subject to the over-riding powers of the High Court under Article 226 or under Article 227 of the Constitution and, therefore, Mr. Rajagopal is right to this extent that even a declaration that there is a vacancy can be challenged under Article 226 or under Article 227. But the challenge cannot be directed to reopening that declaration or going behind that declaration. The challenge can only be that the declaration was made mala fide or that there was some extraneous factor which led the Government or the officer concerned to make that declaration. The Supreme Court, with respect, was not saying that under Article 226 it is open to the High Court to go behind the declaration on a question of fact or on a question of law. If, again with respect, the Supreme Court has said so, it would be reversing our decision in *Mohsinali Mahomedali v. The State of Bombay*. Far from the Supreme Court doing so, as we have pointed out, it has referred to this judgment presumably with approval. Therefore, this is not a case where the petitioner is making a proper challenge against the declaration under Article 226. What the petitioner is doing is asking the Court to sit in judgment on the declaration made by the Government and to decide that in law such a declaration could not be made. That, this Court cannot do, and, therefore, with respect, we do not agree with the learned Judge when he holds that the officer had no jurisdiction to declare a vacancy by reason of the assignment. The learned Judge should have assumed by reason of the collusiveness of the declaration that all the legal requirements of a vacancy had been complied with.

4. Now, we turn to the second contention, although it does not strictly arise but as the matter has been considered by the learned Judge and as the matter is of some importance and as the Advocate General states that the State wants guidance on this question, we have been persuaded to go into that matter also: Assuming it was open to the Court to consider the legal requirement of a vacancy, would the facts here established constitute a vacancy in law? Now, for this purpose we will assume that the assignment of September 22, 1955, is a valid and legal assignment. If it is legal and valid, does the fact that the petitioner is an assignee under a valid assignment bring about a situation in law by which there is no vacancy which would attract the powers of Government to make a requisition order? It is difficult to understand how, with very great respect to the learned

Judge, it is possible to take the view on a plain reading of the relevant provisions of the section that an assignment does not create a vacancy. The Explanation to Section 6 provides:

For the purposes of this section,-Premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment, or transfer in any other manner of his interest in the premises or otherwise, notwithstanding any instrument or occupation by any other person prior to the date when such landlord, tenant or sub-tenant so ceases to be in occupation.

Therefore, according to the plain and clear meaning of this Explanation, when the tenant Mr. Nair executed the deed of assignment on September 22, 1955, and assigned the premises to the petitioner, there was a vacancy within the meaning of this Explanation. Whether in fact there was a vacancy or not is irrelevant, because the Explanation introduces a legal fiction and for the purposes of the Requisition Act, on an assignment by a tenant there is a vacancy although the assignee may be in occupation of the premises.

5. Now, this clear position in law, so it seems to us, is met by Mr. Rajagopal by pointing out that under the Rent Act, a tenant is defined in Section 5(11) as also any person whose interest in premises has been transferred under the proviso to Section 15, and Section 15 permits an assignment being made under certain circumstances, and for the purposes of this argument, we will assume that the assignment that is made is an assignment which is permitted under Section 15, and we will also assume that for the purposes of the Rent Act, the petitioner has become a tenant. Now, says Mr. Rajagopal that if the petitioner is a tenant under the Rent Act, his possession is protected and he cannot be evicted by the requisition order. He draws attention to the fact that although a landlord is defined in the Requisition Act, a tenant is not defined; and, therefore, we must turn to the Rent Act for the definition of a tenant. But that is entirely an unacceptable canon of construction. When an Act defines a landlord and does not define a tenant, it

clearly means that we must look upon 'tenant' as a co-relative term and define a tenant corresponding to the definition of the landlord. In the Land Requisition Act, the landlord is defined as any person who is, for the time being, receiving, or entitled to receive, rent in respect of any premises, and therefore, the tenant must be defined as a person who, for the time being, pays or is liable to pay rent. If that be the true definition, then that definition can only apply to Nair who, as a tenant, assigned the premises to the petitioner. But apart from the definition, Mr. Rajagopal has raised a larger question that if a tenant is protected by the Rent Act, his premises cannot be requisitioned under the Land Requisition Act. In our opinion, that is an entirely untenable proposition. The Rent Act and the Land Requisition Act are not laws in pari materia. The object of putting the Rent Act on the statute book was to protect the possession of the tenant, but the protection was to be against the landlord. The Legislature, notwithstanding the termination of the contractual tenancy, wanted to protect the tenant from being evicted by the landlord, which power he had under the ordinary law. But even though the person may be looked upon as a tenant under the Rent Act and even though his possession may be protected under the Rent Act, it does not, therefore, follow that his possession is protected against the State. Under the Land Requisition Act, we are not dealing with rights of the landlords, but we are dealing with the rights of the State, and the State has the right to requisition premises, if they are vacant as understood by that Act, even though the premises may be in possession of a statutory tenant and even though his possession may be protected against the landlord. The fallacy underlying this argument is to equate the protection under the Rent Act with the right to requisition under the Land Requisition Act. We will assume, for the sake of this argument that the petitioner was a tenant as defined by the Rent Act, that the assignment was valid and that being in occupation the petitioner was deemed to be a tenant under the provisions of the Rent Act and the landlord could not evict him except on the grounds mentioned in the Rent Act. But when we turn to the Requisition Act, there is nothing in the Act which prevents the State from requisitioning premises of a statutory tenant. If the statutory tenant does not occupy the premises and the premises become vacant, those premises become liable to be requisitioned. If the tenant does not occupy the premises, the landlord cannot eject him, because he is protected, but the State can step in and

say that in view of the housing problem in the State if you do not occupy the premises, well, we will make better use of those premises. That is the whole basis of the Land Requisition Act. That is the policy underlying that Act. Therefore, in our opinion, even assuming every fact in favour of Mr. Rajagopal and assuming that we can go behind the declaration, it is clear, on the facts of this case, that the legal requirements of a vacancy are satisfied and in law the State Government was entitled to requisition these premises.

6. The result is that the appeal is allowed and the petition must be dismissed with costs.

7. Liberty to the appellant to withdraw the sum of Rs. 500 deposited in Court.

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