

M.N. Gowrishankar Vs. the Collector of Madurai (Competent Authority) and anr.

M.N. Gowrishankar Vs. the Collector of Madurai (Competent Authority) and anr.

SooperKanoon Citation : sooperkanoon.com/821545

Court : Chennai

Decided On : Jan-25-1967

Reported in : (1967)2MLJ291

Appellant : M.N. Gowrishankar

Respondent : The Collector of Madurai (Competent Authority) and anr.

Judgement :

ORDER

P. Ramakrishan, J.

1. The petitioner is the owner of the premises bearing No. 22, South Chittarai Street, Madurai. In 1942, he let out the building to the Union of India, represented by the Postmaster-General, Madras, the second respondent herein, for the use of the postal department; the ground-floor being used for the Post Office and the first-floor for the residence of the Postmaster. After the expiry of the agreement of lease in February, 1947, the petitioner made strenuous efforts to get the building back for his personal occupation. Finding his efforts unsuccessful he initiated proceeding in 1959, in the Court of the Rent Controller, Madurai, under the provisions of the Madras Buildings (Lease and Rent) Control Act for recovery of possession, on the ground that he required it bona fide for his personal

occupation, besides other grounds with which we are not now concerned. The petitioner did not succeed before the Rent Controller as well as the appellate authority. But when he moved the District Judge of Madurai, in revision, the learned District Judge found that the petitioner required the building for his bona fide residence, and directed eviction of the second respondent, by an order passed on 28th September, 1963. Within about six months thereafter, on 19th March, 1964, presumably at the instance of the second respondent the first respondent-Collector of Madurai issued a notice to the petitioner to show cause why the building should not be requisitioned for a public purpose, being a purpose of the Union of India, under Section 3 of Central Act XXX of 1952 the Requisitioning and Acquisition of Immovable Property Act, 1952. The petitioner filed a written objection to this notice, in which he laid prominent stress on the fact that he had got a verdict from a Court of law that the building was required bona fide for the purpose of his residence. In addition to this, the petitioner questioned legality of the action taken for the purpose of requisitioning the property as well as its bona fides. He had no other communication thereafter for his reply, and on 9th June, 1964, the first respondent-Collector of Madurai passed an order under Section 3(2) of the aforesaid Act, hereinafter referred to as the Act, requisitioning the property and directing the petitioner to deliver 'symbolic possession' to the Postmaster-General, Madras, represented by the Senior Superintendent of Post Office.

2. According to the affidavit of the petitioner, the requisitioning order above mentioned was passed mala fide, and was really intended to get round the decision of the revisional authority under the Madras Buildings (Lease and Rent) Control Act, holding that the petitioner required the building for the purpose of his bona fide residence and that the tenant in possession, namely the Postal Department should surrender possession to him. It was also alleged that the order of requisition was passed with the ulterior purpose of defeating the effect of the decision of the authority functioning under the Rent Control Act and must be construed as a fraud on power. It was further urged that in the circumstances of the present case, the petitioner should have been given an opportunity of making his representations in person, following up his written reply to the show cause notice. If such an opportunity had been given, he would have been able to

convince the competent authority, namely the first respondent that there were buildings in the neighbourhood where the second respondent could shift and run the Post Office, without depriving the petitioner of the valuable benefit, which he had obtained from the Rent Controller's Court, namely terminating the tenancy of the Postal Department.

3. The respondent relied upon a counter affidavit filed by the Collector of Madurai. In this counter affidavit, it is stated that the required formalities under the Act had been complied with, before the order of requisition was issued by the competent authority, and that the authority had also considered all the objections raised by the petitioner in his reply to the show cause notice. It was only after all efforts to obtain other accommodation or make alternative arrangements for the Post Office proved fruitless, that the second respondent moved the competent authority for invoking the provision of the Act. It was also urged that the locality in question is a very busy one, in the heart of the town of Madurai, and that it was necessary in the public interest that the building in question should be requisitioned.

4. Learned Counsel Sri Vedanthachari who appeared for the writ petitioner, first of all, urged that the second respondent was already in possession of the premises which was used as a Post Office. Therefore, from a strict point of view, this will not be a proper case for resorting to the power of requisition under the Central Act, because such requisitioning carried with it as a necessary and concomitant the recovery of possession. It appears to me that this argument had no substance in it. The Postal Department was in possession only as a tenant and such possession involved the incidents of tenancy, including the obligations as well as the rights that flow on the basis of such contractual relationship. The provisions of the Act providing for requisition is intended to enable the authority, for whom the Act is resorted to, to obtain a more exclusive control over the property, than what a tenant has. No doubt the Central Act does not define the word 'requisition' whereas a definition of that word is found in the Defence of India Act and that is referred to by the Bombay High Court in *Tan Nug Taim v. Collector of Bombay* : AIR1946 Bom216 . But it is clear that the incidents of requisitioning under the Central Act (XXX of 1952) imply a much larger dominion over the property requisitioned than what a tenant has over the property. Therefore there is nothing

illegal in form where a department of the Union, which is already in possession of the property as a tenant, requires the service of the competent authority for requisitioning the property for its benefit. This view finds a support in a Bench decision of the Punjab High Court in *Panna Lal v. State of Delhi*, a decision which dealt with Central Act XXX of 1952. The Punjab High Court observed:

Where premises which are lying vacant or are in possession of any one can be requisitioned and handed over to a Government servant or such other person whose business is concerned With the purpose of the Union, then a fortiori if such a person is already in possession, his possession can be continued.

5. The second objection pressed by learned Counsel for the petitioner regarding the mala fide nature of the requisitioning proceeding and there being a fraud on power, does not also appear to me to have an adequate basis in the circumstances of the case. Both these arguments are based in substance on the contention that the Postal department is trying to do, by resorting to the provisions of the Central Act, something which they could not succeed in doing, when the petitioner invoked the provisions of the Rent Control Act against the Department for the purpose of obtaining eviction. But this argument overlooks two important points. One is that the competent authority, the Collector of Madurai, has nothing to do officially with the Postal Department, which is a department of the Union, for whom the requisitioning order was sought. He is not a subordinate of the Central Government or of the Postal Department, in any sense. Secondly, the Postal Department finding itself threatened with eviction, which would disturb the possession which it was enjoying all these years of the premises, could reasonably feel that other steps which it could take legally to maintain its possession should be taken by it, and this will include approaching the competent authority, under Central Act XXX of 1952, to invoke the power of requisitioning. The rights they obtain on requisitioning the property are much larger than the rights which they had in it as a tenant, and it cannot be called a fraud on power or a mala fide proceeding, when resort to the Central Act XXX of 1952 was sought, for the purpose of requisitioning, in the present circumstances of the case. It is unnecessary to cite, in this connection the various decisions bearing upon the question of mala fides referred to by learned Counsel for the petitioner including

the decision in *Tan Mug Taim v. Collector of Bombay* : AIR1946 Bom216 and *Partap Singh v. State of Punjab* : (1966)ILLJ458SC .

6. However, a third ground, on which learned Counsel for the petitioner relied, appears to me to have substance. The argument proceeded in the following way. The power, which the competent authority is exercising under Section 3 of the Act. involves a quasi-judicial determination, on the merits of the demand for requisitioning the property of a private person made by the concerned department or authority on the one hand, and the owner or other person in possession who is affected by the order of requisition, on the other. The section specifically enjoins the competent authority to call upon the owner or other person in possession to show cause against resorting to the requisitioning proceedings. After receiving the answer to the show cause notice, the competent authority is obliged under Section 3(2) of the Act to consider the cause shown by the person interested, and then come to a conclusion-no doubt on a subjective satisfaction-that it is necessary or expedient to requisition the property. The same sub-section also enables the competent authority to make such further orders, as may appear to it to be necessary or expedient in connection with the requisitioning. To this exercise of the power in this form by the competent authority, there are two definite restrictions, which the statute itself has provided in the provisos to Section 3(2). In particular, proviso (a) gives protection to the owner, who is actually using the premises for the bona fide residence of himself or his family. Another safeguard is that, if the premises are used by a tenant for his residence for a period of not less than two months immediately preceding the date of service of the notice, the competent authority cannot dispossess the tenant before affording suitable alternative accommodation. Unfortunately in this case, the owner could not rely upon proviso (a) because on the date of the requisitioning, he had only obtained the order of the District Judge recognising his bona fide need of the premises for his residence, but before he could commence user of the premises for his residence, the requisitioning order had intervened, just at the nick of time Relying upon the proximity of the two dates, namely the date of the order of the District Judge and the date of the requisitioning order, learned Counsel for the petitioner wants to extend the meaning of the word 'used' in proviso (a) to a case like the present one, where the Rent Control authority had given a decision that the

premises were required for the bona fide use of the owner. But I am of the opinion that the statute does not permit the extension of the meaning of the word 'used' in the proviso, in this form.

7. But the more important argument urged, in this connection, is that, though the statute did not define the meaning of the terms 'show cause' used in Section 3(1)(a) of the Act, it could be inferred, as a general principle of affording natural justice in such cases, that the affected party should also be given an opportunity of a personal hearing, before an adverse decision is taken against him, solely on the basis of his written reply to the show cause notice. For this view, learned Counsel for the petitioner relied upon the decision of the Punjab High Court in *Panna Lal v. State of Delhi*, where the learned Judges held:

The expression 'to show cause' in Section 3(1)(a) means the right to be heard in person or by Counsel and where the petitioner whose house has been requisitioned has not been given an opportunity by the competent authority of appearing either personally or through Counsel and stating his case, the requisitioning authority must be deemed to have acted without jurisdiction.

The Punjab High Court, for this view, relied upon one of their own earlier decisions.

8. Learned Counsel for the respondents referred to the decision of Ganapathia Pillai, J., in *Syed Casim v. Collector, Central Excise* : AIR1962 Mad366, where it was held that in the circumstances of that case which arose under the Sea Customs Act, the refusal to grant a personal hearing could not be held to be unreasonable. The judgment cannot be considered as laying down a general proposition applicable to all circumstances and to all cases that, where the statute requires that the affected party should be given a show cause notice, it does not involve an opportunity for personal hearing, where circumstances of a particular case make it necessary that a personal hearing should be afforded, in order to comply with the requirements of natural justice. Learned Counsel for the petitioner quoted in this connection a decision of the Supreme Court in *Board of Revenue v. Vidyawati* (1963) 1 S.C.J. 324 : A.I.R. 1962 S.C. 121, that decision arose out of a case under Stamp Act, wherein the Board of Revenue, as the Chief Controlling

Revenue Authority, had to decide, on a reference made to it, the property construction of an instrument and the appropriate stamp duty payable on it. The Stamp Act itself was silent about the issue of a show cause notice. Nevertheless, the Supreme Court observed, that since the Board of Revenue had to act judicially in disposing of the matter, and the issues involved payment of heavy amounts of deficit duty and even heavier amounts as penalty, the principles of natural justice required that the opposite party, namely, the executant of the instrument should be given a hearing. In the present case, adopting the above principles as well as the decision of the Punjab High Court, above cited, the petitioner is a person who had successfully obtained a decision in his favour, that he required the premises bona fide for his residence, he having no other home of his own. He had remained out of possession of the house for over 20 years. In such circumstances, the competent authority exercising quasi-judicial powers had a duty to weigh the importance of the public purpose to be achieved by the requisitioning, authority on the one hand and the hardship which might be caused to the owner by depriving him of the valuable rights to possession which he had obtained from the Rent Control Court, on the other. Central Act XXX of 1952 had laid stress on the word 'expedient' in Section 3(2). This implies that the compulsory provision for requisitioning should be resorted to, only if the competent authority, having weighed the balance of convenience, decides that requisitioning is clearly called for in the circumstances. Section 3(2) also provides that the competent authority could also make such further orders, as may appear to it necessary or expedient in the circumstances of the particular case. These provisions in the Act contemplate a wide scope for the exercise of his discretion by the competent authority, and this discretionary relief cannot be given, merely on the basis of an abstract consideration of the written representations against the show cause notice. On the other hand, the language of 'the statute as well as the authorities above referred to appear to make it necessary that a personal hearing should have been given to the petitioner in the circumstances of the present case, before a proper decision could be taken for requisitioning the property.

9. The learned Counsel for the second respondent referred me to the provision in Section 10 of the Act, where liberty is given to the aggrieved party to prefer an appeal to the Central Government, and the Central Government is required to give

the party affected an opportunity of being heard and then pass orders after making such further enquiry as they consider necessary. It is interesting to note that the Punjab High Court in the decision in Panna Lal v. State of Delhi , relied upon the very provision in Section 10(2) of the Act, making it necessary for the appellate authority to give an opportunity to the aggrieved party for being personally heard as a reason for the support of its view, that an opportunity should be given for a personal hearing even on the original occasion by the competent authority. This apart, in the present case, the second respondent, on whose behalf the requisitioning is made, is a department of the Central Government, and the power of appeal under Section 10(2) of the Act has also to be exercised by the Central Government. While I do not wish to say that the Central Government, in such circumstance cannot be expected to take an objective view, when the matter is brought before them in appeal, still, in view of the circumstances obtaining in the present case, it would be proper to hold such opportunity of a personal hearing is afforded by the competent authority himself who is the Collector of Madurai.

10. I, therefore, allow the writ petition and quash the order under consideration. It will be open to the competent authority, if it is found necessary to proceed with the requisitioning, to deal with the matter afresh, in the light of the observation contained in this judgment. There will be no order as to costs.