

# **Kantendra Jaymukhlal Majumdar vs Collector Of Baroda And Anr. on 25 February, 1965**

**Equivalent citations: AIR1966SC89, AIR 1966 SUPREME COURT 89**

**Author: Raghubar Dayal**

**Bench: P.B. Gajendragadkar, Raghubar Dayal, V. Ramaswami**

## **JUDGMENT**

Raghubar Dayal, J.

1. This appeal, by special leave, raised the question whether the requisitioning authority under the Bombay Land Requisition Act, 1948 (Bom. Act XXXIII of 1948) can, on de-requisitioning a premises, ask the allottee in possession of the premises to vacate it.

2. The premises in suit were requisitioned for the appellant in December 1953 when he was an Assistant Registrar of the Baroda University. He left the service at Baroda in December 1957 and was serving at Gorakhpur when the impugned order asking him to vacate the premises was made on February 23, 1962.

3. To appreciate the contentions raised for the appellant, we may set out some further facts. There had been litigation between respondent No. 2 and the appellant in 1958 on the basis that the appellant was the tenant of respondent No. 2. The suit for ejecting the appellant from the premises was instituted on the ground that respondent No. 2 required the premises bona fide for personal occupation. It was ultimately dismissed on the ground that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. Act LVII of 1947) did not apply to the premises requisitioned by Government in view of Section 4 of that Act.

4. It is urged for the appellant that both on account of respondent No. 2 treating him as a tenant and on account of the provisions of the Requisition Act he became a tenant of the landlord when the premises were de-requisitioned and that, therefore, the Collector, Baroda, was not competent to order him to vacate the premises. We do not consider any force in this contention.

5. Before discussing this contention, we may refer to the relevant provisions of the Requisition Act and the action taken under them. Sub-section (2) of Section 2 empowered the State Government to extend, by notification in the official Gazette, any or all the provisions of the Act to any other area and on such date as may be specified in the notification. In the exercise of this power, the Government of Bombay issued, a notification on August 5, 1950 extending with effect from August 16, all the provisions of the Act to the Baroda district. This notification was published in the Bombay

Government Gazette, dated August 17, 1950. Sub-section (3) of Section 2 empowered the State Government, at any time, to direct by like notification, that any or all the provisions of the Act shall cease to extend to any area. No such notification has been issued by Government rescinding the notification of August 5, 1950.

6. Section 4 defines 'land' to include benefits to arise out of land and buildings and all things attached to the earth, or permanently fastened to the buildings or things attached to the earth, and 'premises' to mean any building or part of a building let or/intended to be let separately. Clause (5) of Section 4 defines the expression 'to requisition' to mean, in relation to any land, to take possession of the land or to require the land to be placed at the disposal of the State Government. Section 5 authorizes the State Government to requisition any land for any public purpose and the proviso to the section states that a building or part thereof in certain circumstances will not be requisitioned. Sub-section (2) of Section 5 also refers to the making of a certain declaration where any building or part thereof is to be requisitioned under Sub-section (1). Section 6 deals with requisition of vacant premises in an area specified by the State Government by notification in the official Gazette. It provides for the landlord of the premises which were to fall vacant to give intimation to the proper officer and not to let out the premises without the permission of the State Government to anyone before giving the necessary intimation and for a month from the date on which the intimation is received. Sub-section (4) of Section 6 empowers the State Government to requisition the premises for any public purpose and to use or deal with it for any such purpose in such manner as may appear to it to be expedient.

7. Section 8 provides for the payment of compensation with respect to the land requisitioned. Section 8AA authorizes the Government to deduct the amount spent on the purposes mentioned in that section from the compensation which from time to time becomes due to the owner.

8. Section 9 deals with matters in connection with release from requisition. Sub-section (1) authorises the State Government to release at any time from requisition any land requisitioned under the Act. Sub-section (2) provides that upon such release the land shall be restored as far as possible in the same condition in which it was on the date on which the State Government was put in possession thereof and that the State Government shall pay compensation in certain circumstances. Sub-section (3) provides that where any land is to be released from requisition, the State Government may, after making such enquiry as it deems fit specify by order in writing the person to whom possession of the land shall be given, and Sub-section (4) states that the delivery of possession of the land to such person shall be a full discharge of the State Government from all liability in respect of such delivery but shall not prejudice any rights in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered. Sub-section (6) provides that in certain circumstances possession would be deemed to have been delivered on a certain date to the person entitled to possession thereof and that the State Government shall not be liable for any compensation or other claim in respect of the land for any period after the said date, and Sub-section (7) provides that for the purpose of releasing any land from requisition, the State Government may by order direct the person to whom the State Government had given possession of such land and other person, if any, in occupation of such land, to deliver possession thereof to the officer authorised in that behalf by the

State Government. Section 11 provides that any officer authorised in that behalf by the State Government by a general or special order may take possession of any land in respect of which an order has been made under Section 5 or Section 6 or Sub-Section (7) of Section 9.

9. Now, the Government of Bombay directed, in the exercise of powers conferred under Section 15 of the Act, by notification, dated August, 5, 1950, that the powers conferred and duties imposed upon the State Government by the sections specified therein including Sections 5, 6 and Sub-sections (1), (3), (5) and (7) of Section 9 and Section 11, shall also be exercised or discharged by the Collectors mentioned in the notification within the limits of their respective jurisdictions. The Collector of Baroda first issued a notification on March 29, 1951 in the exercise of powers conferred by Sub-section (1) of Section 6 of the Act specifying the area within the limits of the Baroda Municipal Borough as the area for the purpose of the said Sub-section (1). The Collector of Baroda requisitioned the premises in December 1953 and allotted it to the appellant.

10. The Collector, by another notification, dated April 13, 1954, withdrew the areas specified in the schedule to that order from the operation of Section 6 of the Act. The area mentioned in the schedule does not cover the area in which the premises in suit are situate. It follows that the original notification of March 29, 1951, continued to apply to the area where the premises in dispute were situate.

11. The Collector issued another notification on December 26, 1959, specifying the area within the limits of the Baroda Municipal Borough to be the area for the purposes of the said Sub-section (1). This notification, in a way, was a duplication so far as the areas which had not been excluded by the Notification of April 13, 1954. The Government rescinded the Collector's order, dated December 26, 1959 by its order, dated December 5, 1961. In the context of the various notifications, the rescinding of the Collector's order, dated December 26, 1959, does not affect the application of Sub-section (1) of Section 6 to the area in which the premises in suit are situate, and, even if it be held otherwise, that would simply debar the Collector from taking any further action under Section 6 of the Act, but will not have the result of releasing from requisition premises which had been lawfully requisitioned prior to this order of Government.

12. In view of Section 9 of the Act, it was the (duty of the Collector, on derequisitioning the premises, to restore them to the landlord in the condition in which he had taken them in possession. He took vacant possession from the landlord and therefore had to deliver vacant possession to him. Sub-sections (3) and (7) of Section 9 specially provide for specifying in the order of de-requisitioning, the person to whom possession of the land be given and such person can be the person from whom possession had been obtained by Government or some officer of Government specified therefor. It was, therefore, essential for the Collector to order by his order of de-requisitioning the premises the vacation of the premises by the appellant and the delivery of possession to respondent No. 2 to whom the Government had to restore possession in order to relieve itself of any farther claims to compensation. The contention that the Collector was incompetent to make such an order is not sound.

13. It was not for the collector to consider whether there was any private arrangement between the appellant and the landlord with respect to the tenancy of the premises after the de-requisitioning, and it is rightly conceded that the Collector would not be bound by any such arrangement. Nor can the question of any such arrangement between the two be a matter for decision by the High Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution. There is a different forum for the determination of the rights of the two parties, if any.

14. It was sought to be urged for the appellant that the expression 'to requisition' in Section 4 applies to the taking of possession of land and does not apply to the taking of possession of premises, which, according to the appellant, are not included in the term 'land' as defined in Sub-section (1). It is argued on this basis that the requisition of the premises in suit was not under the Act. No such question was raised before the High Court and we did not allow learned counsel for the appellant to raise this question in this Court.

15. We are, therefore, of opinion that the High Court rightly rejected the writ petition of the appellant.

16. The appeal is accordingly dismissed.