Ram Chandra vs The District Magistrate Of Aligarh And ... on 13 February, 1951

Equivalent citations: AIR1952ALL520, AIR 1952 ALLAHABAD 520

JUDGMENT

Sapru, J.

1. This is a plaintiff's first appeal. The case as put forward by the plaintiff was that he and his ancestors had been in possession of the shop in suit for a continuous period of 60 or 70 years, that they bad been carrying on 'kaserat' business in that shop, that defendant 2, who is the Rationing Officer of the town of Hathras was somehow improperly prevailed upon the defendant 3 to allot the shop in dispute to him under the United Provinces (Temporary) Accommodation Requisition Act (Act XXv [25] of 1947), herein-after called the Act, on a representation to him that the shop was vacant and that no alternative accommodation had been provided to the plaintiff. The plaintiff's case was that it was not competent to the authority concerned to eject him, that he was protected by Act XXV [25] of 1947 and that the ejectment order was likely to affect his business somewhat seriously in his old age. On these allegations, the relief claimed by the plaintiff was that the Court might be pleased to issue a permanent injunction, restraining defendants 1 and 2, from ejecting him from the shop as also restraining defendant 3, from taking possession of it.

2. The suit was resisted by defendants 2 and 3 on the ground, inter alia, that inasmuch as the requisition order was quite legal, its validity could not be challenged, having regard to Section 16 of the Act in any Court. Another plea that was taken was that the suit was bad inasmuch as defendant 2 had not been served with any notice under Section 80, Civil, P.C. It was further asserted by the defendants that the plaintiff's allegation that no suitable alternative accommodation had been provided by the defendants to him was wrong and that they had in fact provided such accommodation to the plaintiff. On the above facts, it was pleaded by defendants 2 and 3 that the plaintiff was not entitled to the injunction prayed for. The defence put forward by defendants 1 and 2 was supported in the main by defendant 3. The latter, however, added a further plea that he was a refugee and, after having left the West Punjab on account of the disturbances, had to take shelter in Hathras and that the shop in question was purchased by him in order to have a fresh start in life.

3. The learned Additional Civil Judge dismissed the plaintiff's suit. He held that the notice given under Section 80, Civil P. C., was a valid one and that the District Magistrate had acted, within the powers vested in him, in asking the plaintiff to vacate the shop and deliver its possession to defendant 3. He further held that inasmuch as the plaintiff had not been able to show that the order of the District Magistrate was illegal, the suit brought by him wag barred by Section 16 of the Act. The learned Judge's view was that it was not, in any case, open to him under Section 56, Specific Relief Act, to grant an injunction against the District Magistrate as to do go would be to interfere

with the public duties with which the Provincial Government had vested the District Magistrate. Dissatisfied with the judgment and decree of the trial Court, the plaintiff has come up in appeal to this Court.

4. The question for consideration is whether the decree of the learned Additional Civil Judge should be maintained and the injunction asked for refused to the plaintiff. The first question that needs to be determined is whether there is any substance in the argument that Section 16 of the Act constitutes a bar to the plaintiff's suit. Section 16 of the Act reads as follows :

> "Except as provided in this Act no order made in exercise of any power conferred by or under this Act shall be called in question in any Court."

The word "Court" has been defined in Section 2 (b) of the Act to mean "the Court of a Munsif or Civil Judge, or where there is no Civil Judge the District Judge, who would have jurisdiction to hear and decide a suit for eviction of a tenant from accommodation in respect of which the question arises;"

5. The argument has been advanced, in this Court, that it is, if at all, the Civil Judge who was debarred from hearing the suit and that the bar does not apply to this Court in appeal, an appeal being in the nature of the re hearing of the suit Whatever may be the merit in this argument, I think the question raised is capable of being looked at from a different angle. I do not think that the section, as it stands, can be interpreted to mean that the Civil Judge who would have been competent to entertain the suit but for the above section is debarred from examining the question whether the order impugned can be described as one coming within the limits of the power conferred by or under the Act. What this section, in other words, lays down is that the Court has no power to interfere with an order made within the ambit of the power conferred upon the authority making it. Where the authority exceeds the powers conferred upon it or makes an order disregarding the conditions subject to which and the limits up to which it can pass any order, the Court can undoubtedly interfere for an' order passed of such a nature would not be a legal order and could not be described, for that reason as an order made in the exercise of any power by or under the Act. I do not think that the section has taken away the jurisdiction of Courts to consider whether powers have been exceeded and to prevent, in case they find they have, from their being so exceeded. I do not find any words which expressly deny or limit the jurisdiction of Courts to control an excess or abuse of power. As I read the section, the Courts can declare the order invalid, if it is not in accordance with the provisions of the Act in question or goes beyond the powers conferred on the authority promulgating it. The word "question", in my opinion, means, as was pointed out by Walsh J. in Kashmiri Lal v. Emperor, 19 ALL L. J. 541, "called in question as regards its reasonableness or practicability" and cannot mean in the context in which it has been used "challenging its legality."

6. The real question, therefore, for determination is whether the order impugned in this case transgresses the limits prescribed for such orders or not. If it does not exceed the limits prescribed by the Act or if the order is no more than that which the authority ordering it could pass, then undoubtedly finality attaches to it and the Court has no power to set it aside. The question whether it was intra vires or ultra vires the authority making it, is, however, a question which the Court was

competent to go into and I do not think that the legislature has taken away this power.

7. The question, then, which we have to consider is whether the order of the District Magistrate directing the plaintiff to hand over possession of the shop in dispute to the person mentioned by him, in whatever manner it might have been procured, is in conformity with the provisions of the Act and does not exceed the powers conferred upon the District Magistrate. In order to appreciate the question which has arisen in this ease, it is necessary to understand the full meaning of Section 3 of the Act which is in the following terms:

> "If in the opinion of the District Magistrate, it is necessary to requisition any accommodation for any public purpose, he may, by order in writing, requisition such accommodation and may direct that the possession thereof shall be delivered to him within such period as may be specified in the order, provided that the period so specified shall not be less than 15 days from the date of the service of the order:
>
> Provided also that no building or part of a building exclusively used for religious worship shall be requisite one under this section ;
>
> Provided further that no accommodation which is in the actual occupation of any person shall be requisitioned unless the District Magistrate has satisfied himself that suitable alternative accommodation exists for his needs or has provided him with swell accommodation."

8. The power which has been given to the District Magistrate is meant to be used for a public purpose, i.e., a purpose which is to the benefit of the community in general. The phrase "public purpose" as was observed by Lord Dunedin in Hamabai Framjee Petit v. Secy. of State A. I. R. (1) 1914 P.C. 20 : 39 Bom. 279 at p. 295:

> "Whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

It was further observed in that case that "Prima facie the Government are good judges of that. They are not absolute Judges."

9. Reference may be made to the recent case of Province, of Bombay v. Kushaldas S. Advani, A. I. R. (37) 1960 S.C. 222. That was a case in which an appeal had been directed by the Province of Bombay against a judgment of an appellate bench of the Bombay High Court affirming an order of a single Judge of that Court granting the writ of certiorari for quashing the order requisitioning certain premises under Section 3 of the Bombay Land Requisition Ordinance (5 of 1947) which was in the following terms:

> "3. Requisition of land--If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in writing requisition

> any land for any public purpose:
>
> Provided that no land used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the official Gazette shall be requisitioned under this section."

The view which found favour with the majority of their Lordships composing the Supreme Court bench was, to quote the language of Kania C.J., that:

> "The decision of the Provincial Government as to the public purpose contains no judicial element in it. Just as the Government has to see that its order of requisition is not made in respect of laud which is used for public religious worship or is not in respect of land used for a purpose specified by the Provincial Government in the Official Gazette, (as mentioned in the proviso to Section 3) or that the premises are vacant on the date when the notification is issued (as mentioned in Section 4 of the Ordinance), the Government has to decide whether a particular object, for which it is suggested that land should be requisitioned, was a public purpose."

In the same case Fazl Ali J. observed:

> "For prompt action, the executive authorities have often to take quick decisions and it will be going too far to say that in doing so they are discharging any judicial or quasi-judicial functions."

His Lordship further observed that:

> "There is nothing in the Ordinance to show that the Provincial Government has to decide the existence of a public purpose judicially or quasi judicially."

10. It is thus well settled that every decision of an executive authority in pursuance of a power given to it by any law is not necessarily judicial or quasi-judicial. It strikes me that the decision of the District Magistrate both about the purpose and the need for which the house was being requisitioned is, in the absence of any proof of mala fide on the part of the District Magistrate, a final one and it is not open to this Court to substitute its judgment either in regard to the purpose for which the house had been requisitioned in this case being a public purpose or the need for its being requisitioned. I am not satisfied on the evidence that the District Magistrate was influenced in this case by considerations of a mala fide character. It is unnecessary to go into the evidence led by the plaintiff to show that the District Magistrate did not exercise a proper judgment in coming to the conclusion that the purpose for which the house was acquired was a public purpose. It was his job to come to a conclusion on this matter and his view must be accepted as final. Actually the purpose for which the house is stated to be required is the rehabilitation of refugees and I can conceive of no purpose which can more properly be described as coming within the category of a public purpose than the rehabilitation of uprooted persons with whose misfortune it is impossible for a man with a heart not to sympathise. I can quite well appreciate how the rehabilitation of even a single individual

refugee in pursuance of a general scheme or policy of rehabilitation of refugees can be a public purpose in the best sense of the term.

11. That the view of the District Magistrate as to whether the purpose is a public purpose or not has to be accepted as final is not however, enough to dispose of the case for it is important to remember that it is not sufficient for requisitioning an accommodation under Section 3 that the District Magistrate must consider the requisition necessary for any public purpose. Apart from the fact that the period specified must not be less than is days from the date of the service of the order and that no building or part of a building exclusively used for religious worship shall be requisitioned, the further condition laid down by the section for enabling the District Magistrate to requisition a premises which is in actual possession of any person is that the District Magistrate must satisfy himself at the time that he passes the order that suitable alternative accommodation exists for the needs of that person or actually provides him with such accommodation. What the District Magistrate has done in this case is simply to say that accommodation will be provided to the appellant before us. There is nothing in the order passed by the District Magistrate to indicate that the alternative accommodation provided by him is, in his opinion, of a suitable character. On the contrary, the words "will be" indicate unmistakably that at the time the order was passed, the District Magistrate had neither made sure that suitable alternative accommodation existed for the needs of the appellant nor had provided him with such accommodation. The words "will be" have reference to the future and it is not on the basis of any future plan that the District Magistrate might have had in mind for providing accommodation for the person from whom he is requisitioning accommodation but either on the actual allotment of suitable accommodation to him at the time the order is passed or on the actual existence of such accommodation that he could act. The inference, therefore, is irresistible that the District Magistrate did not exercise his mind in an intelligent manner on this matter at the time that the order was passed by him. He appears to have overlooked the pro-visions of the section of the Act and its requirements. The conclusion that I have, therefore, arrived at is that inasmuch as the District Magistrate did not act in accordance with the requirements of the section, this Court has power to interfere with his order as in the circumstances, that existed in this case he cannot be said to have been acting within the ambit of the authority conferred upon him by the Act. I do not mean to suggest that the order passed by the District Magistrate was not an order passed by him in his official capacity in a bona fide manner. It was, however, in my opinion, an order which was not in conformity with the requirements of Section 3, for the reason that the District Magistrate had paid no regard to the considerations which he must keep in mind when promulgating an order under Section 3. For this reason the order is, in my opinion, an invalid order and cannot, there fore, be described as an order under the Act.

18. This, however, I think, does not dispose of the case. It was contended by learned counsel for the State that the suit as framed was misconceived for a permanent injunction cannot be issued under Sub-section (d) of Section 36, Specific Relief Act which is to the following effect:

> "An injunction cannot be granted. ....
>
> (d) to interfere with the public duties of any department of the Central Government, the Crown Representative of any Provincial Government, or with the sovereign acts

of a Foreign Government."

13. The order passed in this case was by the District Magistrate, the power to pass such orders of requisition having been conferred by Section 3, of the Act upon the District Magistrate. What this subsection prohibits is injunctions which interfere with the public duties of any department of the Central Government (now the Union Government) or the Provincial Government (now the State Government). Assuming that the Act of the District Magistrate was a public act, can it be said that the District Magistrate is a department of the Union Government or State Government. I do not think it can. Section 10 (1), Criminal P. C., makes it obligatory on the State Government to appoint in every district outside Presidency towns a magistrate of the first class who shall be called the District Magistrate. The Code of Criminal Procedure imposes upon the District Magistrate many duties and responsibilities and invests him with many powers. In addition to the powers that he possesses under the Code of Criminal Procedure, he is the Collector of the district and he is also the District Officer, and in this capacity he performs many duties which are not covered by the Code of Criminal Procedure (see the observations of McNair J. in Chaudhary' Bejoy Krishna v. Shyam Narain, A. I. R. (20) 1940 Gal. 30 at p. 31. (I do not see how it can be said that Sub-section (d) of Section 56, Specific Relief Act has conferred upon the District Magistrate the position or the status of a department. The District Magistrate is the persona designate who can exercise the powers in question under the Act and unless it be held that he is a department of Government or is acting as the authorised agent of a department, the sub-section in question will not prevent injunctions being issued to certain acts whish he could not do under the section on which he is relying. The District Magistrate, as I have just pointed out, is an officer who has multifarious duties to perform. He is, inter alia, the Head of the Police, the Head of the Magistracy and the person on the spot under whom many departments of Government function. But can he be called a department? For that it is necessary for u3 to understand clearly what is meant by a department of Government. The Shorter Oxford English Dictionary, vol. I.P. 483 defines the word "Department" in the following terms:

> "Separate allotment; province or business assigned to a particular person; hence, a separate division of a complex whole, especially of activities or studies; a branch province. One of the separate divisions or branches of state or municipal administration. One of the districts into which Prance is divided for administrative purposes. A part, section, region."

In the Encyclopedia Britannica, 14th Edition, vol. 7 p. 228, the word "Department" is defined to mean:

> "a division or part of a system; one of the branches of the administration in a State or municipality. In Great Britain it is commonly applied to the subordinate divisions of the Chief executive offices of state, such as the savings bank or other department of the Post Office, the mines department of the Board of Trade, etc.; in the United States these subordinate divisions are known as 'bureaux' while 'department' is used of the chief branches of the executive."

In the Encyclopedia of the Laws of England, 1897 Edition, vol. IV, p. 218, the meaning attached to the words 'Department of State' is as given below:

> "A branch of the Government. The various departments of State are classified by Sir W.R. Anson (Law and Custom of the Constitution Part II., 2nd Ed., Ch. IV) as follows--(1) offices of the household which are now filled by the Lord Steward, Lord Chamberlain, and Master of the Horse; (2) political offices, including the various secretariats, the Privy Council, Admiralty (the), Board of Trade, Local Government Board, etc.; (3) the various non-politics I executive offices, e.g. the Customs and Inland Revenue Departments. The functions of each department are dealt with under its separate title. See also Executive Government."

In the classical work of Sir William Anson's Law and Custom of the Constitution, Fourth Edition, vol. II, Part I, chapter in, p. 156, history is given of "The Departments of Government and the Ministers of the Crown." Sir William Anson traces the history of the Councils of the Crown to their issue in the Cabinet of the present day, After stating that the Cabinet is not the executive in the sense in which the Privy Counsil was the executive, the late Sir William Anson makes the following observations which are pertinent on the question of what a department is:

> "The Cabinet shapes policy and settles what shall be done in important matters, whether foreign or domestic, and it consists mainly of the heals of great departments of government, but it is not therefore the executive.
>
> The Cabinet is the motive power in our executive. The decisions of the Cabinet and the advice thereupon tendered to the Crown bring into action the departments of government concerned. Of these and of the ministers who supervise them we must now treat."

I may also refer to the book on Constitutional Law of Mr. Chalmers and Mr. Asquith (now Lord Justice), 5th Edn., p. 223, chap, XXVI, where the position in regard to a, department is explained in the following terms:

> "Each important department of the Executive has a Parliamentary head often, though not always a Cabinet Minister, who controls the general policy of that department, but who is necessarily assisted by a large subordinate staff. The Parliamentary Chief can only deal personally with matters of importance but all the business of the department is conducted in his name, and he is responsible for its conduct to Parliament. The staff of the executive departments constitute the Civil Service."

It may further be mentioned that chap, XXVII is headed "Important departments of State."

14. In their well-known book on Constitutional Law, Professor Wade and Mr. Phillips observed as follows in ch. 4, the heading of which is "The Central Government Departments:

> "Administrative government at the centrals carried out mainly by departments. A list of the departments follows, together with a brief statement of their principal functions No attempt has been made to cover in detail the vast field of activity of the Central Government.
>
> A department is presided over by a Minister who in the case of all the more important departments has hitherto been, in peace time, a member of the Cabinet, He is assisted by a junior Minister or a Parliamentary Secretary. The Permanent Secretary is the senior civil servant in the department. Under him are one or more Deputy Secretaries and a hierarchy of administrative officers graded as Principal Assistant Secretaries, Assistant Secretaries, Principals and Assistant Principals. It is the administrative staff who are responsible for executing policy and on them, particularly the higher grades, the Minister must be able to rely for disinterested and impartial advice."

Reference may also be made in this connection to the well known work of a writer of the highest reputation on the comparative politics, the late President Wilson's work on the State. This is what he had to observe about the Departments of Administration in his book at p. 883:

> "So much for the relations of the Cabinet to the Sovereign and to Parliament. When we turn to view it in its administrative and governing capacity as the English Executive we see the ministers as heads of departments as in other governments. But the departments of the central government in England are by no means susceptible of brief and simple description as are those of other countries, which have been given their present forma by logical and self consistent written Constitutions, or by the systematizing initiative of absolute monarchs. They hide a thousand intricacies born of that composite development so characteristic of English institution".

Finally I should like to refer to the interpretation Act of 1889 in which will be found the official definition in past and future Acts of the various high functionaries of State who constitute the big departments in Britain.

15. Prom these quotations it is clear that the word "Department" as used in Britain means branches of administration in the State or a municipal corporation. In Great Britain as also in this country where under the Constitution a system of Parliamentary Government prevails it is applied to the subordinate divisions of the chief executive offices of State presided over by Ministers responsible to the legislatures. The word "Department" has special connotations both in France and the United States which it is, unnecessary to consider in connection with this case.

16. There is no difficulty so far as the word "Government" is concerned. The words "Central Government" or as we should now call it "Union Government" and the words "Provincial Government" or to be more exact "State Government" are defined in the General Clauses Act and I reproduce those definitions for the sake of convenience.

"3 (Sub) 'Central Government' shall--

(a) in relation to anything done or to be done after the commencement of Part III, Government of India Act, 1935, mean the Federal Government; and

(b) in relation to anything done before the commencement of Part III of the said Act, mean the Governor-General in Council, or the authority competent at the relevant date to exercise the functions corresponding to those subsequently exercised by the Governor-General in Council:

8 (43-a) 'Provincial Government,' as respects anything done or to be done after the commencement of Part III of the Government of India Act, 1935, shall mean--

(a) In a Governor's Province, the Governor acting or not acting in his discretion, and exercising or not exercising his individual judgment according to the provision in that behalf made by and under the said Act; and

(b) in a Chief Commissioner's Province, the Central Government, and, as respects anything done before the commencement of part III of the said Act, shall mean the authority or person authorised at the relevant date to administer executive government in the Province in question":

"3 (21) 'Government' or 'the Government' shall include both the Central Government and any Provincial Government:"

17. It follows from what I have said above t hat department is a particular activity or a branch of Government under the political charge or control of a Minister or a Minister of State responsible to the legislature.

18. It must be borne in mind that, the words used in Section 56 are 'department of the Union Government or State Government". Surely an officer serving in a department is not the department and cannot have a representative capacity To hold otherwise would be to hold that an excise inspector, sub-inspector of police, a kanungo or a patwari is a department. Any such conclusion would be inconsistent with the whole theory on which responsible government, i.e., a government deriving its authority from the legislature and removable by it rests. The inference to be drawn from all this discussion is that a department is a unit or branch of Government, either Union or State, under the political control of a Minister or Secretary of State or President of the Board. Individual officers serving under a department do not constitute a department. The department has an entity distinct and separate from the officers serving under it. I am clear in my mind, therefore, that there is no force whatsoever in the argument that the District Magistrate is a department and, therefore, immune from the power of issuing injunctions which Courts enjoy. In the district he has to perform duties assigned to him by the Code of Criminal Procedure, by various enactments and by departments of State. The fact that he is shown in the U. P. Civil List as a person acting under the General Administrative Department only means that he is an officer attached to that department.

He is not a department or a departmental head. The department is a branch of Government as distinct from the Government itself. To confuse it with administrative officers because they have been classified as serving in a particular department in the Civil List is to misunderstand the meaning and nature of administrative organisation in democratic countries. The District Magistrate being not a department; Section 56, Specific Relief Act, has no application to this ease. An injunction can, therefore, issue to the District Magistrate as he is a persona designata for passing orders under the Act.

19. As I have come to the conclusion that the proviso to Section 3 is not applicable to this ease and that the District Magistrate has acted in excess of the authority vested in him, having not observed the requirements laid down for the requisition order by that section, I think an injunction should issue. I have already said that I do not think that the District Magistrate was improperly influenced by extraneous considerations in issuing the particular order that he has done. As I have said before, of the public nature of the purpose for which he has issued the requisition, the District Magistrate is the sole judge. It is not because the purpose was not a public one but because he has ignored certain essential conditions for the issue of the order that I consider this ease to be a fit one for the issue of a permanent injunction. A permanent injunction shall, therefore, issue to the District Magistrate, the Town Rationing Officer and Guman Chand Arora to whom the house has been allotted.

20. For the reasons given above, I would allow the appeal, set aside the decree of the trial Court and direct the issue of an injunction in terms of the prayer embodied in the plaint.

Bind Basni Prasad, J.

21. I agree with the conclusion reached by my learned brother. I agree with everything that has fallen from him except that I have a doubt in my mind whether or not individual officers of the Government serving in a department are included or not within the term "department" as used in clause (d) of Section 56, Specific Relief Act. If a 'department' is a unit or branch of administration of the Government under the political control of a Minister, not only the Minister but all those who are working in the department constitute the department. An individual cannot be a department. The expression "department" is a collective noun. It consists of the band of workers in that particular department. Every person working in a department is a member of that department whatever may be his position in it. Collectively they are a department The whole includes a part. I am, therefore, inclined to think that in Clause (d) of Section 56 Specific Relief Act, where the word '"department" has been used, it means not only the department as a whole, but includes also the individual members of the department. This difference of opinion, however, between my learned brother and myself does not affect the order proposed by him, for I am clear in my mind that the District Magistrate acts under the U.P. (Temporary) Accommodation Requisition Act, 1947, as a persona designata The term ' District Magistrate" is denned in that Act in Clause (c) of Section 2. The Legislature designated the 'District Magistrate" as the person who could exercise the powers of requisition under Section 8 of the Act. He does not exercise those powers merely by virtue of his being a District Magistrate. He exercises them because he has been conferred those powers by the Act.

22. I agree also that inasmuch as the District Magistrate did not comply with the second proviso to Section 3 of the Act his order of requisition cannot be upheld.

By the Court

23. The appeal is allowed and the decree of the trial Court is set aside. The suit for injunction is decreed but in the circumstances of the case we would let the parties bear their costs.