

CIVIL REFERENCE

Before Falshaw and Kapur, JJ.

NEMI CHAND,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Civil Reference No. 27 of 1952.

East Punjab Movable Property (Requisitioning) Act, XV of 1947—Whether intra vires the Provincial Legislature—Government of India Act, 1935, Schedule VII, List II, items 27, 29 and List III, item 8.

1956

April 9th

Seven lacs of bricks of N. C. requisitioned on 12th April, 1948. Suit by N. C. for the price of the bricks on the ground that the East Punjab Movable Property (Requisitioning) Act of 1947 is *ultra vires* of the Provincial legislature.

Held that—

- (1) the requisitioning of bricks is not compulsory acquisition of commercial or industrial undertaking;
- (2) in determining the scope of the powers of a legislature it is important to have regard to what is ordinarily treated as embraced within that topic in legislative practice;
- (3) The East Punjab Movable Property (Requisitioning) Act XV of 1947. is *intra vires* the Provincial Legislature.

The United Provinces v. Mst. Atiqa Begum (1), *The State of Bombay v. F. N. Balsara* (2), *In re: P. S. Venkatasubbier* (3), *Lakhi Narayan Dass v. The Province of Bihar* (4), *Prafulla Kumar Mokherji v. Bank of Commerce* (5), *Darshan Singh v. State of Punjab* (6), *Croft v. Dunphy* (7), referred to.

(Case referred by Hon'ble Mr. Justice Kapur, to Division Bench on 1st April, 1953, as the constitutionality of the East Punjab Movable Property (Requisitioning) Act of 1947 (Act XV of 1947), is involved in this case.)

Case referred by Mr. Mehar Singh Chaddah, Senior Subordinate Judge, Gurgaon, dated the 18th August, 1952 with his letter No. 1645, dated the 29th August, 1952, for orders of the High Court as interpretation of an important point of law concerning the Punjab Requisitioning of Immovable Property (Amendment and Validation) Ordinance, 1951, is involved.

TER CHAND and S. C. MITTAL for Petitioners.
S. M. SIKRI, Advocate-General for Respondent.

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- (1) 1940 F.C.R. 110
 - (2) A.I.R. 1951 S.C. 318
 - (3) A.I.R. 1945 Mad. 104
 - (4) 1949 F.C.R. 693
 - (5) 1947 F.C.R. 28
 - (6) 1953 S.C.R. 319
 - (7) 1933 A.C. 156

REFERRING ORDER.

Kapur, J.

KAPUR, J. The constitutionality of the East Punjab Movable Property (Requisitioning) Act of 1947 (Act XV of 1947) is involved in this case and I would therefore direct that it be heard by a Division Bench. The papers should be placed before the Hon'ble Chief Justice.

JUDGMENT OF THE DIVISION BENCH.

KAPUR, J. This is a reference made by Mr. Mehar Singh Chaddah, Senior Subordinate Judge, Gurgaon, dated the 18th August, 1952, under section 113 of the Code of Civil Procedure for the purpose of determining the legality of the East Punjab Movable Property (Requisitioning) Act of 1947.

On the 12th of April, 1948, an order was served on the plaintiff Nemi Chand requisitioning his seven lacs of bricks lying at his kiln, under the impugned Act—East Punjab Movable Property (Requisitioning) Act of 1947. On the 13th April, 1948, an order was sent to the plaintiff by the Sub-Divisional Officer informing him that the bricks should not be removed as he had been authorised to take possession. We are told that the bricks were taken over and the plaintiff has now brought a suit for recovery of Rs. 17,750 for price of baked bricks at Rs. 40 per thousand, *kacha* bricks at Rs. 15 per thousand and damages on account of trespass Rs. 1,000. The Advocate-General has informed us that the State was quite prepared to pay the plaintiff the price at the controlled rate but the plaintiff has refused to take it but that matter is not before us and, therefore, it is not necessary to go into that.

The claim of the plaintiff is based on the plea that the Act under which the requisition was made was *ultra vires* of the Provincial Legislature as it then was.

The impugned Act, the East Punjab Movable Property (Requisitioning) Act, XV of 1947, received the assent of the Governor-General on the 12th December, 1947, and was published in the East Punjab Government Gazette on the 13th December, 1947. Under section 2 of the Act the State Government has the power of requisitioning movable property under conditions therein mentioned and then it has the power to acquire it under section 3. Section 4 provides for compensation and section 6 gives the power to the State Government to obtain information and to give directions in regard to the amount of compensation. It is not necessary to refer to any other provision of this Act.

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The petitioner relies on two provisions of the Government of India Act of 1935—on section 299 and section 104 of the Act and then submits that there is no item in List II (Provincial List) or List III (Concurrent List) which gave to the Provincial Government the power to enact the impugned Act. Section 299 of the Government of India Act deals with compulsory acquisition of land and it provided that no law authorising the compulsory acquisition for public purposes of land, or any commercial or industrial undertaking, could be made unless the law provided for the payment of compensation and fixed the amount of compensation, or specified the principles on which and the manner in which it was to be determined. This section has no application because it deals with land or commercial or industrial undertaking. In the present case certainly no land was acquired but it was faintly contended that the requisitioning of bricks amounts to compulsory acquisition of commercial or industrial undertaking. In my opinion, no commercial or industrial undertaking was acquired and, therefore, this section has no application to the present case.

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Section 104 also has no application. It deals with residual powers of legislation, because the matter, in my opinion, falls within some of the items in the Provincial List.

The Advocate-General relied on three items, two of List II, i.e., items 27 and 29 and one of List III, i.e., No. 8. These items are :—

“ List II.

27. Trade and commerce within the Province; markets and fairs; money-lending and money-lenders.
29. Production, supply and distribution of goods ; development of industries, subject to the provisions in List I with respect to the development of certain industries under Dominion control.

“ List III.

8. Transfer of property other than agricultural land ; registration of deeds and documents.”

He submits that the widest possible meaning should be given to these Lists and they should be interpreted according to the rules which have been laid down in various cases. He firstly relies on a judgment of the Federal Court in *The United Provinces v. Mst. Atiq Begum* (1). There the item under consideration was item 21 of List II—

“Land*****including Courts of
Wards*****treasure trove.”

and it was held that the subjects dealt with in the List are not always set out with scientific definition and that it would be practically impossible to define each item in the Provincial List in such a way as to

(1) 1940 F.C.R. 110

make it exclusive of every other item in that List and that Parliament seems to have been content to take a number of comprehensive categories and to describe each of them by a word of broad and general import. Dealing with the item 'land' the learned Chief Justice said—

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“Thus ‘Courts of Wards’ and ‘treasure trove’ might not ordinarily have been regarded as included under ‘land’, if they had not been specifically mentioned in item No. 21. I think, however, that none of the items in the Lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.”

This case was approved of by their Lordships of the Supreme Court in *The State of Bombay v. F. N. Balsara* (1), and at page 322, Fazl Ali, J., said—

“One of these principles is that none of the items in each List is to be read in a narrow or restricted sense.”

In *Re P. S. Venkatasubbier* (2), a learned Single Judge of the Madras High Court held that the requisitioning of movable property, although not specifically enumerated in the Provincial List, is included in more general subjects which find a place in that list. And he further held that an order requisitioning paddy stocks would fall both under item 27, i.e. trade and commerce, and item 29, i.e. production, supply and distribution of goods, and, therefore, the order was not *ultra vires* of the Constitution. The Calcutta High Court in *Jashprokash Mitter v. Deputy Commissioner of Police* (3), held that the requisitioning of a motor car fell within item No. 1 of List II,

(1) A.I.R. 1951 S.C. 318

(2) A.I.R. 1945 Mad. 104

(3) A.I.R. 1946 Cal. 194

Nemi Chand v. The State of Punjab Kapur, J. i.e. public order and that the words "public order" had a very wide meaning and covered legislation in respect of all matters to ensure public order and the Defence of India Act was a matter to ensure public order in India.

The learned Advocate-General also relies upon two cases decided by the Federal Court and the Supreme Court. The first is *Lakhi Narayan Das v. The Province of Bihar* (1). That was a judgment of Mukherjee, J., where the rule laid down in *Atiqa Begum's case* (2), was reiterated and the learned Judges also referred to the observations of the Judicial Committee in *Prafulla Kumar Mukherji v. Bank of Commerce* (3), where it was observed—

"The overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found."

The question to be decided in that case was the *vires* of an Ordinance passed by the Governor of Bihar and it was held that the Ordinance was valid as it dealt with the maintenance of public order and fell within item 1 and the offences created and the procedure laid down for arrest and trial were only ancillary without which no effective legislation would have been possible and they applied the Privy Council dictum which I have quoted above.

(1) 1949 F.C.R. 693
 (2) 1940 F.C.R. 110
 (3) 1947 F.C.R. 28

The other case relied upon by the State is *Nemi Chand Darshan Singh v. State of Punjab* (1), which was a case under the East Punjab Cotton Cloth and Yarn Order of 1947 and the words "trade and commerce" of section 3 of the Essential Supplies (Temporary Powers) Act of 1946, were held to include export of goods outside the Province including export to Pakistan because even under the purely Provincial List subjects of production, distribution and supply of goods, restriction of import and export as ancillary to production and supply of essential commodities, would fall under the ambit of item 29 of the Provincial List. At page 329, Mukherjea, J., observed—

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"Even taking the legislation to be purely on the provincial subjects of production, distribution and supply of goods, restriction of export as ancillary to production and supply of essential commodities would, in our opinion, be quite within the scope and ambit of such legislation and in pith and substance it would be an enactment dealing exclusively with these provincial matters."

The learned Advocate-General also relied on some English cases in regard to the meaning of the words "ancillary" and "subsidiary". In *Croft v. Dunphy* (2), it was held that the authority conferred on Parliament under section 91 of the British North America Act, 1867, in relation to customs duties extended to enacting anti-smuggling provisions similar in scope to the provisions operating beyond territorial limits. Lord Macmillan observed at page 165—

"When a power is conferred to legislate on a particular topic it is important, in determining

(1) 1953 S.C.R. 319

(2) 1933 A.C. 156

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the scope of the power, to have regard to what is ordinarily treated as embraced within that topic in legislative practice and particularly in the legislative practice of the State which has conferred the power. Thus in considering what might be appropriately and legitimately enacted by the Dominion Parliament under its power to legislate in relation to "bankruptcy and insolvency," it was considered relevant to discuss the usual content of bankruptcy statutes: *Royal Bank of Canada v. Larue* (1). Now from early times the customs legislation of the Imperial Parliament has contained anti-smuggling provisions authorizing the seizure of vessels having dutiable goods on board when found "hovering" off the coast within distance substantially in excess of the ordinary territorial limits."

and at page 166 the principle of effectiveness was laid down.

Mr. Tek Chand has relied on a Single Bench judgment of the Bombay High Court in *Tan Bug Taim v. The Collector of Bombay* (2), but that case has been differed from by a Division Bench of this Court in *Pt. Shyam Krishen v. The State of Punjab* (3), and, therefore, it is not necessary to go into the facts of that case.

In my opinion, therefore, the Act is *intra vires* and I would answer the reference accordingly. The costs of the reference will abide the event.

Falshaw, J.

FALSHAW, J. I agree.

(1) 1928 A.C. 187

(2) I.L.R. 1949 Bom. 517

(3) 1951 P.L.R. 391