

CIVIL WRIT

*Before Kapur, J.*DR. HANS RAJ SOOD,—*Petitioner**versus*THE DISTRICT MAGISTRATE, JULLUNDUR,—
Respondent

Civil Writ No. 153 of 1953

Interpretation of Statutes—Order passed under an Act—That Act repealed and replaced by another—Order inconsistent with the provisions of the latter Act—Whether can be enforced after the latter Act comes into force—The Punjab Requisitioning and Acquisition of Immovable Property Act (XI of 1953)—Sections 3 and 25(2)—‘Hospital’—Meaning of.

1954

August, 13th.

The District Magistrate made an order on the 22nd November, 1952, requisitioning a part of the building in which a hospital was being run under the Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, read with Punjab Ordinance VI of 1951, but it was sought to be enforced on the 18th April, 1953, when the old Act and Ordinance had been repealed and Act XI of 1953, had been brought into force. The question arose as to what is the law which has to be applied to the facts of the case.

Held, that as no possession was taken under the order passed under the old Act and the order was sought to be executed after the coming into force of the Act of 1953, the latter Act would be applicable. The Court is bound to take into consideration the change in law and to administer the law as it is at the time the order is made.

Held, that under section 3 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, the premises which are bona fide used by the owner for his residence or are exclusively used as a hospital or for persons connected with the management of the hospital cannot be requisitioned. As the order of requisition passed on 22nd November, 1952, is inconsistent with the provisions of section 3 of Act XI of 1953, that order cannot be enforced after the old Act had been repealed and Act XI of 1953, had been brought into force.

Held, that the definition of a hospital, for the purposes of Act XI of 1953, should not be circumscribed to a big

charitable institution where patients in very large numbers are received, but it may apply to any place which is used for the purposes of administering to the need of the sick and the wounded.

Lachmeshwar Prashad's case (1), *Patterson v. State of Alabama* (2), *Minnesota v. National Tea Co.* (3), *Quilter v. Mapleson* (4), *Harbhajan Singh v. The State of Punjab* (5), *Dilworth v. Commissioners of Stamps* (6), *Blake and London Corporation* (7), and *Ormskirk v. Charlton* (8), relied on.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari and prohibition be issued to the respondent quashing the order of requisition passed by him and prohibiting him from dispossessing the petitioner, and further praying that a writ, order or any other direction, which may meet the ends of justice, may be passed and the costs of this petition be allowed. Also praying that till the final decision of this petition, the dispossession of the petitioner be kindly stayed and an ad interim order be made.

K. S. THAPAR and S. D. BAHRI, for Petitioner.

S. M. SIKRI, Advocate-General, A. M. SURI and C. L. AGGARWAL, for Respondents.

ORDER

Kapur, J.

KAPUR, J. This is a rule obtained by Dr. Hans Raj Sood, against the District Magistrate of Jullundur, praying for a writ of mandamus directing the District Magistrate to forbear from effectuating the order of requisitioning.

The allegations of the petitioner are that he had taken the premises in dispute on rent from Dr. Abdul Aziz Faruqi, at Rs. 100 per mensem with the object of starting a nursing home and for his own residence, that the ground-floor is occupied by the patients who come for operations

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- (1) 1940 F.C.R. 34, 87
 - (2) 294 U.S. 600, 607
 - (3) 309 U.S. 551, 555
 - (4) 9 Q.B.D. 672
 - (5) 56 P.L.R. 62
 - (6) 1899 A.C. 107
 - (7) 18 Q.B.D. 437
 - (8) (1903) 2 K.B. 498

and a portion of the premises is used by the petitioner himself for his residential purposes in order that he may be able to look after his patients at the premises where his presence is required at any time during the day or night. On the 15th June, 1949, the District Magistrate, Mr. Sundar Das Midha, made an order of requisition under the Act of 1948, for the purposes of its being occupied by one Bihari Lal Ahuja, Deputy Commissioner, Excise, Jullundur. By appealing to Ch. Lehri Singh, the Minister-in-charge, the petitioner obtained a derequisitioning order. The petitioner has placed an order of Ch. Lehri Singh (annexure B) where it is stated as follows :—

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“There are some principles involved in it and we need not make the matter complex. We may give up this house and cancel the previous order of requisitioning.”

Mr. Chand Narain Raina, the successor, made the order in dispute on the 22nd November, 1952. The relevant portion of that order runs as follows :—

“Whereas it is necessary and expedient for securing the maintenance of supplies and services essential to the life of the community to requisition the property detailed in the schedule.

Now, therefore, in exercise of the powers provided by the Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, read with the Punjab Requisitioning of Immovable Property (Amendment and Validation) Ordinance, 1951, and delegated to me, I

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direct in the public interest the requisition of the said property and do further order that the owner delivers possession of the same to the District Magistrate, Jullundur, and that for the period during which this order remains in force:

* * * * *

This was an order for requisitioning the ground-floor, and on the 18th April, 1953, the District Magistrate sent another order (annexure E) asking the petitioner to surrender possession of a half portion of the ground-floor.

In paragraph 12 the petitioner alleged that the premises were being used as a nursing home which was doing a very useful work and it was necessary and expedient and in the interest of public health that the premises be allowed to be continued to be used as a nursing home and they should not be requisitioned. Allegations of *mala fides* were also made.

The reply of the District Magistrate is contained in his affidavit, dated the 14th May, 1954. He pleads that the institution is not a flourishing one : that Mr. Bhambri inspected the building on the 9th August, 1952, and before him the petitioner stated that the accommodation in the hospital was for ten persons and that he had five patients in the hospital, but when Mr. Bhambri went there it was found that there was only one. He reported that the accommodation was excessive for the petitioner's use. On another day in December, 1952, Mr. Chand Narain Raina found that there was one patient in each room of the hospital and that Mr. Raina came to the conclusion that half of the ground-floor could safely be requisitioned

and that was the order which was made. Later on the 27th July, 1953, the Chief Minister visited the place along with the Commissioner and the District Magistrate and it was found that even half of the building was not necessary for the purposes of the petitioner's hospital and therefore only two rooms which were equipped for clinical and dispensary purposes would be sufficient for the purposes of the petitioner and the Hon'ble the Chief Minister ordered accordingly and it is finally pleaded that these inspections on three different occasions show that "the professional work of Dr. Sood had considerably declined since 1947". It is admitted in this reply that the first floor was requisitioned for Mr. Bihari Lal Ahuja, Deputy Excise and Taxation Commissioner, and because the presence of the petitioner was found to be necessary in the interest of the nursing home that portion was derequisitioned. The allegations which had been made by the petitioner that Mr. Kashyap, District Magistrate, refused to requisition the premises had not been denied because the records are available in the office of the District Magistrate. It is admitted that it was at the instance of one I. M. Kapur, at one time Principal of a Government College, who is a private individual now that an inquiry was started as to the availability of accommodation. In paragraph 11 it is pleaded that the premises are required for the use of a branch of the Deputy Commissioner's office and that as a result there is no likelihood of any disturbance to the patients who are admitted to the nursing home and that in view of the decision of the Chief Minister that this accommodation should be used for residential purposes, the question of inconvenience to patients does not arise. It is then stated that the petitioner was called upon to surrender only half of the ground-floor on the 18th April, 1953, and

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later on an order was issued to take forcible possession which was stayed by the State Government themselves.

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In order to determine the dispute between the parties the question which has to be decided is what is the law which has to be applied to the facts of the present case. The requisitioning order is under the Requisitioning Act of 1948, read with the Ordinance of 1951, and is dated the 22nd November, 1952, but it was sought to be enforced on the 18th April, 1953, when the old Act had been repealed and Act XI of 1953 had been brought into force. Under section 3 of this Act, it is provided—

3. *Power to requisition immovable property.*—(1) Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the State, and that the property should be requisitioned, the competent authority—

- (a) shall call upon the owner or any other person who may be in possession of the property by notice in writing (specifying therein the purpose of the requisition) to show cause, within fifteen days of the date of the service of such notice on him, why the property should not be requisitioned ; and
- (b) may, by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority dispose of, or structurally alter, the property or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order.

- (2) If, after considering the cause, if any, shown by any person interested in the property, or in possession thereof, the competent authority is satisfied that it is necessary or expedient so to do, it may by order in writing, requisition the property and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning :

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Provided that no property or part thereof—

- (a) which is bona fide used by the owner thereof as the residence of himself or his family, or
- (b) which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purpose of accommodation of persons connected with the management of such place of worship or such school, hospital, library or orphanage, shall be requisitioned."

As I read this section the premises which are bona fide used by the owner for his residence or are exclusively used as a hospital or for persons connected with the management of the hospital shall not be requisitioned. No doubt the order for requisitioning was there but possession was not taken, but that Act had been repealed and the new Act had brought in this restriction on the power of requisitioning.

Section 25 of the Act of 1953 provides for repeals and savings. Subsection (2) of section 25 runs as under:—

- "(2) For the removal of doubts, it is hereby declared that any property which immediately before such repeal was

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subject to requisition under the provisions of either of the said Acts shall, on the commencement of this Act, be deemed to be property requisitioned under section 3 of this Act, and all the provisions of this Act shall apply accordingly:”

This section provides that any order made under the previous Act shall, after the commencement of this Act, be deemed to be properly made under section 3 of this Act and all provisions of that Act would be applicable as if they were under the Act of 1953 except those provisions which are inconsistent with the provisions of this Act and therefore anything done which is inconsistent with the Act of 1953 would be inoperative. The learned Advocate-General submits that in a case like this section 6 of the General Clauses Act would be applicable, but in the present case there is an express provision as to what has to happen to the orders under the previous Act and that would in my opinion be applicable.

It has been held in American cases which have been approved of by the Federal Court of India in *Lachmeshwar Prashad's case* (1), that in the exercise of the appellate jurisdiction the Court is not only to correct errors in the judgment under review but to make such disposition of the case as justice requires and in determining what justice required, the Court is bound to consider any change either in fact or in law which has supervened since the judgment was entered: [*Patterson v. State of Alabama* (2)] and this view has been reaffirmed by that Court in *Minnesota v. National Tea Co.*, (3). *Varadachariar, J.*, has referred to several Privy Council cases at

(1) 1940 F.C.R. 84, 87

(2) 294 U.S. 600, 607

(3) 309 U.S. 551, 555

page 103 and has held that the rule laid down in *Quilter v. Mapleson* (1), lays down correct law and should be followed and therefore at the appellate stage the Court is bound to take into consideration the change in the law. In this case I am bound, in my opinion, to administer the law at the time I am making the order, and in this particular case there is a further fact that the order of requisitioning was made effective after the new Act came into force, for it was then that the order of eviction was passed. I have already discussed as to which law is applicable in the case of requisitioning and I hold that the Act of 1953 is the law which would apply to the facts of the case: see *Harbhajan Singh v. The State of Punjab* (2), where I held at page 63—

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“The order of requisitioning at the time when it was passed even though it might have been good at the time, has now to be read along with the proviso to sub-section (2) of section 25, and unless it is consistent with the provisions of this Act, it cannot be taken to be an order passed under this Act, and as the possession has not passed and the requisitioning would now be considered to be under the new Act the provisions of which are not consistent with the orders of the previous Act, that order cannot be held to be a good order.”

In my opinion, as no possession was taken under the order passed under the old Act and the order was sought to be executed after the coming

(1) 9 Q.B.D. 672
(2) 56 P.L.R. 62.

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 into force of the Act of 1953, the latter Act would be applicable.

It is then submitted that enquiries had been made by responsible officials who have said that the premises are not required for the hospital and in his reply the District Magistrate has stated that the popularity of the hospital has decreased since 1947. Merely because a building which is used as a hospital is not frequented by patients because of the want of skill of the doctor or for some other cause does not change the nature of the hospital from hospital to anything else. Hospital has been defined by Lord Watson in *Dilworth v. Commissioners of Stamps* (1).

“‘Hospital’ is a word of wider and more variable meaning than Dispensary, and primarily signifies a place built for the reception of the sick, or the support of the aged or infirm, poor”

and a hospital will nonetheless be called a hospital because in order to diminish its expenses certain fees are taken from certain richer patients who might choose to obtain the benefit of the hospital : see per Denman, J., *Blake and London Corporation* (2).

In *Ormskirk v. Charlton* (3), it was held—

“So a house, though called a Home, which is used for the reception of patients suffering from illness, and partly maintained by eleemosynary contributions and partly by payments by or for the inmates, is a ‘hospital.’”

(1) 1899 A.C. 107

(2) 18 Q.B.D. 437

(3) (1903) 2 K.B. 498

In my opinion, the definition of a hospital for the purposes of this Act should not be circumscribed to a big charitable institution where patients in very large numbers are received, but it may apply to any place which is used for the purposes of administering to the need of the sick and the wounded, and in my opinion the premises in dispute are a hospital and could not be requisitioned.

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I would therefore allow this petition and would quash the order of requisitioning and would issue a writ of mandamus to the District Magistrate to forbear from interfering with the rights of the petitioner.