APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

THE KAPUR TEXTILE FINISHING MILLS,—*Plaintiff-Appellant*

versus

THE PROVINCE OF EAST PUNJAB,—*Defendant-Respondent*

Regular First Appeal No. 96 of 1949

1952

August 5th

Punjab Public Safety Act (II of 1947)—Section 43—'person'—Whether includes 'the State'—Suit for compensation in respect of requisitioned movable property—Whether barred by Section 43 or that it is based on a tort.

On 9th September 1947 the District Magistrate requisitioned the jeep car of the plaintiff under section 10 of the Punjab Public Safety Act, 1947. It was left at the place of the plaintiff on 3rd November, 1947, in spite of the refusal of the plaintiff to take it back on the ground that many parts of the machinery were missing and the jeep car was unserviceable. It was later found that it could not be repaired. The plaintiffs thereupon filed a suit for the recovery of Rs. 5,125, the price of the car by way of compensation. It was pleaded that section 43 of the Punjab Public Safety Act, 1947, was a bar to the suit, that the statute did not provide for payment of compensation and that it was a case in torts and, therefore, no suit could lie against the State.

Held, that section 43 of the Punjab Public Safety Act, 1947, did not bar the suit as the word 'person' in that section did not include the word 'Crown' or 'State'.

Held further, that no prohibition against claiming compensation in respect of requisitioned property can be deduced from the mere fact that no provision for it is made in the statute.

Held also, that the exercise of the right by the State of taking possession of the movable property of a subject *in invitum* for the exigency of public service does not connote that the subject is left without any right of compensation and that when he can claim compensation he is doing so because of the tortuous acts of the State or its servants. In the present case as the possession was taken lawfully the only question to be decided is the legal consequences that follow from this acquisition. The compensation claimed by the plaintiff cannot be said to fall within a suit for damages founded on tort, but it is a claim for compensation in money because restitution is not possible.

Simla Hill Transport Service Ltd. v. *The Punjab State* (1), relied on; *Moti Lal* v. *Uttar Pradesh Government* (2), not followed; *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and others* (3), held not applicable; *Attorney-General* v. *De Keyser's Royal Hotel, Limited* (4), *Newcastle Breweries, Limited* v. *The King* (5), and *Chester* v. *Batesan* (6), relied on.

Regular First Appeal from the decree of Shri Gobind Ram Budhiraja, Sub-Judge, 1st Class, Amritsar, dated the 2nd day of April 1949, dismissing the suit with costs.

BHAGIRATH DAS, for Appellant.

S. M. SIKRI, Advocate-General, and K. S. THAPAR, for Respondent.

JUDGMENT

Kapur, J.

KAPUR, J. This is a plaintiff's appeal against a judgment and decree of Mr. Gobind Ram Budhiraja, Subordinate Judge, 1st Class, Amritsar, dated the 2nd April 1949, dismissing the plaintiff's suit for recovery of a sum of Rs. 5,125-12-0 on account of the price of a jeep station wagon and insurance and registration charges and interest.

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(1) C.W. No. 545 of 1950
(2) A.I.R. 1951 All. 257 (F.B.)
(3) 1952 S.C.R. 889
(4) 1920 A.C. 508
(5) 36 T.L.R. 276
(6) 36 T.L.R. 225

The plaintiffs on the 19th September 1946 purchased a jeep for Rs. 3,500 from Pyare Lal and Sons, Lahore. They expended a sum of Rs. 1,250 on building a body for converting the jeep into a station wagon. Rs. 300 were paid for insurance and Rs. 75-12-0 is the interest on the amount of money spent by them.

A requisitioning order was made by Government requisitioning the jeep belonging to the plaintiffs. This original order is not on the file but an office copy, Exh. D. 1, has been placed on the file and is at page 46 of the paper book. It purports to be under section 10(2)(c) of the Punjab Public Safety Act, 1947, and is in the following terms:—

> "Now, therefore, in exercise of the powers conferred on me by clause (c) of sub-section (2) of section 10 of the Punjab Public Safety Act, 1947, I, Nakul Sen, District Magistrate, Amritsar, hereby requisition jeep car No. PBL. 6952 owned by Kapur Textile and Finishing Mills, Ghee Mandi Gate, Amritsar.
>
> The possession may be given to the Tehsildar, Tarn Taran, at once and a receipt may be obtained from him."

On the 9th September 1947, a receipt, Exh. P. 2, was written by the Tehsildar of Tarn Taran and it states:—

> "Received jeep car No. P.B.L. 6952 owned by Kapur Textile Mills, Amritsar, for Government work in the Tarn Taran Tehsil."

There was some dispute in the Court below as to the genuineness of this document. We have seen the original and are of the opinion that this document has not been tampered with and its date is the 9th September 1947 and not the 2nd as was alleged by the State. It is alleged that on the 22nd of October 1947, the State offered to return this

The Kapur Textile and Finishing Mills v. The Province of East Punjab

Kapur, J.

station wagon to the plaintiff. On the 29th of October 1947, the plaintiff gave a notice purporting to be under section 80 of the Code of Civil Procedure in which it is stated that the Station House Officer of 'B' Division, Amritsar, asked the plaintiffs to take back the station wagon which was lying in a workshop near Chatiwind Gate, Amritsar, and when the plaintiffs went to the place they found that all the important parts of the jeep were missing from the engine and that it could not be repaired and, therefore, they refused to take it in the condition in which it was sought to be returned. On the 3rd November 1947, Assistant Sub-Inspector Ram Lal is stated to have brought the station wagon into the premises of the plaintiff. It was really towed into the premises. The plaintiff refused to take it but it was left there. On the same day a letter was sent by the plaintiffs to the Collector stating that the jeep was lying in the premises of the plaintiff's mills but he would not be responsible nor would this estop him from bringing a suit. Again on the 17th January 1948, the plaintiff wrote a letter to the District Magistrate, Exh. P. 7, in which it is stated that the station wagon was sent to the I.N.A. Workshop "under orders and directions of S. Madhusudhan Singh, Treasury Officer, and Petrol Rationing Officer, Amritsar, who was acting on your behalf." With this letter was attached the estimate for repairs and report of the workshop stating that the jeep could not be repaired.

On the 14th April 1948, the plaintiff brought a suit for recovery of Rs 5,125 stating all the facts that I have given above and alleging that the jeep was in an absolutely "wrecked condition", that the plaintiff approached the Treasury Officer in December, 1947, and under his orders it was sent to the I.N.A. Workshop, Amritsar, but it was found irreparable and he claimed the amount calculated as I have given in the very beginning.

The State pleaded that section 10 of the East Punjab Moveable Property (Requisitioning) Act of 1947, was a bar to the suit. This Act, however, did not come into force till December, 1947.

Other allegations were denied and it was pleaded that the requisitioning order was shown to the plaintiff on the 1st September 1947, by S. Dalip Singh, Naib-Tehsildar, Tarn Taran, but the owner did not give possession saying that the jeep was not in working order and on the following day the police were given a receipt for the jeep written by the Tehsildar who did not know of the condition of the jeep and Assistant Sub-Inspector Ram Lal went to the plaintiff and towed it by tying it behind a truck and that the jeep was not in a working order when it was taken from the plaintiff and it was towed to Tarn Taran and that it was in an unserviceable condition from the very beginning. In paragraph 8 it was pleaded that the defendant was not legally bound to effect repairs to the jeep and that the plaintiff wanted to take undue advantage of the receipt of the Tehsildar which was handed over to the plaintiff's *chaukidar* without stating the condition of the jeep.

The learned Judge stated the following five issues:—

(1) Has not this Court jurisdiction to try this suit?

(2) Was the car damaged while it was in possession of the defendant?

(3) If so, is the defendant liable to make good the loss?

(4) What loss did the plaintiff sustain and to what compensation is he entitled?

(5) Relief.

He held that the Court had jurisdiction, that no damage had been done to the jeep by the defendant and that the defendant was not liable to compensate the plaintiff. He gave no finding on the amount of compensation which the plaintiff could get if he was successful.

After the plaintiff had finished his evidence on issues Nos. 2 and 3 the defendant filed a better written statement where he pleaded that the jeep

The Kapur Textile and Finishing Mills v. The Province of East Punjab

Kapur, J.

had been requisitioned by the District Magistrate, under section 10(2)(c) of the Punjab Public Safety Act of 1947, and that the suit was incompetent because of section 43 of that Act. No further evidence was led by the plaintiff after this written statement was filed. Under issue No. 1, the Court held that the State could not be a person within meaning of section 43 of the East Punjab Public Safety Act and, therefore, section 43 was no bar to the suit. The plaintiff has come up in appeal to this Court.

The first question which is to be decided by us is as to whether section 43 of the Punjab Public Safety Act is a bar to the present suit. This section provides:—

> "43. Except as provided in this Act no proceeding or order taken or made under this Act shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything done or intended to be done under this Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under this Act."

It has two parts. The first part provides that no proceeding or order taken under the Act shall be questioned in any Court, and the second part provides that no civil or criminal proceeding shall be instituted against any person. The question is what is the meaning of the word 'person' in the present context. Under section 3 (39) of the General Clauses Act 'person' is defined thus :—

> " 'Person' shall include any company or association or body of individuals, whether incorporated or not."

In Stroud's Judicial Dictionary the definition of the word 'person' is given under the various English statutes but in none of these has this word

been defined to include 'The Crown'. In the Defence of India Act of 1939 in section 17 a distinction was drawn between the word 'person' and 'Crown'. In the first subsection it is provided that no suit, prosecution or other legal proceeding shall lie against any person.....In the second subsection it is stated that no suit or other legal proceeding shall lie against the Crown. It is obvious from the wording of the two parts of the section itself that the two words are different and that the word 'person' does not include the Crown. In an unreported case of this Court decided by Weston, C. J. and Falshaw, J. *Simla Hill Transport Service, Ltd.*, v. *The Punjab State* (1), it was held that the word 'person' does not include the word 'State'. There reference was made to Articles 14 and 289 of the Constitution of India. The Bench did not follow the Full Bench Judgment of the Allahabad High Court in *Moti Lal* v. *Uttar Pradesh Government* (2). I am in respectful agreement with the view taken in this judgment of this Court and I am of the opinion that the word 'person' in section 43 does not include the word 'Crown' or 'State'. The learned Judge has in my view rightly held section 43 not to be a bar to the suit.

The next question that arises for determination is whether compensation can be allowed to the plaintiff when no provision is made in the statute allowing requisitioning for the making of compensation. The learned Advocate-General has submitted that in the absence of there being a specific provision for allowing compensation, the plaintiff is not entitled to make a claim in regard to his jeep. He relied on section 299 of the Government of India Act which provides in the first subsection that no person can be deprived of his property save by authority of law and the second subsection confines the making of the provision for compensation to immovable property, commercial or industrial undertakings. No case has been cited before us by the learned Advocate-General to support his contention. The only case

(1) C.W. No. 545 of 1950
(2) A.I.R. 1951 All. 257 (F.B.)

The Kapur Textile and Finishing Mills v. The Province of East Punjab

Kapur, J.

which the learned Advocate-General has relied on is *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and others* (1). I find nothing in this judgment which supports the contention of the learned Advocate-General. Patanjali Sastri, C. J. says as follows :—

> "In other words, article 31 (2) must be understood as also providing that legislation authorising expropriation of private property should be lawful only if it was required for a public purpose and provision was made for payment of compensation. Indeed if this were not so, there would be nothing in the Constitution to prevent acquisition for a non-public or private purpose and without payment of compensation—an absurd result."

But this passage, I do not think, would in any way help the respondent. The appellant has relied on a judgment of the House of Lords, *Attorney-General* v. *De Keyser's Royal Hotel, Limited* (2). There the Crown purporting to act under the Defence of the Realm Regulations took possession of a hotel for the purpose of housing the headquarters personnel of the Royal Flying Corps and denied the legal right of the owners to compensation. The owners yielded up possession under protest and by a Petition of Right they asked for a declaration that they were entitled to rent for the use and occupation of the premises or in the alternative they were entitled to compensation under the Defence Act, 1842. It was held that the Crown had no power to take possession of the suppliants' premises in right of its prerogative simpliciter and that the suppliants were entitled to compensation in the manner provided by the Act of 1842. It is not the final decision which is of any very great consequence. It is the observations of their Lordships which help in the decision of the present case. Regulation 2

(1) 1952 S.C.R. 889 at p. 902
(2) 1920 A.C. 508

issued under the Defence Act of 1842 empowered the military authorities to take possession of any land or building but made no provision about compensation. At page 521 Lord Dunedin observed :—

> "It is conceded that the Crown has entered lawfully, and the only question at issue is whether certain legal consequences follow from that entry. It is a fallacy to say, as has been contended on behalf of the Crown, that the remedy by petition of right is limited to certain defined classes of actions. This procedure was designed to ascertain the legal relations existing between the subject and the King in a manner consistent with the dignity of the King."

Continuing his Lordship said at page 530 :—

> "I am of opinion that a Petition of Right lies, for it will lie when in consequence of what has been legally done any resulting obligation emerges on behalf of the subject. The Petition of Right does no more and no less than to allow the subject in such cases to sue the Crown. It is otherwise when the obligation arises from tort, but, as already insisted on, what was done here, so far as the taking of the premises was concerned, was perfectly legal."

Lord Moulton delivering his speech referred to the principle of equitable distribution and said:—

> "In the third place, the feeling that it was equitable that burdens borne for the good of the nation should be distributed over the whole nation and should not be allowed to fall on particular individuals has grown to be a national sentiment."

The Kapur Textile and Finishing Mills
v.
The Province of East Punjab

Kapur, J.

And in the judgment of Lord Parmoor at page 579 we find the passage which is of greater assistance in deciding the present case. His Lordship said:—

> "If there is room for ambiguity, the principle is established that, in the absence of words clearly indicating such an intention, the property of one subject shall not be taken without compensation for the benefit to others or to the public."

The House of Lords in that case approved of a judgment of Salter, J., in *Newcastle Breweries, Limited* v. *The King* (1). In that case the point to be decided was whether under the Emergency Legislation and Regulations the Crown had the right to take a man's property without paying for it. The facts were that under the Defence of the Realm Regulations the Admiralty took possession of certain stocks belonging to the suppliants and it was held that Regulation 2B was *ultra vires* so far as it purported to deprive persons whose goods are requisitioned by the naval or military authorities of their right to the fair market value and to a judicial decision of the amount. At page 281 the learned Judge, observed:—

> "It is an established rule that a statute will not be read as authorizing the taking of a subject's goods without payment unless an intention to do so be clearly expressed.....This rule must apply no less to partial than to total confiscation, and it must apply *a fortiori* to the construction of a statute delegating legislative powers."

Continuing the learned Judge said:—

> "A power to take the goods of a particular subject, or class of subjects, without payment of the then cash value is a power of taxation by the Executive. If it had been intended that the Defence of the Realm (Consolidation) Act, 1914,

(1) 36 T.L.R. 276

should confer such a power as this, I think that more precise language would have been employed.

For these reasons I think that the whole of that part of Regulation 2(B) which has been attacked is *ultra vires*, so far as it purports to deprive persons, whose goods are requisitioned by the Naval or Military authorities, of their right to the fair market value and to a judicial decision of the amount."

Reliance was in this case placed on *Chester* v. *Bateson* (1). In that case Regulation 2a (2) was held to be invalid in so far as it deprived a class of subjects in certain circumstances of their common law right of access to Courts.

Relying on these rulings I am of the opinion that no prohibition against claiming compensation can be deduced from the mere fact that no provision is made in a statute.

The learned Advocate-General then submitted that this was a case in torts and no suit could lie against the State. It is not necessary to go into the question whether a suit against the State lies on torts, but as I read the present case it is not a case on torts at all. The case has proceeded on the lines that the taking of the jeep under the orders of the District Magistrate was a perfectly legal act done by an officer of the State under powers vested in him by a statute. It cannot be said in such a case that it is a case founded on torts. The object of the suit, in my opinion, is that the property of the plaintiff has "found its way into the possession of the Crown" but illegally and the purpose of the suit is to obtain restitution and as restitution cannot be given, compensation in money. In my opinion the exercise of the right by the State of taking possession of the movable property of a subject *in invitum* for the exigency of public

(1) 36 T.L.R. 225

The Kapur Textile and Finishing Mills
v.
The Province of East Punjab

Kapur, J.

service does not connote that the subject is left without any right of compensation and that when he can claim compensation he is doing so because of the tortuous acts of the State or its servants. In the present case as the possession was taken lawfully the only question to be decided is the legal consequences that follow from this acquisition. The compensation claimed by the plaintiff cannot be said to fall within a suit for damages founded on torts, but, as I have said before, it is a claim for compensation in money because restitution is not possible.

The case set up by the Province of the East Punjab, was that the jeep when it was taken was not in a proper working order. I am unable to believe any such statement and it would be difficult for me to hold that the officers of the State would take away the jeep if it was not in working order and that the servants of the State would act in such a foolish manner that they would take in tow a vehicle which was unserviceable to as far away as Tarn Taran. The statement of Sub-Inspector Dewan Singh, D.W.1, who himself had the jeep towed, according to him, from the premises of the plaintiff is wholly unacceptable. That he should have brought a driver Baj Singh who tried to start the jeep but could not and the jeep should have then been pushed out and towed first to the police station and then to a workshop and from there to Tarn Taran is also wholly unbelievable. If the jeep had been in the condition that it is stated to be in, it would have been specifically mentioned in the receipt, Exh. P. 2. Besides Sub-Inspector Dewan Singh, was never mentioned in the written statement, and the person who was stated to have taken this jeep was Assistant Sub-Inspector Ram Lal and no reason has been shown why Dewan Singh has been substituted in place of Ram Lal. The statement of Baj Singh, D.W.2., is no better because he did not even care to see whether there was any petrol in the jeep or not. He has been prosecuted several times and was sent for by Sub-Inspector Dewan Singh from his house

why it is not stated. The last witness is the Tehsildar S. Sardul Singh, who is an equally unsatisfactory witness. How he could have given a receipt for a jeep which was out of order without stating that it was not in working order is beyond one's conception, but there are two facts which absolutely destroy the defendant's case on this point. One is that two witnesses, P.W.1, Sansar Chand and P.W.2, Kishan Kishore, have been produced who prove that coupons for 12 gallons and for 24 gallons were exchanged at their respective petrol pumps for petrol which was put in this very jeep. The Tehsildar, when he was cross-examined with regard to these coupons stated that he did not know whether any petrol had been taken for these coupons on the 22nd September 1947. He added "as far as I think the price of petrol purchased was not paid at the spot" whatever that may mean. Kartar Singh, P.W. 3, who was the driver of this jeep has stated that it was in working order before it was taken away and the alleged requisitioning order which was produced as an authority for taking the jeep had, according to Naib-Tehsildar, S. Dalip Singh, an endorsement at the back of it by the plaintiff that his jeep was not in working order, but that has not been produced. In these circumstances I am unable to hold that the plaintiff's jeep was not in working order when it was taken away by the servants of the State. In my opinion the learned Judge has taken a totally erroneous view of the evidence on this point and has not considered the evidence in its correct perspective and has, therefore, come to an erroneous conclusion.

It is unfortunate that the learned Judge under a somewhat erroneous impression that he would be saving the time of his Court by shortening the evidence did not record the evidence of the parties on issue No. 4. Instead of shortening the litigation it has really lengthened it. The case will, therefore, have to be remanded to try the 4th issue which I would redraft in the following words:—

> "What loss did the plaintiff sustain and to what compensation is he entitled?"

The Kapur Textile and Finishing Mills
v.
The Province of East Punjab

Kapur, J.

The remand will be under Order XLI, Rule 25 of the Code of Civil Procedure, and the report should be made to this Court within three months of the date of the appearance of the parties in the trial Court which I fix to be the 25th August 1953. Costs will abide the event. The parties have been directed to appear in the trial Court on that day. The office must see that the records reach the trial Court in time.

FALSHAW, J.—I agree.