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May 14

THE DOMINION OF INDIA AND ANOTHER

v.

SHRINBAI A. IRANI AND ANOTHER.

[MEHR CHAND MAHAJAN C.J., S. R. DAS, BHAGWATI, JAGANNADHADAS and VENKATARAMA AYYAR JJ.]

Requisitioned Land (Continuance of Powers) Ordinance, 1946 (XIX of 1946), cls. 2(3) and 3—Effect thereof on the existing requisition order in respect of immovable property—Non obstante *clause—Interpretation of.*

Three shoprooms were requisitioned on April 15, 1943, under the Defence of India Rules and the requisition order *inter alia* stated that "the said requisitioned property shall be continued in requisition during the period of present war and six months thereafter or for such shorter period as may be specified by the Food Controller, Bombay....."

Held, that on a plain and grammatical construction of cls. 2(3) and 3 of Ordinance XIX of 1946, the immoveable property which when the Defence of India Act expired on the 30th September, 1946, was subject to any requisition order effected under the Act and the rules thereunder, continued to be subject to requisition until the expiry of Ordinance, no matter whether the requisition order to which the immoveable property was subject was of a limited duration or an indefinite period.

The ordinary rule is that there should be a close approximation between the *non obstante* clause and the operative portion of the section but the *non obstante* clause need not necessarily and always be co-extensive with the operative part if it has the effect of cutting down the clear terms of an enactment.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 154 of 1953.

Appeal by Special Leave against the Judgment and Decree dated the 8th January, 1953, of the High Court of Judicature at Bombay in Appeal No. 117 of 1952 arising out of Suit No. 235 of 1949 in the said High Court.

M. C. Setalvad, Attorney-General for India, and *C. K. Daphtary, Solicitor-General for India, (Porus A. Mehta,* with them) for the appellants.

N. A. Palkhivala and *S. P. Varma* for respondent No. 1.

1954. May 14. The Judgment of the Court was delivered by BHAGWATI J.

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BHAGWATI J.—This appeal by special leave from a judgment of the High Court of Judicature at Bombay in Appeal No. 117 of 1952 raises a short point as to the construction of clause 3 of the Requisitioned Land (Continuance of Powers) Ordinance, 1946.

The suit out of which this appeal arises was commenced by the first respondent against the appellants and the second respondent for delivery of vacant and peaceful possession of the three shops situated on the ground floor of the premises known as "Irani Manzil." The first respondent was the owner of the said immovable property which had been requisitioned on the 15th April, 1943, by the Collector of Bombay in exercise of the powers conferred upon him by rule 75-A(1) of the Defence of India Rules read with the Notification of the Government, Defence Co-ordination Department, No. 1336/OR/1/42 dated the 15th April, 1942. The order of requisition was in the following terms :—

"Order No. M.S.C. 467/H—Whereas it is necessary for securing the public safety and the efficient prosecution of the war to requisition the property specified in the schedule hereto appended.....I, M.A. Faruqui, the Collector of Bombay, do hereby requisition the said property and direct that possession of the said property be delivered forthwith to the Food Controller, Bombay, subject to the following conditions :—

(1) The property shall be continued in requisition during the period of the present war and six months thereafter or for such shorter period as may be specified by the Food Controller, Bombay....."

The said premises were used for the purpose of housing the Government Grain Shop No. 176.

By a letter dated the 30th July, 1946/17th August, 1946, the Controller of Government Grain Shops, Bombay, wrote to the first respondent that as the validity of the requisitioning order was to expire on the 30th September, 1946, the first respondent should allow the Department to remain as her tenants in respect of the premises. The first respondent replied by her advocate's letter dated the 27th August, 1946,

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offering the tenancy to the Department on certain terms. These terms were not accepted but the occupation of the premises continued even after the 30th September, 1946, and the first respondent complained about such occupation after the period of requisition of the said shops had come to an end and also complained that it was contemplated to transfer the said shops to a private party or concern without any reference to her in the matter. By her advocate's letter dated the 29th August, 1947, she gave to the Collector of Bombay a notice to vacate the said shops giving him two clear calendar months' time and asking him to deliver over to her peaceful and vacant possession of the said shops. The Controller of Government Grain Shops, Bombay, wrote to the first respondent on the 1st October, 1947, that the second respondent was being handed over the Government Grain Shop No. 176 and that she should give her consent to the electric connection to be carried out in the said shops by the second respondent. The first respondent refused to give her consent and protested against the contemplated action. The Collector of Bombay by his letter dated the 15th January, 1948, intimated to the first respondent that the requisitioning of he said shops was continued after the 30th September, 1946, by Act XVII of 1947 and as possession of the said shops had been handed over to the second respondent vacant possession of the same could not be given to the first respondent. Further correspondence ensued between the first respondent's attorneys and the Collector of Bombay in the course of which the Collector of Bombay admitted that the said shops had been sublet to the second respondent but contended that the maintenance of essential supplies was the purpose for which the premises in question were requisitioned and that as the second respondent continued to serve the same purpose the first respondent was not entitled to peaceful and vacant possession of the premises. The first respondent therefore filed a suit on the original side of the High Court of Judicature at Bombay being Suit No. 235 of 1949 claiming vacant and peaceful possession

of the premises as also compensation for wrongful use and occupation thereof till delivery of possession was given over to her.

The appellants were impleaded as defendants Nos. 1 and 2 in the said suit and the second respondent was impleaded as the third defendant. The suit was contested by the appellants. The second respondent did not file any written statement nor did he contest the suit.

The first respondent contended that the requisitioning order had expired, that the property was no longer under requisition and therefore the possession by the Government was wrongful. She next contended that the order was made for a specific purpose and as that purpose no longer obtained the order was no longer operative. She further contended that after August, 1947, the user of the property was not by the appropriate Government, *viz.*, the Dominion of India, but was by the State Government. She also contended that the requisitioning order had ceased to be operative by reason of Act IX of 1951.

The trial Judge, Mr. Justice Coyajee, upheld all these contentions of the first respondent and decreed the suit. The appellants preferred an appeal against that decision and the Court of Appeal confirmed the decree passed by the trial Court on the short point as to whether clause 3 of Ordinance No. XIX of 1946 had the effect of continuing the requisitioning order. It affirmed the conclusion of the trial Court that there was no further extension of the duration of the requisitioning order by the provisions of clause 3 of the Ordinance and declined to go into the other questions which had been mooted before the trial Court and which had been decided by the trial Court in favour of the first respondent. The appellants not being satisfied with that judgment applied for leave to appeal to the Supreme Court, but the High Court rejected that application. The appellants thereupon applied for and obtained special leave under article 136 of the Constitution.

It is common ground that the Defence of India Act, 1939 (XXXV of 1939), and the rules made thereunder

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were to expire on the 30th September, 1946. Various immoveable properties had been requisitioned in exercise of the powers conferred by sub-rule 1 of rule 75A of Defence of India Rules and all these requisitioning orders would have come to an end and the immoveable properties released from requisition on the expiration of the Defence of India Act and the rules made thereunder. These requisitions had to be continued and an emergency arose which made it necessary to provide for the continuation of certain powers theretofore exercisable under the said Act and the said rules and the Governor-General in exercise of the powers conferred by section 72 of the Government of India Act promulgated on the 26th September, 1946, an Ordinance being Ordinance No. XIX of 1946, the relevant provisions of which may be set out hereunder :—

"*ORDINANCE NO. XIX OF 1946.* An Ordinance to provide for the continuance of certain emergency powers in relation to requisitioned land..... Whereas an emergency has arisen which makes it necessary to provide, in relation to land which, when the Defence of India Act, 1939 (XXXV of 1939), expires, is subject to any requisition effected under rules made under that Act, for the continuance of certain powers theretofore exercisable under the said Act or the said rules.....the Governor-General is pleased to make and promulgate the following Ordinance :—.....

.....

2. DEFINITIONS.....

(3) "Requisitioned land" means immoveable property which, when the Defence of India Act, 1939 (XXXV of 1939), expires is subject to any requisition effected under the rules made under this Act.....

Secn. 3. *Continuance of requisitions.*—Notwithstanding the expiration of the Defence of India Act, 1939 (XXXV of 1939), and the rules made thereunder, all requisitioned lands shall continue to be subject to requisition until the expiry of this Ordinance and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient."

It is clear from the preamble as also clause 3 of the Ordinance that the occasion for the enactment of the Ordinance was the impending expiration of the Defence of India Act, 1939, and the rules made thereunder. All the requisition orders which had been made under the Act and the rules would have ceased to be operative and come to an end with the expiration of the Act and the rules and the immovable properties which had been requisitioned thereunder would have been released from such requisition. It was in view of that emergency that the Ordinance came to be promulgated and the obvious object of the enactment was to provide for the continuance of the powers exercisable under the Act and the rules and to continue the requisitions of immoveable properties which had been made thereunder. It was therefore argued that those requisition orders which would cease to be operative and come to an end with the expiration of the Act and the rules were the only orders which were intended to be continued by virtue of clause 3 of the Ordinance and clause 3 would accordingly cover only such requisition orders as would have ceased to be operative and come to an end with the expiration of the Act and the rules and not those orders which by reason of their inherent weakness such as the limitation of the period of duration expire *ipso facto* on the date of the expiration of the Act and the rules. The latter category of orders would have ceased to be operative and come to an end by reason of the limitation placed on the period of duration within the terms of the orders themselves and their expiration would not have depended upon the expiration of the Act and the rules and were therefore not touched by clause 3 of the Ordinance. That this was the true construction of clause 3 of the Ordinance was further sought to be supported by the *non obstante* clause appearing therein, *viz.*, "Notwithstanding the expiration of the Defence of India Act, 1939 (XXXV of 1939), and the rules made thereunder." The *non obstante* clause was invoked in support of the submission that those orders which would have ceased to be operative and come to an end with the expiration of the Act and the rules were the only orders which were intended to be continued under clause 3 of the Ordinance.

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There is considerable force in the argument and it found favour with the trial Court as well as the Court of appeal. It was recognised that but for the *non obstante* clause the plain wording of the Ordinance was capable of covering the order in dispute. The preamble in so far as it could be drawn upon for the purpose showed that the Ordinance was being enacted to provide for the continuation of certain powers in relation to land which was subject to *any* requisition effected under the Act and the rules. The definition of requisitioned lands contained in clause 2(3) also covered immoveable property which when the Defence of India Act, 1939, expired was subject to *any* requisition effected under the Act and the rules. Clause 3 of the Ordinance covered *all* requisitioned lands which having regard to the definition above mentioned covered immovable properties which when the Defence of India Act, 1939, expired were subject to *any* requisition effected under the Act and the rules and such requisitioned lands were to continue to be subject to requisition until the expiry of the Ordinance. On a plain and grammatical construction of these provisions it was obvious that once you had an immovable property which when the Defence of India Act expired, that is on the 30th September, 1946, was subject to any requisition effected under the Act and the rules, that immovable property continued to be subject to requisition until the expiry of the Ordinance, no matter whether the requisition order to which the immovable property was subject was of a limited duration or an indefinite duration. The only test was whether the immovable property in question was on the 30th September, 1946, subject to any requisition effected under the Act and the rules. This construction was sought to be negatived by having resort to the *non obstante* clause which, it was submitted, restricted the operation of clause 3 of the Ordinance only to those cases where the requisition order would have ceased to be operative or come to an end merely by reason of the expiration of the Act and the rules. If there was in existence on the 30th September, 1946, any requisition order which would have ceased to be operative or come to an end by reason of the fact that it was limited in duration and

was to expire on the 30th September, 1946, the *non obstante* clause saved that from the operation of clause 3 of the Ordinance and such requisition order could not continue in operation until the expiry of the Ordinance as therein provided. Such orders could not have been in the contemplation of the legislative authority because they would cease to be operative and come to an end by reason of the inherent weakness of the orders and not by reason of the fact that the Act and the rules were to expire on the 30th September, 1946, and it would not be at all necessary to make any provision for the continuance of such requisitions, because they could never have been intended to be continued.

While recognising the force of this argument it is however necessary to observe that although ordinarily there should be a close approximation between the *non obstante* clause and the operative part of the section, the *non obstante* clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof, a *non obstante* clause cannot cut down that construction and restrict the scope of its operation. In such cases the *non obstante* clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment. Whatever may have been the presumed or the expressed intention of the legislating authority when enacting the Ordinance No. XIX of 1946, the words of clause 3 read along with the definition of requisitioned land contained in clause 2(3) of the Ordinance are quite clear and it would not be within the province of the Courts to speculate as to what was intended to be covered by clause 3 of the Ordinance when the only interpretation which could be put upon the terms thereof is that all requisitioned lands, that is, all immoveable properties which when the Defence of India Act, 1939, expired were subject to *any* requisition effected under the Act and the rules were to continue

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to be subject to requisition until the expiry of the Ordinance. No doubt measures which affect the liberty of the subject and his rights to property have got to be strictly construed. But in spite of such strict construction to be put upon the provisions of this Ordinance one cannot get away from the fact that the express provisions of clause 3 of the Ordinance covered all cases of immoveable properties which on the 30th September, 1946, were subject to *any* requisition effected under the Act and the rules, whether the requisition was effected for a limited duration or for an indefinite period. Even those requisition orders, which by accident or design were to expire on the 30th September, 1946, would come to an end not only because the fixed term expired but also because the Act and the Rules expired on that date and were therefore covered by clause 3 read along with definition in clause 2(3) of the Ordinance and were by the clear terms thereof continued until the expiry of the Ordinance. We are not here concerned with the equities of individual cases. There may be cases in which the Ordinance worked to the prejudice of the owner of the requisitioned land. In such cases the necessary relief could be granted by the appropriate Government by releasing the immoveable property from requisition. But the Courts would be helpless in the matter. Once the conclusion was reached that a particular measure was lawfully enacted by a legislative authority covering the particular case in question the hands of the Court would be tied and the legislative measure would have to be given its legitimate effect, unless *mala fides* or abuse of power were alleged.

We have therefore come to the conclusion that both the trial Court and the Court of appeal were in error when they reached the conclusion that clause 3 of the Ordinance had not the effect of continuing the requisition order in question.

Mr. Palkhivala at the close of the arguments appealed to us that his client was a petty landlady and the immoveable property which she owned was of a small value and the result of an order of remand would be to put her to further harassment and costs. He pointed out to us that he had particularly requested the Court of appeal not to decide the appeal merely on the short

point in regard to the construction of clause 3 of the Ordinance, but to decide it on all the points which had been canvassed before trial Court. But the Court of appeal turned down his request and decided the appeal only on that point stating that it was unnecessary to go into the other points which Mr. Palkhivala wanted to urge before it. It is to be regretted that the Court of appeal did not respond to Mr. Palkhivala's request, but we have not had the benefit of the judgment of the Court of appeal on those points which found favour with the trial Court and which were not considered by the Court of appeal and we cannot help remanding the matter to the Court of appeal with a direction that the appeal be disposed of on all the points which were dealt with by the trial Court.

It was unfortunate for the first respondent to be pitted against the appellants who considered that this was a test case and the matter had to be fought out in detail inasmuch as it affected a series of cases and the properties involved would be considerable as alleged by Mr. Seervai before the trial Court. We are not concerned with the policy of the appellants in making test cases of this character. The only thing that impresses us in this case is that the unfortunate first respondent has had to bear the brunt of the battle and has been worsted in this preliminary point which was found in her favour both by the trial Court and the Court of appeal. We cannot make any order for costs in her favour. But we think that the justice of the case requires that the appellants as well as the first respondent will bear and pay their own respective costs both here and in the Court of appeal.

We therefore allow the appeal, set aside the decree passed by the Court of appeal and remand the Appeal No. 117 of 1952 for hearing and final disposal by the Court of appeal on the other points which have been raised in the matter after hearing both the parties. There will be no order as to costs here as well as in the Court of appeal.

Appeal allowed.

Agent for the appellants : *R. H. Dhebar.*

Agent for respondent No. 1 : *R. A. Gagrat.*