opinion of the learned Judge I am unable to agree that if the provisions of the Cacutta Ordinance were applicable in spite of the Transfer of Property Act the provisions with regard to notice would also be applicable.

Shri Hem Chand v. Shrimati Sham Devi

Kapur, J.

It is not necessary for me to add anything more because I have already given my opinion in the judgment which my learned brother has referred to above.

CIVIL WRIT

Before Khosla and Kapur, JJ.

SHRI PANNA LAL,—*Petitioner*

versus

THE STATE OF DELHI THROUGH COLLECTOR,—*Respondent.*

1954

Civil Writ No. 138 of 1953.

12th March.

The Requisitioning and Acquisition of Immovable Property Act (XXX of 1952)—Section 3—"To show cause" Meaning of—Whether means affording an opportunity of personal hearing—House requisitioned for tenant in possession—Such requisition whether permissible under the Act.

Held, that the expression "to show cause" in section 3 of Act XXX of 1952 means the right to be heard in person or by Counsel, and an opportunity of appearing either personally or through Counsel and stating his case, and as this was not done the requisitioning authority must be deemed to have acted without jurisdiction.

Held also, that where premises which are lying vacant or are in possession of anyone can be requisitioned and handed over to a Government servant or such other person whose business is concerned with purpose of the Union, then a *fortiori* if such a person is already in possession, his possession can be continued.

The Bharat Insurance Co. Ltd, Delhi v. *The State of Delhi and another*, (1) followed, *In re The Solicitors Act, 1932* (2) referred to and *Sudhindra Nath Datta* v. *Sallendra Nath Mitra* (3) distinguished.

(1) 54 P.L.R. 179.
(2) (1938) I.K.B. 616
(3) A.I.R. 1952 Cal. 65.

Petition under Article 226 of the Constitution of India, praying that this Hon'ble Court be pleased to issue directions or orders or writs in the nature of Mandamus *and Prohibition to the Competent authority and the Chief Commissioner, Delhi not to take possession of the petitioner's property in which the petitioner is residing as it is not liable to requisition and has not been requisitioned in accordance with law.*

BISHAN NARAIN, for Petitioner.

BISHAMBER DAYAL and VIDYA DHAR, for Respondent.

JUDGMENT

Khosla, J.

KHOSLA, J. This petition under Article 226 of the Constitution has arisen in the following manner. The petitioner was residing in a house in School Lane, New Delhi, as a tenant. He was ejected from this house on the ground that his landlady required the house for her own personal use. He purchased the house in dispute which is situated in the Central Lane, Babar Road, and sought to obtain possession of it from the tenant who is an employee of the Reserve Bank of India. He served the tenant with a notice and brought an application for ejectment. In the meantime Government took steps to requisition the house under the provisions of Act of 1952. A notice under section 3 of the Act was issued on the 3rd of November 1952, and the petitioner was required to show cause within a fortnight why the premises should not be requisitioned. The petitioner filed written objections on the 17th November 1952. On the 21st of November 1952, the Collector who was the Requisitioning Authority in this case passed an order requisitioning the premises and said that he had taken into consideration the objections filed by the petitioner. The Collector had not given an opportunity to the petitioner to be heard personally or through counsel, nor had he afforded him an occasion for producing his evidence by affidavit or otherwise. The petitioner feeling aggrieved by this order filed an appeal to the Chief Commissioner, to whom powers had been delegated under section 10 of the Act and this appeal was dismissed

on the 9th of January 1953, without the petitioner being given any hearing. The petitioner then filed a petition for review to the Chief Commissioner and this review petition was dismissed on the 23rd of February 1953.

The petitioner's grievance before us is two-fold. It has been contended in the first place that the competent authority did not give him a proper hearing as required by law, and, in the second place, it is urged that since the original tenant for whose benefit the premises were requisitioned was already in possession of the house the provisions of the Act could not have been called into action for requisitioning the house, because the Act contemplates requisitioning of houses for persons who are not in actual occupation.

The second contention has very little force although on a first reading of sections 3, 4 and 7 it might appear that the only instance in which a house can be requisitioned are those where possession has not yet been obtained by the State, for these sections lay down the procedure for obtaining possession from the landlord or the previous tenant. But it seems to me that where premises which are lying vacant or are in possession of anyone can be requisitioned and handed over to a Government servant or such other person whose business is concerned with the purpose of the Union, then a *fortiori* if such a person is already in possession, his possession can be continued.

With regard to the first point it has been contended that the expression "to show cause" means affording of an opportunity for personal hearing. Section 3(1) of the Act is in the following terms:—

> "The competent authority 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."

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Khosla, J.

Counsel for the State has contended that all that this clause requires is that the occupier or owner should be allowed to put his case before the authority and not that he should also be given an opportunity of personal hearing and of producing evidence. Our attention has been drawn by Mr. Bishan Narain to a Division Bench decision of this Court in *The Bharat Insurance Company, Ltd., Delhi* v. *The State of Delhi and others* (1). In that case the provisions of section 3 and section 5 of the old Act, namely Act XLIX of 1947, were considered. Section 3(3) of that Act was in very similar terms—

> "Where the competent authority decides that it is necessary to requisition the premises for any public purpose he shall call upon the landlord and the tenant or the person in possession by notice in writing to show cause within seven days why the premises should not be requisitioned."

Harnam Singh and Soni, JJ. who heard that case took the view that the expression "to show cause" meant affording an opportunity of personal hearing. The learned Judges in that case were considering whether an appeal filed against the order of the appellate authority was rightly decided when the Chief Commissioner had not given an opportunity to the aggrieved party of being heard. Section 5 of the old Act which dealt with the procedure in appeals said—

> "Any person aggrieved by an order of requisition may, within seven days from the date on which it is communicated to him, appeal from such order to the Chief Commissioner, Delhi, on the ground that the provisions of this Act relating to requisitioning have not been complied with."

(1) 54 P.L.R. 179.

It will be seen that the section dealing with appeals did not say anything about affording the parties an apportunity of being heard. Harnam Singh J. in his judgment said—

> "No one can doubt that in proceedings under subsections (3) and (4) of section 3 of the Act, the tenant or the person in possession is entitled to be heard either by counsel or in person. In a sense an appeal under section 5 is a continuation of the proceedings under section 3 of the Act. Indeed an appeal under section 5 is competent only on the ground that the provisions of section 3 of the Act have not been complied with. If so, in my judgment, the person aggrieved from an order of requisition appealing under section 5 of the Act is entitled, as a litigant party, to be heard in support of the appeal."

Similarly Soni, J. observed—

> "An appeal is a continuation of the hearing before the subordinate officer, Section 5 gives the general right to appeal without any restrictions and ordinarily the same procedure would be followed regarding the hearing of the appellant as would be followed by the subordinate officer when hearing his grievances. If at the stage of showing cause, *he has a right to be heard* then surely he has the same right to be heard when his appeal is being dealt with by the appellate authority."

Both the learned Judges took the view that the expression "showing cause" meant that the party had the right to be heard, and in this view they concluded that even in appeal the party must be heard although section 5 said nothing about affording an opportunity of being heard.

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Khosla, J.

It is interesting to note that when the new Act of 1952 was enacted the section dealing with appeals was substantially changed. Subsection (2) of section 10 of the new Act reads—

> "On receipt of an appeal under subsection (1), the Central Government may, after calling for a report from the competent authority and giving an opportunity to the parties of being heard and after making such further inquiry, if any, as may be necessary, pass such orders
>
> * * * * * * ".

It seems to me that the Legislature while framing this clause had in mind the decision of this Court in the abovementioned case and wished to clear any obscurity with which the old section 5 might have been enveloped. Section 3(1) (a) was left almost unchanged and, therefore, it may be assumed that in this respect also the decision of this Court was accepted as correct and that the interpretation of "showing cause" as being equivalent to affording an opportunity to be heard was taken by the Legislature to be the correct view of the matter.

There is an English decision which has considerable persuasive value. *In* re *The Solicitors Act* (1932) (1) the question of debarring two solicitors was being considered. I need not set out the relevant sections of the Act nor the rules framed thereunder, and it will be sufficient if I say that under the Act and the rules an application against the solicitors could have been dismissed if "*no prima facie* case were shown." The Disciplinary Committee had dismissed the application on the ground that no *prima facie* case was made out although they had not furnished the complainant or the petitioner with an

(1) (1938) 1 K.B. 616

opportunity of substantiating her complaint. Greer, L.J., observed at p.625 of the report.

> "In my judgment the Committee were wrong in making this order without giving the appellant an opportunity of contending, whether by herself or by counsel, that she had made out a *prima facie* case against the solicitors."

Counsel for the State has drawn our attention to *Sudhindra Nath Datta* v. *Sallendra Nath Mitra* (1). That case arose out of the West Bengal Premises Requisition and Control (Temporary Provisions)Act of 1947 and the judgment considered the interpretation to be placed on section 3(1) which dealt with the manner in which premises could be requisitioned. A Division Bench of the Calcutta High Court took the view that an order requisitioning the premises was an administrative order therefore the occupier who in this case was the person aggrieved could not claim to be heard. But in that case section 3(1) said nothing about giving an opportunity to show cause and section 3(1) was in the following terms:—

> "Whenever it appears to the Provincial Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing, requisition such premises".

The section therefore did not contemplate giving an opportunity to the owner or occupier to show cause against requisitioning, whereas section 3 of Act xx of 1952 does contain a provision to that effect. I am, therefore, of the view that the expresion "to show cause" means the right to be heard in person or by counsel, and that the petitioner should in this case have been given an opportunity by the competent authority

(1) A.I.R. 1952 Cal. 65.

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of appearing either personally or throught counsel and stating his case, and as this was not done the requisitioning authority must be deemed to have acted without jurisdiction.

Khosla, J.

I should not be understood to say anything regarding the merits of this case. It is no doubt true that the Chief Commissioner when hearing the review petition did hear the petitioner's objection, but I do not think that the previous irregularity can be regularised by the final order of the Chief Commissioner. I would, therefore, make this rule absolute and set aside the order of requisitioning and direct that the petitioner be given an opportunity of being heard before further action is taken in respect of these premises. The matter will then be disposed of by the competent authority according to law. The petitioner will be allowed Rs 200 costs.

Kapur, J.

KAPUR J. I agree and would only like to add that when the Legislature says "show cause" it must be taken to mean a reasonable apportunity of showing cause. What happened in the present case was that after his objections were filed by the petitioner he heard nothing more except that his objections had been rejected. That in my opinion is not in accord with the rules of natural justice, one of the principles of which is that a person objecting must be given a reasonable opportunity to make out his case.

I would also like to say that the rules of construction of statutes is that the Legislature is taken to be acquainted with the actual state of the law [*see Lord Blackburn in Young* v. *Leamington*, (*1*)] and therefore when an old statute is either incorporated in or is put in the same terms in a new statute it should be understood that the Legislature has accepted the interpretation which has been put upon it. See Maxwell on Interpretation of Statutes, p. 315.

(1) 8 A.C. 526

In the present case a Bench of this Court had interpreted the words which are now complained of in a particular manner and the same words have found place in the new statute although in regard to the appeal section the words have been changed. I am, therefore, of the opinion that the Legislature has accepted the true meaning of these words to be what was stated by a Bench of this Court. I would, therefore, allow this petition and issue a direction setting aside the order of requisitioning and agree with my Lord in the order that the petition be heard from the stage where the matter reached before the competent authority.

APPELLATE CIVIL

Before Khosla and Kapur, JJ.

M. S. CHEMICAL INDUSTRIES LTD., ETC.,—*Defendant-Appellants*

versus

THE HINDUSTAN COMMERCIAL BANK LTD.,—*Plaintiff-Respondent*

Regular First Appeal 100 of 1953.

1954

17th March.

Court Fees Act (VII of 1870) Section 7—Money due from plaintiff to Defendant—Plaintiff suing for specific sum after asking for credit for the loss sustained by him—Court Fee whether payable on the actual amount claimed or upon the amount of the loss alleged for which credit sought—Cross suit by the defendant against the Plaintiff for the amount due from the plaintiff to the Defendant—Plaintiff claiming set off for that amount due from him against the amount of loss caused to him—Whether can be required to pay Court Fee on the amount of set off claimed—Rule in such cases stated.

M.S.C. had cash credit account with the H. C. Bank. M.S.C. owed Rs. 23,976-14-3 to the Bank. M.S.C. claimed a sum of Rs 6,023-1-9, from the Bank in a suit filed on 5th January 1948, alleging that loss to the extent of Rs. 30,000 had been caused to them by the bank and after giving credit for the amount due from them claimed the amount in question. The Bank brought a suit on 16th April 1948, for the recovery of Rs 25,000 the amount due from M.S.C. on the Cash Credit Account. The defence of M.S.C. to the Bank's suit was that after giving credit for the loss caused by the Bank they were due from the Bank a sum of Rs 6,023-1-9. Bank in its written statement to M.S.C.'s suit took the plea that court fee should have been paid on