

## CIVIL MISCELLANEOUS

*Before S. B. Kapoor and Inder Dev Dua, J.J.*

HARI CHAND AGGARWAL,—*Petitioner*

*versus*

THE BATALA ENGINEERING COMPANY, LIMITED, AND  
OTHERS,—*Respondents*

**Civil Writ No. 719 of 1964.**

1965  
April, 22nd.

*Defence of India Act (LI of 1962)—S. 40(1)—Notification No. G.S.R. 1716, issued under delegating certain powers mentioned in the Schedule attached thereto to District Magistrates—Such powers—Whether can be exercised by Additional District Magistrates—Interpretation of Statutes—Instrument delegating authority—How to be construed.*

*Held*, that by notification No. G.S.R. 1716—the Central Government has delegated its powers under sections 29, 30 (except the proviso thereto), 31, 32, 33, 35 and 36 and sub-sections (1) and (3) of section 37 of the Defence of India Act, 1962 to certain authorities including the District Magistrates as mentioned in the Schedule annexed to the notification. The expression 'District Magistrate' as used in clause (a) column (3) of the Schedule includes the Additional District Magistrate too as all the powers of the District Magistrate have been conferred on the Additional District Magistrate, under the Code of Criminal Procedure as well as under the other laws for the time being in force. An Additional District Magistrate has, therefore, the power to requisition property under the Act.

*Held*, that a Court need not be too dogmatic in construing the instrument of delegation, for in the final analysis it is the intention underlying the act of delegation, which is the guiding factor. In its research for discovering the real intention the Court must attempt to grasp and seek the object and the purpose of the delegating authority, because the oneness of the aim to find the intention is to effectuate and never to throttle the object to be reached. One of the practical and effective ways of proliferating the purpose is to see how far the suggested meaning destroys and defeats or promotes the ultimate purpose. In this research the Court is not confined to the literal meaning of the words used in the instrument, but it has to adopt a rational attitude by attempting to align its vision to that of the draftsman while drafting the instrument in question.

*Case referred by the Hon'ble Mr. Justice Inder Dev Dua, on 28th April, 1964 to a larger bench for decision of an important*

question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice S. B. Kapoor and the Hon'ble Mr. Justice Indev Dev Dua, finally decided the writ petition on 22nd April, 1965.

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of respondent No. 2.*

H. R. AGGARWAL, R. L. BAHARI AND R. C. DOGRA, ADVOCATES, for the Petitioner.

M. R. SHARMA, ADVOCATE, for ADVOCATE-GENERAL AND H. L. SARIN, SENIOR ADVOCATE WITH MISS ASHA KOHLI, ADVOCATE for the Respondents.

### ORDER OF THE HIGH COURT

DUA, J.—This application under Articles 226 and 227 of Constitution has been placed before us in pursuance of my order, dated 28th August, 1964 which contains all the relevant facts and may, therefore, be treated as part of this order. Since then, however, the application for ejection of the petitioner has been dismissed by the Rent Controller because the arrears of rent were duly deposited on the first hearing.

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The impugned order made by Shri R. C. Aggarwal, Additional District Magistrate, Gurdaspur, under section 29 (1) of the Defence of India Act has been challenged on two grounds. In the first instance, it has been described to be a *mala fide* order intended really to circumvent the provisions of the Rent Restriction Act because the Batala Engineering Co. Ltd. had been unable to evict the petitioner under the provisions of that Act. Secondly, the order has been described to be unauthorised because it could only be made by the District Magistrate and not by the Additional District Magistrate.

In so far as the challenge on the ground of *mala fides* is concerned, our attention has been drawn to the order of the Rent Controller, dated 22nd October, 1964, by means of which the application of the Batala Engineering Co. Ltd. for ejection of the petitioner was rejected on the ground that arrears of rent along with costs and interest were tendered on the first hearing. The application for the petitioner's eviction was presented on 8th January, 1964.

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The written statement to that application was filed on 17th February, 1964 and arrears of rent with costs and interest were also deposited on that date. As the Additional District Magistrate issued the impugned notification containing the requisitioning order on 17th April, 1964 after the deposit of the arrears of rent, it is suggested that this order has been passed for the purpose of circumventing the provisions of the Rent Restriction Act and enabling the Batala Engineering Company to evict the petitioner by utilising the Defence of India Act, though under the ordinary law of the land, such an eviction order could not be secured. It is averred in paragraph 3 of the writ petition that the Batala Engineering Company Ltd. feeling the weakness of its application for ejection before the Rent Controller, has got issued a letter by the Labour Commissioner to the Additional District Magistrate for getting the shop in question requisitioned. In the return submitted by the Additional District Magistrate, respondent No. 2, no reply is given to this paragraph and all that is stated is that this paragraph relates to the Batala Engineering Company and the Labour Commissioner. The Batala Engineering Company has in its written statement denied the correctness of paragraph 3. The Labour Commissioner, has, however, not cared to file any written statement.

From the record relating to the requisitioning of the shop in question, we find that it was on 5th January, 1964 (1963 is probably a mistake) that the Batala Engineering Company wrote to the Sub-Divisional Magistrate, Batala, with copies to the Deputy Commissioner, Gurdasour, to the Labour Commissioner, Punjab, and to Pt. Mohan Lal, Home Minister, with reference to the Labour Commissioner's letter of 13th November, 1963, that the Company was handicapped on account of its expansion programme and was not in a position to find a place to accommodate a consumers' stores within its office building for carrying out the instructions of the Government of India. It was accordingly suggested that a shop belonging to the Company and in the occupation of the present petitioner may be got vacated for using it as a consumers' stores for the labour. There is a clear suggestion in this letter that a move to have this shop requisitioned under the Defence of India Rules had already been made and the same had also been recommended by the Labour Commissioner. There is

a further reference in this letter to a statement made by Shri G. L. Nanda, Home Minister, Government of India, in which stress was laid on the necessity of providing fair price shops and consumer's co-operative stores by the industries wherever the employment rate is more than 300. The number of persons employed in the Batala Engineering Company, as disclosed in this letter, was 550. A request was repeated in this letter that necessary steps in the matter may be taken to help the Company in providing the much needed assistance to its employees. The Company made a very clear offer in this letter that if the Batala Central Co-operative Consumers' Stores was desirous of opening a branch there, then the Company would not charge any rent for the same, subject to the condition that the employees of the Company are registered as members and are thereby entitled to purchase their requirements from the said Stores. This letter quite clearly negatives the suggestion that it was in January or February, 1964 that, after discovering the weakness of the case for ejection, the Batala Engineering Company got a letter issued by the Labour Commissioner to the Additional District Magistrate for requisitioning the shop in question. This ground of *mala fide* is, therefore, clearly unsupportable and I have no hesitation in rejecting it.

The real question which is seriously agitated before us is that the impugned order of requisition is outside the Defence of India Act and the Rules made thereunder and that, therefore, it is *ultra vires* and unauthorised which must be struck down and quashed by this Court in these proceedings. In order to appreciate the point canvassed it is necessary to refer to the relevant provisions of the Defence of India Act and the Rules made thereunder, which I shall hereinafter call the Act and the Rules respectively. On behalf of the petitioner reference has been made to the preamble of the Act which shows that the Act has been designed to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for trial of certain offences and for matters connected therewith. Section 29, which is directly in question in the present controversy, has next been adverted to. This section had better be reproduced *in extenso*:—

“29. (1) Notwithstanding anything contained in any other law for the time being in force, if in the

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opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India, civil defence, public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning;

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.

- (2) The requisition shall be effected by an order in writing addressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.
- (3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section."

Section 40, the next relevant provision, deals with the power to delegate. Sub-section (2) of this section concerns us, according to which, so far as relevant for our purpose, the State Government may, by order, direct that any power or duty which by the Act or any Rule made thereunder is conferred or imposed on the State Government or which, being by the Act or the Rules conferred or imposed on the Central Government, has been directed under sub-section (1) to be exercised or discharged by the State Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority not being an officer or authority subordinate to the Central Government. Our attention has also been drawn by the petitioner's learned counsel to rules 107 and 108, both of

which fall under Part II dealing with requisition and acquisition of immovable property. Rule 107 contains definition of 'competent authority' which means the Central Government or the State Government or any person appointed by the Central Government or the State Government to exercise the powers of competent authority under any provision in Part II. Rule 108 dealing with requisitioning of property provides that if in the opinion of the competent authority it is necessary or expedient so to do for securing the defence of India and civil defence, the public safety, the efficient conduct of military operations or the maintenance of services and supplies essential to the life of the community, the competent authority may, by order in writing, requisition any movable property and may make such further orders as appear to it to be necessary or expedient in connection with the requisition. After taking us through these provisions the petitioner's learned counsel has drawn our attention to the Supreme Court decision in *Central Talkies Limited v. Dwarka Prasad* (1), and has tried to distinguish that decision on the ground that in the reported case the District Magistrate was not a *persona designata* as contemplated by the U.P. (Temporary) Control of Rent and Eviction Act (3 of 1947). He has in support of his contention relied on *Prabhul Ramlal Kabra v. Emperor* (2), and particular reliance has been placed on the following observations of the Division Bench:—

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“The object of section 10(2), Criminal Procedure Code, is only to relieve the pressure of work falling on the shoulders of the District Magistrate in the course of the performance of his normal duties under the Criminal Procedure Code or any other ordinary law. The Additional District Magistrate, who is invested with powers of a District Magistrate, does not thereby attain the status of the District Magistrate as sub-section (3) of section 10 itself makes clear: See also 54 *Mad.* 943. The fact that the Additional District Magistrate may have all the powers of the District Magistrate does not make him a District Magistrate inasmuch as there

(1) A.I.R. 1961 S.C. 606.

(2) A.I.R. 1944 Nagpur 84.

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can be only one person in the district who can be a District Magistrate."

And further down:—

"Section 10(2), Criminal Procedure Code and section 2(5), Defence of India Act, are quite distinct in their scope and application. The former is concerned with the powers of the District Magistrate under the law and the latter with the powers of the Provincial Government. Section 10(2) cannot be called in aid to confer the powers of the Provincial Government under Rule 26, Defence of India Rules, on any officer subordinate to it."

Reliance has further been placed on *Janak Dulari v. Narain Dass* (3), where following the ratio *decidendi* of the Supreme Court decision in *Kuldip Singh v. State of Punjab* (4), a Bench of this Court observed that the Court of an Additional District Judge in the Punjab cannot be considered to be the principle civil court of original civil jurisdiction within section 19 of the Hindu Marriage Act. The analogy relied upon by the petitioner's learned counsel by citing this case seems to me to be inapt. *Guru Datta v. Sohan Singh* (5), a Bench decision of this Court, is the next case cited. The Additional Deputy Commissioner, who had disposed of the election

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this case after granting sanction to himself as Additional District Magistrate. The ratio of this decision also does not seem to me to be of much assistance in the present case. Finally support has been sought on behalf of the petitioner from a recent unreported decision of the Supreme Court in *Ajaib Singh v. The State of Punjab*, Criminal Appeal No. 252 of 1964, decided on February 2, 1965, and indeed the petitioner's learned counsel has placed great reliance on the ratio of this decision. In this case Ajaib Singh had been detained under rule 30(1)(b) of the Rules by an order passed by Shri Lal Singh, on June 30, 1964, as District Magistrate of Amritsar. Shri Lal Singh, was, in fact, not the District Magistrate of Amritsar on the said date and it was on this ground that the order of detention was challenged. As is clear from the judgment, Shri P. N. Bhalla was the District Magistrate of Amritsar in April 1964, and he was ordered to be transferred to the Secretariat by an order passed on the 23rd of April, 1964. At that time, Shri Lal Singh was the Additional District Magistrate of Amritsar and had, *inter alia*, been invested under section 10(2), Criminal Procedure Code, with all the powers of a District Magistrate under the Code or under any other law for the time being in force by means of an order passed on 10th April, 1963. Instructions were also issued, when the order of Shri Bhalla's transfer was made, that he should handover charge to Shri Lal Singh, Additional District Magistrate, Amritsar, who would hold the current charge of the post of the Deputy Commissioner till further orders, and apparently Shri Bhalla did handover charge of the office of the Deputy Commissioner to Shri Lal Singh on the afternoon of the 15th of May, 1964. The result was that Shri Lal Singh was in current charge of the Deputy Commissioner, Amritsar, from 16th of May, 1964. However, no order, appointing him as District Magistrate of Amritsar under section 10(1) of Criminal Procedure Code was passed. Since Shri Lal Singh was already invested as an Additional District Magistrate with all the powers of the District Magistrate under Criminal Procedure Code and under any other law for the time being in force, he carried on the duties of the office of the District Magistrate as well and indeed there was no other officer posted as District Magistrate, Amritsar, from 16th May, to 30th June, 1964, when the order of detention was passed; the new District Magistrate Shri Iqbal Singh having taken over as District Magistrate on 1st July,

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On behalf of the respondents reliance has principally been placed on section 10(2) of the Criminal Procedure Code and reference has also been made to the Supreme Court decision in the case of *Central Talkies Limited*. It

has been pointed out that the power of the State Government has been delegated to the District Magistrate under section 40 of the Act and the Additional District Magistrate having been empowered under section 10(2) of the Act, he would be authorised to pass the impugned order. The decision of the Supreme Court in *Ajaib Singh's case* has been distinguished on the ground that there no officer below the rank of a District Magistrate could pass the order of detention and it was on this ground alone that the order of detention was set aside. Lastly, assistance has been sought from my decision in *Cantonment Board, Ambala Cantonment v. Lachhman Das Hari Ram* (7), in which following the ratio of the Supreme Court decision in the case of *Central Talkies Limited* it was held that the expression 'District Magistrate' as used in section 84 of the Cantonments Act includes an Additional District Magistrate. Shri Sharma has also in the alternative questioned the correctness of the decision of the Nagpur High Court in the case of *Prabhulal Ramlal Kabra*. It has been emphasised by reference to section 29 of the Act that the requisition in question is both necessary and expedient for maintaining supplies and services essential to the life of the community. The expression 'essential to the life of the community', it is argued, demands a liberal construction.

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It is desirable at this stage to reproduce, so far as relevant for our purpose, section 10 of the Criminal Procedure Code—

- "10. (1) In every district outside the presidency-towns the State Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate;
- (2) The State Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the State Government may direct.
- (3) \* \* \* \* \*

(7) I.L.R. (1962) 2 Punj. 439=1962 P.L.R. 456.

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It is clear that an Additional District Magistrate appointed under sub-section (2) can be invested by the State Government with all or any of the powers of the District Magistrate under Criminal Procedure Code or under any other law for the time being in force. It is unnecessary to reproduce section 29 of the Act *in extenso*. Suffice it to say that according to it if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for, *inter alia*, maintaining supplies and services essential to the life of the community, the Government may, notwithstanding anything contained in any other law for the time being in force, by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with requisitioning. The period of such requisition, it is expressly provided, shall not extend beyond the period for which such property is required for any of the purposes mentioned in sub-section (1) of the this section. I may now read section 40 of the Act, so far as relevant for our purpose—

“40 (1) The Central Government may, by order, direct that any power or duty which  
Power to delegate. by this Act or by any rule made under this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also—

(a) by any officer or authority subordinate to the Central Government; or

(b) whether or not the power or duty relates to a matter with respect to which a State Legislature has power to make laws, by any officer or authority subordinate to such Government; or

(c) by any other authority.

(2) \* \* \* \* \*

It would be helpful now to refer to the notification, dated the 13th December, 1962, by means of which the Central Government has delegated its power under certain sections of the Act—

“G.S.R. 1716—In exercise of the powers conferred by sub-section (1) of section 40 of the Defence of India Act, 1962 (5 of 1962) and of all other powers enabling it in this behalf, the Central Government hereby directs that the powers exercisable by it under the provisions of the said Act specified in column (2) of the Schedule hereto annexed shall also be exercisable by each of the authorities mentioned in the corresponding entry in columns (3) of the said Schedule in respect of any immovable property situated within its jurisdiction.

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SCHEDULE

Serial No.	Provisions of the Act	Authorities
1	2	3
1.	Sections 29, 30 (except the proviso thereto), 31, 32, 33, 35 and 36 and sub-sections (1) and (3) of section 37.	(a) All Collectors, District Magistrates and Deputy Commissioners in the States and all political *officers in Nefā.  (b) All Land Acquisition Collectors, Land Acquisition Officers and Sub-Divisional Magistrates functioning as Land Acquisition Collectors in the State and all Assistant Political Officers functioning as Land Acquisition Collectors in Nefā.
2.	Provisos to section 30 and sub-sections (2) and (4) of section 37.	The State Government.

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The problem which confronts this Court is to discover the meaning of the expression 'District Magistrate' as used in clause (a) column (3) of the Schedule in this notification. I am not unmindful of the plausibility of the contention that, broadly speaking, the instrument by which the power to make drastic orders like the impugned one affecting citizens' right to property which the Parliament has in its wisdom rightly thought to vest in the Central Government or the State Government, deserves strict compliance and it should not be lightly or unduly stretched. But I am equally conscious of the desirability of not being too dogmatic in construing the instrument of delegation for in the final analysis it is the intention underlying the act of delegation, which is the guiding factor. In its research for discovering the real intention the Court must attempt to grasp and seek the object and the purpose of the delegating authority, because the oneness of the aim to find the intention is to effectuate and never to throttle the object to be reached. One of the practical and, if I may say so, effective ways of proliferating the purpose is to see how far the suggested meaning destroys and defeats or promotes the ultimate purpose. In this research the Court is not confined to the literal meaning of the words used in the instrument, but it has to adopt a rational attitude by attempting to align its vision to that of the draftsman while drafting the instrument in question. Construing the notification before us it seems to be clear that the Central Government was desirous of delegating its power in favour of the officers in fact and actually discharging the duties and functions in exercising the powers of Collectors, District Magistrates and Deputy Commissioners. It is undoubtedly true that power to acquire or requisition a citizen's property is a drastic power and guidance to some extent may be had from the jealous precaution taken by the law-maker in regard to the detention of the citizens, but at the same time it is not easy to ignore the contrast between the language in the various provisions of the Act dealing with the question of detention and those dealing with the delegation of power and the language used in actual delegation in the notification with which we are concerned. In the impugned notification it is note worthy that the power delegated to Collectors, District Magistrates and Deputy Commissioners also includes along with the power conferred by section 29 the power to obtain information, to enter into and inspect, to evict from requisitioned property etc. This may reasonably

suggest that the power has in all probability been intended to be delegated to officers who are lawfully discharging all the functions and duties of Collectors, District Magistrates and Deputy Commissioners, and not confined only to officers appointed as District Magistrates under section 10(1), Code of Criminal Procedure. Had this not been so, then in a contingency like the one which arose in the case of *Ajaib Singh* before the Supreme Court, it is suggested, no order for requisitioning the property would be possible by the District authorities. This reason may possess a comparatively weak plausibility for such a situation has been intended by the Legislature in the matter of detention, and one can truly argue that if the language of the statute is clear and unambiguous, this consideration should not weigh with the Court, and indeed if the delegate is not available, then the Central Government and the State Government can certainly exercise the power under section 29 as is perhaps postulated in the case of detention. I am, however, inclined to think that the Legislature has not placed orders for requisitioning property completely at par with the detention orders in this respect. This view also seems to gather some support from the fact that officers mentioned in clause (b) of third column of the notification are not all of the same status as District Magistrates appointed under section 10(1), Cr. P. C. I am, therefore, unable to hold that the authority is delegated only to the District Magistrate appointed under section 10(1), Cr. P. C. and the Additional District Magistrates on whom all powers of District Magistrates have been conferred under the Code as well as under all other laws for the time being in force, are outside the purview of the authority delegated by means of the notification.

I would, therefore, on a consideration of the entire notification and of the scheme of the Act and the Rules, hold that under the notification in question, the Additional District Magistrate had the power to issue the impugned order. That the purpose for which the property has been requisitioned pertains to the maintenance of supplies essential to the life of the community hardly admits of any doubt and cannot be questioned with any reasonable plausibility.

In the result, this petition fails and is dismissed with costs.

S. B. CAPOOR, J.—I agree.

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