

Single Judge and it is well settled that in a Letters Patent Appeal a new point cannot be raised which had not been agitated before the Single Judge, and for this reason we did not permit the learned counsel to argue this point.

For all these reasons, I see no force in this appeal and I would dismiss it with costs.

BHANDARI, C. J.—I agree.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Bishan Narain, J.

THE STATE OF PUNJAB, etc.,—Appellants

versus

S. HARBHAJAN SINGH,—Respondent

Letters Patent Appeal No. 95 of 1953.

Punjab Requisitioning and Acquisition of Immovable Property Act (XI of 1953)—Sections 3 and 25(2)—Proviso (b)—Proviso—Scope of—Requisition orders under Acts of 1948 and 1951—Whether kept alive under the 1953 Act—Enquiry under section 3—Whether to be made by competent authority or by Court.

1956

Oct., 30th

Held, that ordinarily a proviso refers only to the section or provision to which it is appended although in certain cases it may even relate to the Act as a whole if it is clear from the terms of the Act that such was the legislative intent.

Held, that proviso (b) to subsection (2) of section 25 of the Punjab Requisitioning and Acquisition of Immovable Property Act keeps alive orders of requisitioning property passed under the Acts of 1948 and 1951 which are consistent with the provisions of the Act of 1953.

Held further that the enquiry whether the house in question is in the bona fide use of the owner thereof as the

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residence of himself or his family should be undertaken by the competent authority under the Act of 1953 and not by or under the supervision of a Court.

Appeal under Clause 10 of the Letters Patent praying that the appeal be accepted and the judgment of the Hon'ble Judge set aside.

S. M. SIKRI, Advocate-General, for Appellant.

A. M. SURI, for Respondent.

JUDGMENT.

Bhandari, C.J. BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises a question upon the interpretation of the second proviso to subsection (2) of section 25 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953.

On the 12th August, 1952 the District Magistrate of Amritsar requisitioned a house belonging to one Sardar Harbhajan Singh under the provisions of the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, despite the protests of the owner that the house was in the actual use and occupation of himself and the members of his family. Sardar Harbhajan Singh presented a petition under Article 226 of the Constitution and obtained an order staying delivery of the possession of the house. On the 15th April, 1953 while this petition was awaiting the decision of the Court the State Legislature enacted a measure known as the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, which provided that no property or part thereof shall be requisitioned if it is in the bona fide use of the owner as a residence for himself or for the members of his family. It repealed the earlier legislation but preserved the validity of certain orders issued under the Acts of 1948 and 1951. When the petition came up for consideration before a learned Single Judge of this Court

the owner placed a number of affidavits on the record in support of the assertion that he was in actual occupation of the property when the notice of requisition was served on him on the 17th July, 1952. The learned Single Judge held that although the order of requisition may have been good at the time it was passed, it had to be read with the proviso to subsection (2) of section 25 and could not be deemed to be an order passed under the Act of 1953 unless it was consistent with the provisions of the said Act. In this view of the case the learned Judge accepted the petition and set aside the order of the District Magistrate dated the 12th August, 1952. The State Government is dissatisfied with the order and has come to this Court in appeal under clause 10 of the Letters Patent.

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Section 25 of the Act of 1953 is in the following terms :—

“25. (1) The East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948 (East Punjab Act No. XLVIII of 1948), and the Punjab Requisitioning of Immovable Property (Amendment and Validation) Act, 1951 (President's Act No. II of 1951), are hereby repealed.

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

Provided that—

(a) all agreements and awards for the payment of compensation in respect of any

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such property for any period of requisition before the commencement of this Act and in force immediately before such commencement, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition after such commencement;

- (b) anything done or any action taken (including any orders, notifications or rules made or issued) in exercise of the powers conferred by or under either of the said Acts shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act was in force on the day of which such thing was done or action was taken."

Mr. Sikri, who appears for the State, contends that when the Legislature proceeded to repeal the Act of 1948 and 1951, it intended to keep alive not only the orders passed under the earlier Acts which were consistent with the Act of 1953 but also the orders which were in conflict with the provisions of the said Act, for subsection (2) of section 25 declares that any property which before the repeal of the Acts of 1948 and 1951 was subject to requisition under the provisions of those Acts shall, on the commencement of the Act of 1953, be deemed to be property requisitioned under section 3 of the Act of 1953. This being so, it is argued that the proviso to this subsection must be deemed to apply to the last sentence which declares that "all the provisions of this Act shall apply accordingly" and not to the preceding sentence which declares that "any property which immediately before such repeal was 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."

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I regret I am unable to concur in this contention. Although it is possible to argue with a certain amount of justification that the enacting part of subsection (2) is capable of bearing the construction that any property requisitioned under the earlier Acts should be deemed to be property requisitioned under this Act of 1953 even though the order of requisition was not consistent with the Act of 1953, there are at least two factors which appear to militate against this argument. In the first place, the statute declares that such property shall be deemed to be property "requisitioned" under the Act of 1953 and not "duly requisitioned" under the provisions of the said Act. If the Legislature intended that all properties which were requisitioned under the provisions of the earlier Acts should, notwithstanding the repeal of those Acts, be deemed to be validly requisitioned under the later Act, there was nothing to prevent it from making its intention plain by using the expression "duly requisitioned" as has been used in section 23 instead of contenting itself by using the word "requisitioned" without a qualifying word which would have put the matter beyond the pale of controversy. Secondly, it must be remembered that subsection (2) of section 25 has been subjected to the proviso that any order passed under an earlier Act shall be deemed to have been passed only in so far as it is not inconsistent with the Act of 1953. The proviso is intended to restrain the previous provisions and it must therefore be assumed that the matter contained in the proviso would have been within the language of the main provisions had the proviso not been included. "When one finds a proviso to a section" said Lush, J., in *Mullins v. Treasurer of Surrey* (1),

(1) (1880) 5 Q.B.D. 170,173.

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“the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.” It is for this reason that ordinarily proviso refers only to the section or provision to which it is appended although in certain cases it may even relate to the Act as a whole if it is clear from the terms of the Act that such was the legislative intent.

The property belonging to S. Harbahajan Singh could be requisitioned in the year 1952 even though it was in the actual use and occupation of the owner, for neither the Act of 1948 nor the Act of 1951 imposed any limitation on the power of the Competent Authority to requisition such property so long as it was required for a public purpose. The Act of 1953, however, enacted that a house which is bona fide used by the owner thereof as the residence of himself or his family should not be requisitioned, and section 3 prescribes the procedure which should be followed by the Competent Authority before deciding whether an order of requisition should or should not be passed. It provides that the Competent Authority shall call upon the owner of the property to show cause within a specified period of the service of notice as to why the property should not be requisitioned. If after considering the cause, if any, shown by the person interested in the property the Competent Authority is satisfied that the property ought to be requisitioned, it is open to the Competent Authority to requisition the property provided of course that the property is not in the bona fide use of the owner thereof and is not being used as the residence of himself or members of his family. The enquiry which the statute contemplates is to be undertaken by the Competent Authority constituted under the Act of 1953 and not by or under the supervision of a Court. It is not within the competence of this Court to appropriate to itself

the functions of the Competent Authority or to embark on an enquiry which the Legislature says shall be made by executive officers alone.

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For these reasons I would allow the appeal, set aside the order of the District Magistrate dated the 12th August, 1952 and direct the said officer to make such order as he may consider necessary after holding an enquiry as to whether the house in question was being bona fide used by the owner as the residence of himself or his family on the 17th July, 1952 when the notice under section 3 of the Act of 1948 was issued to him. The District Magistrate will, doubtless, afford the respondent a reasonable opportunity of being heard before any final decision is taken. There will be no order as to costs.

BISHAN NARAIN, J.—I agree.

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J.

APPELLATE CRIMINAL

Before Falshaw and Gurnam Singh, JJ.

THE STATE,—Appellant

versus

RAM SINGH,—Respondent

Criminal Appeal No. 255 of 1956.

Punjab Excise Act (I of 1914)—Sections 25 and 61(1)(a)—Offence under—Ingredients of—Code of Criminal Procedure (Act V of 1898)—Section 342—Questions asked under and charge framed not referring to guilty knowledge mentioned in section 25 of Punjab Excise Act—Effect of.

1956

Nov., 5th

Held, that the offence punishable under section 61 (1) (a) of the Act clearly relates back to the provisions of section 25 and, therefore, for anybody to be convicted under section 61 (1) (a) for the possession of illicit liquor, there must