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## HARI CHAND AGGARWAL

v.

## BATALA ENGINEERING CO. LTD.

September 24, 1968

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[J. C. SHAH, ACTING C.J., V. RAMASWAMI  
AND A. N. GROVER, JJ.]

*Defence of India Act, 1962, ss. 40, 29—Powers of Central Government under s. 29 delegated to District Magistrates—District Magistrate whether includes Additional District Magistrate—Effect of notification issued under s. 10(2) of Code of Criminal Procedure.*

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By notification under s. 40(1) of the Defence of India Act, 1962 the powers of the Central Government in respect of certain sections of the Act including s. 29 thereof were conferred on Collectors, District Magistrates, Deputy Commissioners and political officers in Nefa. The Additional District Magistrate of Batala in the Punjab acting under s. 29 of the Act passed an order requisitioning a shop belonging to the respondent which was occupied by the appellant as a tenant. The appellant challenged the order of requisition in a writ petition to the High Court without success. In appeal before this Court the question that fell for consideration was whether an additional District Magistrate was empowered under s. 10(2) of the Code of Criminal Procedure to exercise the powers under s. 29 of the Defence of India Act delegated by the Central Government to District Magistrates.

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HELD: The powers of requisitioning are of a very drastic nature and involve the fundamental rights in respect of property guaranteed under Art. 19(1)(f) of the Constitution. The Central Government while making the delegation of its power under s. 29 of the Act must ordinarily be presumed to be fully conscious of this aspect of the matter and it was for that reason that an officer or authority of the high status of a District Magistrate in the District was empowered to exercise that power. There was also no reason in the present case to deviate from the normal rule that the expressions or words used in the notification must be read as such and not in any other manner unless the context requires that the latter course should be followed, and the words "District Magistrate" could not be possibly read as "Additional District Magistrate". [207 B-D]

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The notification issued under s. 10(2) of the Code of Criminal Procedure could not serve to confer on the Additional District Magistrate the powers of the District Magistrate under s. 29 of the Defence of India Act for the same reasons as prevailed with the Nagpur High Court in *Prabhulal Ramlal Kabra's case* in denying to the Additional District Magistrate the power of the District Magistrate under R. 26 of the Defence of India Rules. [207 E, 206 E-F]

*Prabhulal Ramlal Kabra v. Emperor*, A.I.R. 1944 Nag. 84, approved and applied.

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*Ajaib Singh v. State of Punjab*, [1965] 2 S.C.R. 845, *Central Talkies Ltd. Kanpur v. Dwarka Prasad*, [1961] 3 S.C.R. 495 and *Guru Dutt v. Sohan Singh & Anr.* I.L.R. 1965 Punj. 134, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 681 of 1966.

Appeal by special leave from the judgment and order dated April 22, 1965 of the Punjab High Court in Civil Writ No. 719 of 1964.

*B. P. Maheshwari and Sobhag Mal Jain*, for the appellant.

*W. S. Barlingay, Brij Mohan Lal and Ganpat Rai*, for respondents Nos. 1 and 3.

*Hardev Singh, R. N. Sachthey, and B. D. Sharma*, for respondents Nos. 2, 4 and 5.

The Judgment of the Court was delivered by

**Grover, J.** This is an appeal by special leave from the judgment of the Punjab High Court in which the sole question involved is whether the Additional District Magistrate, Gurdaspur who had been invested with all the powers of the District Magistrate under s. 10(2) of the Code of Criminal Procedure could make an order under s. 29(1) of the Defence of India Act, 1962, hereinafter called the "Act", requisitioning a shop belonging to Batala Engineering Co. Ltd. which was in occupation of the appellant as a tenant.

The facts may be shortly stated. The appellant claims to have been carrying on the business of a Commission Agent in machines in the said shop at Batala for the last 10 years as a tenant on a monthly rental of Rs. 20. According to the allegations made by the appellant herein in the petition which he filed in the High Court under Arts. 226 and 227 of the Constitution, Batala Engineering Co. Ltd. (respondent No. 1 herein) had filed an application for his ejection in January 1964 before the Rent Controller, Batala but realising the weakness of its case the said respondent resorted to the device of getting the shop requisitioned at the instance of the Labour Commissioner who wrote to the Additional District Magistrate that the shop was required for setting up a Cooperative Consumer Store. On March 24, 1964, the Additional District Magistrate (respondent No. 2 herein) issued a requisitioning order purporting to be under s. 29 of the Act requisitioning the shop in question and directing the tenant to surrender and deliver possession thereof to the Manager, Cooperative Consumer Store, Batala, within two days of the service of the order. The requisitioning order was challenged by means of a writ petition on two grounds; the first was that it had been made *mala fide* and the second was that the notification which had been issued under s. 40(1) of the Act by the Central Government empowering among others the District Magistrate to exercise powers which were exercisable by the Central Government under s. 29 in addition to other sections (which it is unnecessary to mention) was illegal and invalid. The petition was resisted by respondents 1 and 2 and the assertions and contentions of the appellant were controverted.

A The Division Bench of the High Court (the writ petition had been referred by a learned Single Judge to a Division Bench) held that the allegation of *mala fides* had not been proved. It further held that the Additional District Magistrate was competent to make the requisitioning order since he had been empowered to exercise the powers of a District Magistrate under s. 10(2) of the Cr. P. Code. The writ petition was consequently dismissed.

B It is necessary first to notice certain provisions of the Act. Section 29 empowers the Central Government or the State Government to requisition any immoveable property in the circumstances mentioned in the section by an order in writing. Section 40 which provides for the power to delegate may be set out in entirety :

C "S. 40(1) The Central Government may, by order, direct that any power or duty which 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—

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

E (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 State Government or by any officer or authority subordinate to such Government, or

(c) by any other authority.

F (2) The State Government may, by order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed on the State Government or which, being by this Act or any such rule 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 (except in the case of a Union territory) an officer or authority subordinate to the Central Government."

G On December 13, 1962 the Central Government promulgated a notification delegating its power under certain sections of the Act including s. 29. This notification need not be set out in *extenso*. Its material part is as follows :—

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"G.S.R. 1716—In exercise of the powers conferred by sub-section (1) of s. 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 column (3) of the said schedule in respect of any immovable property situated within its jurisdiction.

*Schedule*

S. 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-ss. (1) and (3) of s. 37.	(a) All Collectors, District Magistrates and Deputy Commissioners in the States and all political officers in Nefa.

It is necessary now to turn to the relevant provisions of the Criminal Procedure Code in order to determine whether the Additional District Magistrate would be one of the authorities mentioned in column 3. In Part II which is headed 'Constitution and Powers of Criminal Courts and Offices', s. 6 gives the classes of criminal courts and s. 7 deals with Sessions, divisions and districts. Section 9 provides for establishment of court of Session. Section 10 lays down that 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. It is further provided that 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 the Code or under any other law for the time being in force as the State Government may direct. It may be mentioned that in the State of Punjab after the separation of judiciary from the executive by the Punjab Separation of Judicial & Executive Functions Act, 1964 (Act XXV of 1964) certain amendments were made in s. 10 but in the present case we are not concerned with them because the impugned order requisitioning the shop in question was made before the said Act (XXV of 1964) came into force.

It is well known that the object of appointing an Additional District Magistrate is to relieve the District Magistrate of some

- A** of his duties and that he is subordinate to the District Magistrate to the extent specified in sub-s. (3) of s. 10. It is equally well known that the District Magistrate occupies a very important position in the district and is the head of the Executive there and he exercises powers of superintendence and control over the other Magistrates in the district. Apart from the powers which
- B** have been conferred by the Code of Criminal Procedure on him the District Magistrate is also known as the Collector for purposes of revenue laws. He is variously called Collector in some States and Deputy Commissioner in other States. Under s. 11 of the Code whenever in consequence of the office of District Magistrate becoming vacant, any officer succeeding temporarily to the Chief executive administration of the district such officer
- C** also exercises all the powers and performs all the duties conferred and imposed by the Code on the District Magistrate. The Additional District Magistrate as has previously been noticed, can similarly exercise all or any of the powers of a District Magistrate if the State Government makes a direction under s. 10(2) of the Code but even an officer who heads the chief executive administration
- D** of the district temporarily under s. 11, exercises all the powers of a District Magistrate. The scheme of s. 10 of the Code leaves no room for doubt that the District Magistrate and the Additional District Magistrate are two different and distinct authorities and even though the latter may be empowered under sub-s. (2) to exercise all or any of the powers of a District Magistrate but by no stretch of reasoning can an Additional
- E** District Magistrate be called the District Magistrate which are the words employed in sub-s. (1) of s. 10.

- The argument which prevailed in the High Court and which the appellant has had to seriously meet in this Court, is that the
- F** Additional District Magistrate when invested by the State Government under s. 10(2) of the Code with all or any of the powers of the District Magistrate under the Code or under any other law for the time being in force, would squarely fall within the expression "District Magistrate" employed in column 3 of the notification dated December 13, 1962 by means of which the Central Government delegated its power under certain sections
- G** of the Act including s. 29. The reasoning of the High Court was that on a proper construction of the notification it was clear that the "Central Government was desirous of delegating its power in favour of the officers in fact and actually discharging duties and functions in exercising the powers of Collectors, District Magistrates and Deputy Commissioners. The High Court also
- H** looked at the other provisions in respect of which the powers had been delegated and drew the conclusion that the delegation was not confined only to officers appointed as such under s. 10(1) of the Code of Criminal Procedure. Learned counsel for the appel-

lant has assailed the decision of the High Court principally on two grounds; for which he has sought support from a decision of the Nagpur High Court in *Prabhulal Ramlal Kabra v. Emperor*<sup>(1)</sup>. In that case an order had been made under Rule 26 of the Defence of India Rules by the Additional District Magistrate of Raipur directing the detention of one Bharatchandra Kabra. That Rule conferred power of detention on the Central Government and the Provincial Government but by virtue of the provisions relating to delegation the District Magistrate had been empowered by the Provincial Government to exercise those powers. The Additional District Magistrate who made the order of detention had been conferred powers under s. 10(2) Cr. Pr. Code almost in similar terms as are to be found in the present case. In other words he could exercise all the powers of a District Magistrate under the Code or under any other law for the time being in force. Two points were agitated before the Nagpur court; the first was that the word "law" in "any other law" occurring in s. 10(2) of the Code was not meant to include an executive order but only legislative enactments, and rules, regulations or orders which had the force of law. The second was that the Act and the Rules made thereunder were special laws enacted to meet an emergency and they conferred extraordinary and drastic powers on the executive and it was precisely for that reason that it was imperative that those powers must be exercised with due sense of responsibility and with circumspection by an officer or authority of a certain status and experience and, therefore, that power had been delegated to the District Magistrate. Both these contentions prevailed with the Nagpur High Court and it was held that the Additional District Magistrate could not exercise powers under Rule 26 of the Defence of India Rules simply by virtue of the notification under s. 10(2) of the Code of Criminal Procedure. There is an exhaustive discussion on the first point in the Nagpur judgment but it is altogether unnecessary to examine its correctness because we are of the opinion that most of the reasons given in support of the determination of the second point are clear and cogent and must be accepted as correct. These reasons may be summarised as follows (i) very wide, almost autocratic, powers are conferred on the Government in the matter of detention and therefore they must be exercised with a due sense of responsibility and circumspection by an officer of a certain status and experience; (ii) when the Government delegates its power to an officer or authority subordinate to it, is not unreasonable to assume that it fully considers the fitness of the delegate before making the order in respect of delegation; (iii) the Additional District Magistrate who is invested with the powers of a District Magistrate does not thereby attain the status of a District Magistrate as there can be only one person

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(1) A. I. R. 1944 Nag. 84.

A in the district who can be a District Magistrate and (iv) the Government when it conferred the power on the District Magistrate conferred it on the officer actually holding the office of the District Magistrate and no one else.

B It has not been disputed that the powers of requisitioning are of a very drastic nature and involve the fundamental rights in respect of property guaranteed under Art. 19(1)(f) of the Constitution. The Central Government while making the delegation of its power under s. 29 of the Act must ordinarily be presumed to be fully conscious of this aspect of the matter and it was for that reason that an officer or authority of the high status of a District Magistrate in the district was empowered to exercise that power.

C Apart from these considerations we see no reason to deviate from the normal rule that the expressions or words which have been used in the notification must be read as such and not in any other manner unless the context requires that the latter course should be followed. In the present case the words "District Magistrate" could not possibly be read as Additional District Magistrate and it is only by resorting to the notification issued under s. 10(2) of the Code that the Additional District Magistrate can be said to have empowered to exercise the powers of the District Magistrates. The reasons which prevailed with the Nagpur court and which have already been summarised adequately meet the contrary view that the Additional District Magistrate should be held to be competent to act under s. 29 of the Act even though the Nagpur case was one of detention.

D Coming to the decisions of this Court not much assistance can be derived from them. In *Ajaib Singh v. State of Punjab*<sup>(1)</sup> the Additional District Magistrate of Amritsar who had been invested with the powers of a District Magistrate under s. 10(2) of the Code was incharge of the office of the District Magistrate when the latter was transferred. He passed an order detaining a person under Rule 30(1)(b) of the Defence of India Rules 1962. It was held that the Act and the Rules showed unmistakably that the powers of detention could be exercised only by the State Government or by an officer or authority to whom it might be delegated but who shall, in no case, be lower in rank than a District Magistrate. The Additional District Magistrate was below the rank of a District Magistrate and even though he had been invested with all the powers under the Code and also under any other law for the time being in force he was still not the District Magistrate unless the Government appointed him as such under s. 10(1). This case would have been most apposite for the present case but for the clear distinction that in provisions

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<sup>(1)</sup> [1965] 2 S.C.R. 845.

under which the detention was made it was provided that the powers could be delegated to no one who was lower in rank than a District Magistrate. There is no such provision in the matter of delegation in the present case. One rule, however, emerges quite clearly which is even otherwise unexceptionable that unless a person has been appointed under s. 10(1) of the Code he cannot be called a District Magistrate and that an Additional District Magistrate is below the rank of a District Magistrate.

*The Central Talkies Ltd. Kanpur v. Dwarka Prasad*<sup>(1)</sup> on which reliance was placed by the counsel for the respondents related to interpretation of certain provisions of the U.P. (Temporary) Control of Rent and Eviction Act 1947. Section 3 of that Act enabled a landlord to file a suit for eviction of the tenant with the permission of the District Magistrate. Section 2(d) defined District Magistrate as including an officer authorised by the District Magistrate to perform any of his functions under the Act. By a notification issued under s. 10(2) of the Code of Criminal Procedure one Mr. Seth was appointed as an Additional District Magistrate with all the powers of the District Magistrate. The landlord applied to the District Magistrate for permission to file a suit for ejection against the tenant. The District Magistrate transferred that application to the Additional District Magistrate who granted permission. The tenant challenged the same on the ground that the permission granted by the Additional District Magistrate was invalid as the District Magistrate mentioned in s. 3 of the aforesaid Act was *persona designata*. This contention was repelled by this Court and it was observed that a *persona designata* was a person selected as an individual in his private capacity, and not in his capacity as filling a particular character or office. This case is clearly distinguishable on the ground that under s. 3 of the U.P. Act the District Magistrate himself could authorise any officer to perform any of his functions. That showed that the legislature did not intend that the functions to be performed under s. 3 must be performed by the District Magistrate alone and by no one else. Counsel for the appellant has called attention to a Bench decision of the Punjab High Court in *Guru Datt v. Sohan Singh & Another*<sup>(2)</sup> in which a question arose whether the Deputy Commissioner for the purposes of an election petition under the Punjab Panchayat Samities and Zila Parishads Act 1961 and the Rules framed thereunder was a *persona designata* and it was held that it was the Deputy Commissioner alone who could perform the functions which the statute and the rules conferred on him even though the Governor had made an order declaring the ex-cadre posts of Additional Deputy Commissioners to be equivalent in

(1) [1961] 3 S.C.R. 495.

(2) I.L.R. 1965 Punj. 134.

**A** status to the cadre posts of Deputy Commissioners. This decision may be open to some criticism owing to the observations made in *Central Talkies'* case(1). However, in the present case we are not basing our decision by taking into consideration the line of argument of *persona designata*.

**B** For the reasons which have already been stated the appeal is allowed with costs, with the result that the writ petition filed in the High Court succeeds and the impugned order shall stand quashed.

G.C.

*Appeal allowed.*

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(1) [1961] 3 S.C.R. 495.