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While agreeing with the learned Judge below that the purpose for which this property was requisitioned is undoubtedly a public purpose, in our opinion this public purpose happens to be a purpose of the Union and not a purpose of the State. In those circumstances the State Government has erroneously and improperly exercised the power of requisitioning this particular property. The result is that we must hold that the order is invalid.

The petition will therefore succeed and there will be a direction in terms of prayers (a) and (b) of the petition. The petitioner is entitled to his costs throughout from the respondent.

*Appeal allowed.*

P. M. P.

*Attorneys for appellant: Chhatrapati & Co.*

*Attorneys for respondent: Little & Co.*

## APPELLTAE CRIMINAL

*Before Mr. Justice Bavdekar and Mr. Justice Chainani.*

1952 Dec. 16

KALU *alias* HUSSEIN MAHAMAD (ORIGINAL EXTERNEE), PETITIONER *v.* STATE.*

*Bombay Police Act (XXII of 1951), s. 56—Whether Additional District Magistrate has power under s. 56 also—Criminal Procedure Code (Act V of 1898), s. 10 (2)—Notification issued by Provincial Government investing Additional District Magistrates with powers of District Magistrates—Whether notification has effect of investing them with powers under laws passed subsequent to the notification—Interpretation.*

On March 3, 1952, the Additional District Magistrate of Surat served an order on the petitioner under s. 56 of the Bombay Police Act, 1951, directing him to remove himself out of Surat district. The petitioner applied to the High Court under art. 226 of the Constitution. It was contended on his behalf (i) that as s. 56 empowers only a District Magistrate or Sub-Divisional Magistrate specially empowered in that behalf to take action under that section, the Additional District Magistrate had no power to issue the order, (ii) that the notification issued by the Government on April 21, 1950, empowering all Additional District Magistrates in the State of Bombay to exercise the powers of a District Magistrate was *ultra vires* as it could not invest the former

* Criminal Application No. 1024 of 1952 with Criminal Application Nos. 1025 and 1026 of 1952.

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with powers of a District Magistrate under an Act, viz. the Bombay Police Act, 1951, which was enacted after the date of the notification, and (iii) that according to a possible interpretation of s. 10 (2) of the Criminal Procedure Code, 1898, the Provincial Government was not empowered to issue a notification investing the Additional District Magistrates with powers under laws which may be passed in future and that this interpretation being more favourable to the petitioner ought to be accepted.

*Held*, (*i*) that under s. 10 (2) of the Criminal Procedure Code, 1898, the Provincial Government is entitled to direct by a notification that the Additional District Magistrates shall have all the powers of a District Magistrate whether under the Code or under any other laws, which are in force at the date when the Additional District Magistrates exercise those powers; (*ii*) that whenever any new law investing District Magistrates with any powers is passed, the notification issued earlier investing the Additional District Magistrates with powers of a District Magistrate has the effect of investing the Additional District Magistrates with those powers also under the new law and no further notification investing them with those powers is necessary;

(*iii*) that even assuming that the interpretation of s. 10 (2) of the Criminal Procedure Code, 1998, as sought by the petitioner was a possible interpretation there was no reason for accepting the same as the legislature could have used specific words to restrict the powers of the Provincial Government in that behalf but had not chosen to do so;

(*iv*) that, therefore, the Provincial Government had the requisite power to issue the notification which had been impugned and the Additional District Magistrate came to possess the powers of a District Magistrate under s. 56 of the Bombay Police Act, 1951, immediately that Act was passed.

Application under art. 226 of the Constitution.

The facts are set out in the judgment.

*Rajani Patel*, with *V. B. Patel*, for the applicant.

*H. M. Choksi*, Government Pleader for the State.

BAVDEKAR J. These are three petitions under article 226 of the Constitution against the orders passed by the Additional District Magistrate, Surat, under s. 56 of the Bombay Police Act, directing three persons, Kalu *alias* Hussein Mahomed, Kadwa Nathu Bhil and Peerbhai *alias* Peerubhai Husseinbhai to remove themselves outside the limits of the Surat District. The Additional District Magistrate has passed three separate orders in regard to the three petitioners but all the three petitions involve one question of law, which is common to them. The grounds upon which action has been taken are also similar, and similar objections have been taken with regard to them. It would be convenient, therefore, to dispose of all the petitions by one judgment.

The first point, which is common to the three petitions is with regard to the authority of the learned Additional District Magistrate, who has passed the orders under s. 56 of the Bombay Police Act in all the three cases. Section 56 of the Bombay Police Act empowers only a District Magistrate or a Sub-Divisional Magistrate specially empowered by the State Government in that behalf to take action under that section. The Additional District Magistrate is not specifically mentioned in that section, but he purported to act under the authority conferred upon him by Government Resolution Home Department, No. 1456/6, dated April 21, 1950, which empowers all Additional District Magistrates in the State of Bombay to exercise the powers of a District Magistrate under the Code of Criminal Procedure, or under any other law for the time being in force in the State of Bombay. It is contended on behalf of the petitioners, however, that this notification would not invest the Additional District Magistrate with powers of a District Magistrate under an Act, which admittedly was enacted after the date of the notification. It is not in dispute, and indeed it could not be disputed, that the notification which has been issued under the powers conferred upon the Government by s. 10 of the Code of Criminal Procedure is exactly in the same terms as the Act. Sub-s. (2) of that section says:—

> "The Provincial Government may appoint 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 Provincial Government may direct."

The words "for the time being in force", which qualify the word "law" in s. 10 (2), obviously have been put in there, with a view to enabling the Provincial Government to invest Additional District Magistrates with the powers of a District Magistrate, not only under the Code and any laws, which might have been in force at the time when the Code was enacted, but also under any laws, which may be passed after the enactment of s. 10 (2). When, therefore, the notification empowers Additional District Magistrates to exercise all the powers of a District Magistrate under the Code, or under any other law for the time being in force, it is obvious that the intention was that, provided only the powers were possessed by a District Magistrate at the time when they were to be exercised, the Additional District Magistrates will have those

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powers just as the District Magistrates had them. Mr. Patel, who appears on behalf of the petitioners, contends, however, that this notification is *ultra vires*. He says that it is quite true that s. 10 (2) empowers the Provincial Government to invest the Additional District Magistrate with all or any of the powers of a District Magistrate; but he says that there is a limitation upon the powers of the Provincial Government, and that is, that they can invest the Additional District Magistrate with only such powers as the District Magistrate possessed, whether under the Code, or under any other law, which may be only such powers as the District Magistrate possessed, whether under the Code, or under any other law, which may be in force at the time when the notification investing the Additional District Magistrate with the powers of a District Magistrate is issued. The question consequently is, what are the powers of the Provincial Government under s. 10 (2).

In the first instance, the words "for the time being in force" obviously qualify the word "law". The phrase "under any other law for the time being in force" goes with the word "powers", which is the object of the verb "shall have." The words "for the time being in force" can, therefore, be connected with the words "shall have." It is obvious that when that expression is used, we have got to find out the point of time, with reference to which it has got to be decided as to whether the law, the power under which are claimed by the Additional District Magistrate is or is not in force. The contention on behalf of the petitioners is that the point of time with reference to which it has got to be decided as to whether the law is or is not in force is the time when the Provincial Government directs i.e. issues the notification. On the other hand, it is contended on behalf of the State of Bombay that the point of time, with reference to which it has got to be decided as to whether any law is or is not in force, is with reference to the time when it is contended that the Magistrate has or has not powers. Now, I have already mentioned that there can be no difficulty whatsoever with regard to connecting the words "for the time being in force" with the word "shall have." As a matter of fact, the second sentence of s. 10 (2) is a compound sentence joined by the conjunction 'as', and inasmuch as the words "for the time being in force" occur in the first sentence, the words must have reference to something in that sentence. It is impossible to accept the contention that the words have got any reference to a verb

which occurs in the subsequent sentence joined by 'as', unless it could be shown that the words can be connected with it. Now, whenever a conjunction like 'as' connects two sentences, one principal and one subordinate, and the subordinate sentence follows, words have sometimes to be dropped from the subordinate sentence, with a view to avoiding repetition, and we have no doubt that in this case words have been dropped after the word 'direct'; and it is open to the petitioners to contend that if the words "for the time being in force" can be connected with the word "direct" by restoring to the subordinate sentence the words dropped, that should not be done. But if we restore to the sentence connected by the conjunction 'as' the dropped words, what we get is "the Provincial Government may direct that such Magistrates 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." The result of the restoration of the words is again to introduce into the second sentence the verb 'shall have', in a subordinate sentence the principal sentence ending with the verb "direct" and not get any better result by restoring the words. The words "for the time being in force" are again connected with the verb "shall have", and it is impossible to connect them with the word "direct", which again finds place in another sentence.

In our view, therefore, the grammatical meaning of the sentence is that the Provincial Government is entitled to direct that the Additional District Magistrate shall have all the powers of a District Magistrate, whether under the Code, or under any other laws, which are in force at the date when the Magistrate exercises those powers.

It is contended, however, that there is something anomalous in an Additional District Magistrate being invested with the powers of a District Magistrate by a notification issued at a time, when even the District Magistrate does not possess those powers. It has got to be remembered, however, that there is no question involved in this case of a delegation of powers. If an authority is empowered to delegate its powers, then an argument is permissible that it cannot delegate powers which it itself does not possess at the time when the delegation purports to be made; nor can it be said in this case that the notification which has been issued by the Provincial Government invests the Additional District Magistrates with powers which the District Magistrates themselves do not

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possess. That is not the effect of the notification issued by the Provincial Government in the present case. When the notification is issued, the District Magistrates have no powers under any laws which may be passed after the date of the notification. They will get those powers only when subsequently laws are passed investing them with further powers. But the result of the notification is not to invest the Additional District Magistrates with those powers either. They also cannot, because of the notification, exercise the powers, which as yet the District Magistrates are not invested with. The only result of the notification is that immediately any law, which may be passed after the date of the notification, invests the District Magistrates with any powers, the Additional District Magistrates, without any further notification, come to possess those powers. There is, therefore, no force in the contention that the notification invests the Additional District Magistrates with powers, which, at the date of the notification, the District Magistrates themselves do not possess.

It is contended next on behalf of the petitioners that if s. 10 (2) may have two interpretations, (1) by which the local Government is empowered to issue a notification investing the Additional District Magistrates with the powers of the District Magistrates, not only under the existing laws, but under any other laws, which may be passed in the future, and (2) the interpretation that the Provincial Government is only empowered to issue a notification conferring upon the Additional District Magistrates the powers which a District Magistrate possesses on the date of the notification, then, we should accept the latter interpretation in preference to the former. I have already pointed out the difficulties in the way of holding that s. 10 (2) restricts the powers of a Provincial Government in any manner. But assuming that there were two meanings possible, there is no particular reason for accepting the meaning suggested on behalf of the petitioners. The legislature could, if it had wanted to restrict the powers of the Provincial Government in that manner, have said "the Provincial Government may invest such Additional District Magistrates with all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force." They could have made their intention clearer still by using more specific words. But they did not choose to do so. Nor is there anything absurd in the legislature having wanted to

leave the Provincial Government's powers in this regard unrestricted. It has got to be remembered that in case the interpretation which has been sought by the petitioners is accepted, every time a new Act is passed conferring any power upon a District Magistrate, a fresh notification will have to be issued. If we confine ourselves to the Code only, if a notification is issued giving the Additional District Magistrate all the powers of a District Magistrate under the Code, and we place restrictions upon the powers of the Provincial Government to the effect that they can confer upon the Additional District Magistrates only those powers which the District Magistrate possessed at the date of the notification, whenever additional powers were conferred even by an amendment of the Code upon a District Magistrate, a fresh notification would have to be issued. There would undoubtedly be some advantage in restricting the powers of the Provincial Government in that manner. The District Magistrates and the Additional District Magistrates may not be all officers of the same cadre. Even with the interpretation which we place upon s. 10 (2), there may be something to be said against the issuing of a notification conferring wholesale upon the Additional District Magistrates the powers of a District Magistrate under the existing laws as well as laws to be passed thereafter. But the legislature may well have thought fit not to place any restrictions upon the powers of the Provincial Government itself and to leave it to the good sense of the Provincial Government to decide whether the Additional District Magistrates should be empowered to exercise the powers of the District Magistrates under the laws to be passed after the date of the notification. There are, for example, under the Bombay Police Act powers conferred upon an Additional District Magistrate with regard to police regulations, and one can imagine the legislature saying to itself that there was no reason why the Provincial Government, if it so thought fit, should not invest all Additional District Magistrates with the powers of District Magistrates with regard to those regulations whether under the existing laws or future laws. In our view, therefore, assuming even that the second interpretation was a possible interpretation, there are no reasons for preferring that interpretation to the one which has been suggested on behalf of the State.

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The Provincial Government had, therefore, the requisite power to issue the notification which has been impugned. The Additional District Magistrate, therefore, came to possess the powers of a District Magistrate under s. 56 of the Bombay Police Act immediately that Act was passed. [The rest of the judgment is not material to the report.]

*Rule discharged.*

K. B. S.

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## APPEAL FROM ORIGINAL CIVIL AND INHERENT JURISDICTION

*Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Shah*

1953
*Feb.* 12

AHMEDALLI ABDULHUSSEIN KAKA AND ANOTHER, APPELLANTS (ORIGINAL PETITIONERS) *v.* M. D. LALKAKA, THE CHIEF JUDGE OF THE COURT OF SMALL CAUSES, BOMBAY AND OTHERS, RESPONDENTS.*

*The Bombay Municipal Corporation Act (Bombay Act III of 1888), s. 507 (2)—Constitution of India, art. 226—Writ of* certiorari *and mandamus—Order passed by the Chief Judge, Small Causes Court under s. 507 (2)—Order directing the owner to effect repairs to premises in certain manner—Whether such order falls within the ambit of the section—Chief Judge's order challenged—Necessary parties to the petition challenging the order—Proper attitude for the Tribunal to take before the Court—Practice—When it shall appear at the hearing and show cause—Tribunal and order of costs.*

The petitioners who were owners of a building were served by the Bombay Municipality with two notices requiring them to carry out certain repairs to their property. They thereupon served notices on the tenants of the building to vacate it in order to enable the petitioners to carry out such repairs. As the tenants refused to vacate the premises in their occupation, the petitioners applied to the Chief Judge, Court of Small Causes, Bombay City, under s. 507 of the Bombay Municipal Corporation Act, 1888. By the order passed under s. 507 (2) the learned Chief Judge directed the tenants to afford reasonable facilities to the Petitioners to put up props in the rear portion of the building in order to carry out repairs to the rear portion. He further directed that after the repairs to the rear portion were carried out the tenants should remove themselves from the front portion in order to enable the petitioners to carry out the work of setting-back the front portion as required by the municipality. The petitioners wanted to carry out the work of repairs to the rear and front portions simultaneously, as it would cost

*O. C. J. App. No. 80 of 1952: Misc. Appln. No. 359 of 1951.