1953

Cheruvu Nageswaraswami v. Raja Vadrevu Viswasundara Rao and Others

Mukherjea J.

The result, therefore, is that we allow the appeal in part and modify the judgment of the High Court. A preliminary decree should be drawn up in favour of the plaintiff against defendant No. 6 alone for a sum of Rs. 55,287 annas odd which will carry interest at 7½% simple per annum. Interest will be calculated on Rs. 52,287 on and from the date of the mortgage, while on the balance of Rs. 3,000 interest will run from 5th November, 1930. We make no order as to costs of this court or of the High Court. The plaintiff will have his costs of the trial court.

Appeal allowed in part.

Agent for the appellant: *M. S. K. Aiyangar.*

Agent for respondent No. 1 : *Ganpat Rai.*

1952

November 24

BOPPANNA VENKATESWARALOO AND OTHERS

v.

SUPERINTENDENT, CENTRAL JAIL, HYDERABAD STATE.

UNION OF INDIA—Intervener.

[MEHR CHAND MAHAJAN, S.R. DAS and BHAGWATI JJ.]

Preventive Detention (Second Amendment) Act (XLI of 1952), s. 11-A—Act passed on 22nd August, 1952—Brought into force on 30th September, 1952—Detention expiring on 30th September, 1952—Order on 22nd September, 1952, extending detention upto 31st December, 1952—Validity of order of extension—General Clauses Act (X of 1897), s. 22—Act LXI of 1952, s. 11-A (2), applicability of.

The petitioner was served with an order of detention on the 20th October, 1951, and, after a reference to the Advisory Board, the Government confirmed the detention and specified 31st March, 1952, as the date up to which the detention was to continue. On the 20th March, 1952, the detention was extended till the 30th September, 1952, and on the 22nd September, 1952, the detention was again extended up to the 31st December, 1952. It was contended on behalf of the petitioner that the Government had no power on 22nd September, 1952, to extend the detention beyond the 1st October, 1952, as the Preventive Detention (Second Amendment) Act of 1952, even though it had received the assent of the

1952

Boppanna Venkateswaraloo and Others v. Superintendent, Central Jail, Hyderabad State.

President in August 1952, came into force only on the 30th September, 1952:

Held, (i) that the order extending the period of detention made on the 22nd September could not be justified under the provisions of s. 22 of the General Clauses Act, 1897; the word "order" in the said section means an order laying down directions about the manner in which things are to be done under the Act and the section does not mean that a substantive order against a particular person can be made under a provision of an Act before that Act has come into force.

(ii) The words "the order" in s. 11-A of the Preventive Detention (Second Amendment) Act, 1952, do not refer to the initial detention order, as no period of detention could legally be specified in that order, but to the order of detention as eventually confirmed under s. 11(1) of the Act and the detention of the petitioner could not therefore be treated as automatically extended up to the 1st April, 1953, under the provisions of s. 11-A by reason of the fact that in the initial order for the detention of the petitioner no period of detention had been specified.

(iii) The detention of the petitioner could not continue after the 30th September, 1952, by force of the provisions of s. 11-A(2) of the Preventive Detention (Second Amendment) Act, 1952, merely because the date on which the petitioner's detention was to expire, namely, the 30th September, 1952, happened by accident or coincidence to be identical with the date on which the first Amendment Act (Act XXXIV of 1952) was to expire, for s. 11-A(2) merely provides that if a shorter period is specified in the order, the detenu would be entitled to be released.

(iv) The expression "shorter period" in s. 11-A (2) means a period which does not extend up to the 1st April, 1953, or up to the end of the period of 12 months mentioned in the section and does not mean a period ending before the 30th September, 1952.

(v) The detention of the petitioner after the 30th September, 1952, was therefore illegal.

ORIGINAL JURISDICTION: Petitions (Nos. 335, 350, 356, 362 and 366 of 1952) under article 32 of the Constitution for writs in the nature of habeas corpus.

A.S.R. Chari (*amicus curiae*) for the petitioners.

R. Ganapathy Iyer for the respondents in Petitions Nos. 335 and 356 of 1952.

Hanmanth Rao Vaishnav for the respondents in Petitions Nos. 350, 362 and 366 of 1952.

C. K. Daphtary, Solicitor-General for India (*Porus A. Mehta*, with him) for the Intervener.

1952. November 24. The Judgment of the Court was delivered by

1952

Boppanna Venkateswaraloo and Others v. Superintendent, Central Jail, Hyderabad State.

Mahajan J.

MAHAJAN J.—This petition and four others, *viz.*, Nos. 350, 356, 362 and 366 of 1952, raise a question regarding the construction of section 11-A, inserted in Act IV of 1950 by the Preventive Detention (Second Amendment) Act, LXI of 1952.

Act IV of 1950, as it originally stood, was to expire on 1st April, 1951, but in that year an amending Act was passed which, among other things, prolonged its life till the 1st April, 1952. A fresh Act was passed in 1952 (Act XXXIV of 1952) called the Preventive Detention (Amendment) Act, 1952. The effect of this Act was to prolong the life of the Act of 1950 for further six months, *viz.*, till the 1st October, 1952. On the 22nd August, 1952, an Act further to amend the Preventive Detention Act, 1950, called the Preventive Detention (Second Amendment) Act, LXI of 1952, received the assent of the President, by which the life of the Act was extended till the 31st December, 1954. It was to come into force on a date appointed by the Central Government. By a notification dated 15th September, 1952, the Central Government appointed the 30th September, 1952, as the date when the new Act was to come into force.

The petitioner was served with an order of detention on the 20th October, 1951. The grounds of detention were furnished to him on the 1st November, 1951. His case was referred to the Advisory Board on the 24th November, 1951. The Advisory Board submitted its report on the 13th December, 1951. The appropriate Government confirmed the detention on the 21st January, 1952. It specified 31st March, 1952, as the date up to which the detention was to continue. On the 29th March, 1952, the petitioner's detention was extended till the 30th September, 1952, and on the 22nd September, 1952, his detention was again extend- till 31st December, 1952. In the other petitions also the last order of extension was made on 22nd September, 1952, extending the detentions till 31st December,

1952

Boppanna Venkateswaraloo and Others
v.
Superintendent, Central Jail, Hyderabad State

Mahajan J.

1952. But for this extension the detentions could not continue beyond 30th September, 1952, except by use of the powers under the new Act.

It was contended on behalf of the detenus that on the 22nd September, 1952, the State Government had no jurisdiction to make an order of extension so as to continue the detention beyond the 1st October, 1952, *viz.*, beyond the life of the Act then in force, and that the order extending the period of detention upto 31st December, 1952, was illegal. In our opinion, this contention is well founded. On behalf of the State Government the order made on the 22nd September, 1952, was sought to be justified on the ground that it had power to enlarge the period of detention under the provisions of the Preventive Detention (Second Amendment) Act of 1952 and it could exercise those powers after that Act had been passed by the Parliament even though the amended Act had not yet come into force. Reliance for this proposition was placed on the provisions of section 22 of the General Clauses Act (X of 1897). Section 22 provides as follows:—

"Where, by any Central Act or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation,.....or with respect to the time when, or the place where or the manner in which .....anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation."

This section corresponds to section 37 of the English Interpretation Act of 1899. It is an enabling provision, its intent and purpose being to facilitate the making of rules, bye-laws and orders before the date of the commencement of an enactment in anticipation of its coming into force. In other words, it validates rules, bye-laws and orders made before the enactment comes into

force provided they are made after the passing of the Act and as preparatory to the Act coming into force. It does not authorize or empower the State Government to pass substantive orders against any person in exercise of the authority conferred by any particular section of the new Act. The words of the section "*with respect to*" prescribe the limit and the scope of the power given by the section. Orders can only be issued with respect to the time when or the manner in which anything is to be done under the Act. An order for the extension of detention made under the purported exercise of the powers conferred by any of the provisions of the new Act is not an order with respect to the time when or the manner in which anything is to be done under the Act. Such an order could only be made under the Act and after the Act had come into force and not in anticipation of its coming into force. The Act having no retrospective operation, it cannot validate an order made before it came into force. It seems to us that the expression "order" in the section means an order laying down directions about the manner in which things are to be done under the Act and it is an order of that nature that can be issued before the Act comes into force but it does not mean that a substantive order against a particular person can be made before the Act comes into force. In our opinion, therefore, the contention raised on behalf of the State Government has no force and the order extending the detention of the detenus on the 22nd September, 1952, upto the 31st December, 1952, is illegal.

The learned Solicitor-General on behalf of the Union Government intervened and contended that the detention of the petitioner as well as of others concerned in the connected petitions was legal because in the initial order of detention made in all these cases no period of detention had been specified and by force of section 11-A(2), the detention of the petitioners stood automatically extended till 1st April, 1953.

Section 10 of the new Act [Preventive Detention Second (Amendment) Act, 1952], adds the new section 11-A, which is in these terms :—

1952

Boppanna Venkateswaraloo and Others v. Superintendent, Central Jail, Hyderabad State.

Mahajan J.

"(1) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 11 shall be twelve months from the date of detention.

(2) Notwithstanding anything contained in sub-section (1), every detention order which has been confirmed under section 11 before the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall, unless a shorter period is specified in the order, continue to remain in force until the 1st day of April, 1953, or until the expiration of twelve months from the date of detention, whichever period of detention expires later.

(3) The provisions of sub-section (2) shall have effect notwithstanding anything to the contrary contained in section 3 of the Preventive Detention (Amendment) Act, 1952 (XXXIV of 1952), but nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time."

It was suggested that on a grammatical construction of this section the word "order" in sub-section (2) means the initial order of detention and cannot refer to the order of confirmation as no such order is contemplated by the Act. In our opinion, this contention is not sound. It was held by this Court in Petition No. 308 of 1951 [*Makhan Singh Tarsikka* v. *The State of Punjab*(1)] that the fixing of the period of detention in an initial order of detention is contrary to the scheme of the Act and cannot be supported as it tends to prejudice a fair consideration of the petitioner's case when it is placed before the Advisory Board. That decision was pronounced on the 10th December, 1951, and according to well known canons of construction of statutes and principles of legislation it has to be presumed that when Parliament enacted section 11-A in Act LXI of 1952 it was aware of the decision of this Court that no period could be specified in the initial order of detention. It follows that when Parliament in sub-section (2) provided that "every detention order

(1) [1952] S.C.R. 368.

which has been confirmed under section 11 before the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall, unless a shorter period is specified in the order, continue to remain in force" till a certain date, it plainly intended by the words "the order" to refer, not to the initial order of detention, for no period of detention could legally be specified in that order, but to the order of detention as eventually confirmed under section 11 (1). We are not on any debatable ground when we say that at that stage it is open to an appropriate government to specify the period of detention in the case of every detenu. We are satisfied that when sub-section (2) refers to specification of a period in the order, it intends to refer to the detention order as confirmed under section 11(1) and not the initial order of detention.

It was next contended that the period specified in the order in question being coterminous with the date fixed for the life of the Act, the specification of the period was wholly unnecessary and therefore the order of detention could continue till the 1st April, 1953, by force of sub-section (2) of section 11-A in the new Act, as if no period had in fact been specified in the order. This argument cannot be sustained on the language employed in section 11-A(2). The phraseology employed in the section is in sharp distinction to the language employed in section 3 of Act XXXIV of 1952 and if the object was to convey the same intention, then Parliament would have used similar language in section 11-A(2) as in section 3 of Act XXXIV of 1952. That section runs thus:—

"Every detention order confirmed under section 11 of the principal Act and in force immediately before the commencement of this Act shall have effect as if it had been confirmed under the provisions of the principal Act as amended by this Act; and accordingly, where the period of detention is either not specified in such detention order or specified (by whatever form of words) to be for the duration or until the expiry of the principal Act or until the 31st day of March, 1952, such

1952

Boppanna Venkateswaraloo and Others
v.
Superintendent, Central Jail, Hyderabad State.

Mahajan J.

detention order shall continue to remain in force for so long as the principal Act is in force..."

The Parliament, when it intended to say that if the date specified in an order is coterminous with the life of the Act the detention will continue for a further period automatically, said so in clear and unambiguous language and by use of apt words. It knew that there may be cases in which the date specified for the determination of the detention may be coterminous with the date on which the Act is to expire, and it made a clear provision in section 3 to cover all such cases. In section 11-A(2), however, it simply said that if a shorter period is specified in the order, then the detenu would be entitled to his release on that date. In the order passed against the petitioner and also in the orders passed in the connected petitions, 30th September, 1952, was the date specified up to which detention could continue and that being so, their present detention cannot continue after that date by force of the provisions of sub-section (2) of section 11-A merely because that date by accident or coincidence happens to be identical with the date on which the first amendment Act was to expire.

Then it was contended that even if the date up to which detention was to continue was specified in the order, it does not fix a period shorter than 30th September, 1952, (the date on which Act XXXIV of 1952 was to expire), and the detenus are not entitled to the benefit of the provisions of sub-section (2) of section 11-A. This contention is difficult to sustain grammatically. The words "unless a shorter period is specified in the order" clearly have reference to the periods mentioned immediately thereafter, namely, the first April, 1953, or the date of expiry of twelve months from the date of detention. They have no reference at all to the date of the expiry of Act XXXIV of 1952. When the attention of the learned Solicitor-General was drawn to the plain reading of the section and the grammar of it, he conceded that the adjective "shorter" there had reference to the 1st April, 1953, or the date of expiry of the period of twelve months

1952

Boppanna Venkateswaraloo and Others v. Superintendent, Central Jail, Hyderabad State.

Mahajan J.

mentioned in the section and could not mean a date antecedent to 30th September, 1952.

For the reasons given above, in our judgment, the detention of the petitioner in this petition and of those in the other petitions mentioned above, after the 30th September, 1952, became illegal and we therefore direct that the petitioners in this petition and in petitions Nos. 350, 356, 362 and 366 of 1952 be released forthwith. They are in detention by reason of the extension order made on the 22nd September extending their detention up to 31st December, 1952. On that date the State Government had no jurisdiction to make that order under the law in force as it stood on that date. 30th September, 1952, had been specified as the date up to which their detention was to last by a subsisting and perfectly valid order and their detention order beyond that date is illegal and cannot be justified on the provisions of section 11-A (2) or on the provisions of section 11 (1) of the original Act.

Petitions allowed.

Agent for the respondents and intervener: *G. H. Rajadhyaksha.*

1953

Jan. 23.

THAKURAIN RAJ RANI AND OTHERS

v.

THAKUR DWARKA NATH SINGH AND OTHERS.

[MEHR CHAND MAHAJAN, S.R. DAS and BHAGWATI JJ.]

Will—Agreement by cousin of testator to make monthly payment to testator in consideration of giving him and his sons the remainder after life-estate to widow—Grant of letters of administration—Question of animus testandi*—Whether* res-judicata*—Payments, whether condition precedent or mere consideration—Death of cousin before widow—Effect of.*

On the 7th January, 1904, G, a cousin of S, executed an agreement in favour of S, the material portion of which ran as follows: "Whereas my cousin S has proposed to make a bequest of his taluka in favour of his wife and after her death in my favour and