

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No. 340 of 2012
Date of Decision: 23.08.2017

Arun Mahajan

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Sandeep K. Wadhawan, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

Mr. H.S. Deol, Advocate
for respondents no. 2 and 3.

SURINDER GUPTA, J.(Oral)

Petitioner-Arun Mahajan vide this petition filed under Article 226 of Constitution of India has sought to invoke jurisdiction of this Court to issue a writ in the nature of habeas corpus for setting aside order of detention bearing no. PSA-1211/CR-21(2)/SPL3(A) dated 25.01.2012 (Annexure P-5) passed by Principal Secretary (Appeals and Security), Government of Maharashtra, Home Department under the provisions of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'the COFEPOSA').

2. Order passed against the petitioner by the competent authority reads as follows:-

“GOVERNMENT OF MAHARASHTRA

*Home Department (Special),
Mantralaya, Mumbai - 400032*

Dated the 25 Jan 2012

DETENTION ORDER

No. PSA-1211/CR-21(2)/SPL3(A), Whereas I, Medha Gadgil, Principal Secretary (Appeals & Security) to the Government of Maharashtra, Home Department specially empowered under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) vide Government Order, Home Department (Special) No. MIS-2009/CR-113/SPL-3(A) dated the 30th September 2009, am satisfied with respect to the person known as Shri Arun Mahajan (age 48 years) residing at C-1/210, Janak Puri, New Delhi-110058, that with a view to preventing him in future from smuggling goods, it is necessary to make the following order:

In exercise of the powers conferred by section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974), I hereby direct that the said Shri Arun Mahajan be detained under the COFEPOSA Act, 1974.

2. In pursuance of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Maharashtra Conditions of Detention) Order 1974 read with Government Order, Home Department No. SB.III/SA-3974 (V) dated the 18th December, 1974, I hereby further direct that said Shri Arun Mahajan shall be detained in the Nashik Road Central Prison, Nashik, and shall be subject to the conditions laid down in the said Conservation of Foreign Exchange and Prevention of Smuggling Activities (Maharashtra Conditions of Detention) Order, 1974.

*Sd/-
(Medha Gadgil)
Principal Secretary (Appeals and Security)
Government of Maharashtra, Home Department
and Detaining Authority.”*

3. At the very outset, learned counsel appearing for respondents no. 2 and 3 i.e. State of Maharashtra has raised the issue of jurisdiction of this Court to issue any writ as sought by the petitioner. He has argued that detention order of petitioner was passed by Government of Maharashtra. Article 226 of Constitution of India requires that the person or authority to whom writ is to be issued should be resident in or located within the territory over which the High Court has jurisdiction.

4. The petitioner was arrested on 02.11.2010 by Senior Intelligence Officer vide order under the provisions of Section 104 of the Custom Act, 1962 (Annexure P-6). He was produced before the Additional Chief Metropolitan Magistrate, Mumbai and was remanded to judicial custody. He, thereafter, moved application for retracting from his statements dated 02.11.2010, 03.11.2010, 09.11.2010, 10.11.2010 and 16.11.2010 made by him to DRI officials {Annexure P-9 (colly)}. He was released on bail in that case vide order dated 14.12.2010 passed by Additional Sessions Judge, Bombay (Annexure P-10). Thereafter, he had been appearing and dealing with Custom Authorities, Mumbai and moving applications. In his applications to competent authority, he questioned the proceedings against him under the order passed by Commissioner of Customs (Import). The petitioner filed Writ Petition no. 1243 of 2011 in the High Court of Judicature at Bombay, relating to release of confiscated goods seized under Section 110 of the Customs Act, 1962, which was disposed of with direction to furnish bank guarantee vide order dated 25.07.2011 (Annexure P-14). A screening committee for COFEPOSA and PITNDPS in its meeting held at Bombay on 19.04.2011, which was presided over by Director General, Anti Corruption Bureau, Maharashtra

State, Mumbai approved proposal for detention of petitioner and several other persons. Reshma Arun Mahajan, wife of petitioner, filed representation on his behalf against proposal for his detention, which was addressed to Principal Secretary & Detaining Authority, Government of Maharashtra, Mumbai (Annexure P-17). The petitioner also moved representation dated 18.11.2011 to Chief Secretary and Detaining Authority, Cofeposa, Mumbai (Annexure P-18). He filed Writ Petition (Criminal) No. 115 of 2011 in Hon'ble Supreme Court, which was dismissed vide order dated 19.08.2011 (Annexure P-20) with liberty that in case any detention order is passed in future, the petitioner shall have the liberty to assail the same in accordance with law. Regarding his case, the petitioner had been filing representations before the competent authorities of Custom Department in Mumbai and had also filed Writ Petition in Bombay High Court challenging their action of confiscation of goods, his detention order, seeking bail etc.

5. The petitioner has filed present petition in this Court seeking issuance of writ of habeas corpus for setting aside order dated 25.01.2012 (Annexure P-5) passed by competent authority of Government of Maharashtra, Home Department and Detaining Authority on the ground that he is also residing at Sonipat and carrying out his business activities in Sonipat and other parts of Haryana, as such, order of detention is being sought to be executed by respondents within the jurisdiction of this Court.

6. In reply on the point of jurisdiction of this Court, respondent no. 4-Directorate of Revenue Intelligence, Mumbai has alleged that petitioner is having his office at Mayapuri, Phase-2, New Delhi and residential premises of the petitioner is situated at C1/210, Janakpuri, New

Delhi. He has never alleged during the investigation and questioning that he has any premises in Sonipat (Haryana). The matter regarding illegal import of cranes pertains to Mumbai Zonal Unit of DRI, which collected the entire evidence in the present matter at the Port in Mumbai. He was arrested in Mumbai and all the proceedings pertaining to his bail, release of the detained cranes etc. were initiated against him in the Court at Mumbai. The proposal for detention of petitioner was passed and sponsored by Screening Committee at Mumbai and the impugned detention order was passed by the detaining authority for the offence committed within the jurisdiction of Mumbai, Maharashtra. No part of cause of action leading to passing of detention order arose within the jurisdiction of this Court, hence, this Court has no territorial jurisdiction to entertain the present petition. It is also averred that the plea of petitioner that he is also resident of Sonipat, Haryana or that he has industrial/business unit in Haryana is of no help to petitioner for filing this petition before this Court. Even otherwise, the residence of detainee at a particular place would not confer jurisdiction on the Court where he is residing or carrying out business.

7. When the petition was taken up for hearing the issue of jurisdiction of this Court to entertain this petition was raised and arguments were addressed on this issue by learned counsel for the petitioner and learned counsel for respondents, as such, I first take up the issue of jurisdiction and proceed to decide the same.

8. Learned counsel for the petitioner has argued that the detention order against the petitioner was to be executed within the jurisdiction of this Court as the petitioner, who is also a resident of Sonipat (Haryana), as such, this Court has got jurisdiction to entertain this petition. He has supported

his contention with the observations of a Division Bench of this Court in case of Tejinder Singh Makkar vs. State of Punjab and others, LPA No. 117 of 2008, decided on 30.07.2009. He has also relied on observations in cases of Ashok Sadarangani vs. State of Punjab and others, CRWP No. 117 of 2014, decided on 27.03.2014, Joit Kumar Jain vs. State of Punjab and others, CRWP No. 248 of 2014, decided on 27.03.2014, Sat Pal Jain and another vs. Joint Secretary to the Government of India (Detaining Authority) and another, 2014 (2) RCR (Criminal) 607, D.N. Anand vs. Union of India, Ministry of Finance, 1993 (2) RCR (Criminal) 104, Trilok Nath Mittal vs. Union of India and others, 1994 (1) RCR (Criminal) 247, Mrs. Arvind Shergill vs. Union of India, 1994 (4) RCR (Criminal) 781, B. Shareefa Ummer vs. Joint Secretary, 1997 (4) RCR (Criminal) 249, S.P. Goyal vs. Union of India, 2003 (1) RCR (Criminal) 83, Umed Mal vs. Union of India and others, 1998 CriLJ 3465 and Tejinder Singh Makkar vs. State of Punjab and others, CRWP No. 912 of 2007, decided on 13.02.2008.

9. Learned counsel for the respondents has argued that the order in this case was passed by competent authority of Government of Maharashtra. The mere fact that the order was conveyed to petitioner at his address of New Delhi does not confer any jurisdiction to the Court at New Delhi and the plea of petitioner that he also has his residence at Sonipat, does not vest any jurisdiction in this Court to entertain this petition. The remedy available to petitioner is at Maharashtra and he could approach the Court there. He has supported his contention with observations in cases of Lt. Col. Khajoor Singh vs. Union of India, 1961 AIR (SC) 532, Bhagat Ram Sharma vs. Union of India and others, 1988 AIR (SC) 740, State of

Rajasthan and others vs. M/s Swaika Properties and another, 1985 (3) SCC 217, K.S. Rashid and son vs. Income Tax Investigation Commission and others, 1954 AIR (SC) 207, Alchemist Limited and anr. vs. State Bank of Sikkim and others, 2007 AIR (SC) 1812 and Brahm Pal Panchal vs. Union of India through Secretary and others, CRWP No. 14978 of 2012 decided on 11.10.2012.

10. Firstly, I take submissions of learned counsel for the petitioner. In case of ***Tejinder Singh Makkar (supra)***, warrants of detention had not been executed even after the lapse of period of period of 7 ½ years of its issue and learned counsel for respondents had sought liberty to pass fresh order in this regard. On this ground the detention order was quashed. In that case the detention order was passed at Gandhi Nagar, Gujarat and the same was to be executed at Ludhiana and learned Single Judge had held that petition was maintainable in this Court and this Court has territorial jurisdiction over the matter. Though, the Division Bench in LPA took note of this observation but the same was not discussed while setting aside the order of learned Single Judge. In number of cases referred by learned counsel for the petitioner, learned Single Bench of this Court in various cases have held that in such matters cause of action accrues at the place where the detention order is to be executed.

11. A Constitution Bench of Apex Court in case of ***Lt. Col. Khazoor Singh (supra)*** discussed the question of jurisdiction of High Courts to entertain petition under Article 226 of Constitution of India and it was held (majority view) as follows:-

“13.What we have to see, therefore, is whether the words of Article 226 mean that the person or

authority to whom a writ is to be issued has to be resident in or located within the territories of the High Court issuing the writ? The relevant words of Article 226 are these-

"Every High Court shall have power.....to issue to any person or authority.....within those territories..."

*So far as a natural person is concerned, there can be no doubt that he can be within those territories only if he resides therein either permanently or temporarily. So far as an authority is concerned, there can be no doubt that if its office is located therein it must be within the territory. But do these words mean with respect to an authority that even though its office is not located within those territories it will be within those territories because its order may affect persons living in those territories? **Now it is clear that the jurisdiction conferred on the High Court by Article 226 does not depend upon the residence or location of the person applying to it for relief; it depends only on the person or authority against whom a writ is sought being within those territories.** It seems to us therefore that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority*

passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Article 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Art. 226.....”

12. It was further observed in para 14 of the judgment as follows:-
- “14.What Article 226 requires is residence or location as a fact and if therefore there is a seat from which the Government functions as a fact even though that seat is not mentioned in the Constitution the High Court within whose territories that seat is located will be the High Court having jurisdiction under Article 226 so far as the orders of the Government as such are concerned. Therefore, the view taken in *Election Commission, India v. Saka Venkata Subba Rao*, 1953 SCR 1144, and *K.S. Rashid and son v. The Income-Tax Investigation Commission*, 1954 SCR 738 that there is

two-fold limitation on the power of the High Court to issue writs etc. Under Article 226, namely, (i) the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction, and (ii) the person or authority to whom the High Court is empowered to issue such writs must be "within those territories" which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories, is the correct one."

13. Arguments raised by learned counsel for the petitioner that detention order was to be implemented within jurisdiction of this Court as petitioner also has his residence in Sonipat does not vest jurisdiction to this Court to entertain this petition. Firstly, the detention order is addressed to the petitioner at his address of New Delhi and not of Sonipat. In the entire correspondence, which has been placed on file by the petitioner, he has nowhere referred his address of Sonipat to the competent authority and his mere assertion that he is also resident of Sonipat is without basis. Even otherwise, service of notice at Sonipat does not confer jurisdiction to entertain such petition under Article 226 of Constitution of India.

14. A similar question arose before Hon'ble Apex Court in case of ***M/s Swaika Properties (supra)***, which find mention in para 1 of the judgment in that case, as follows:-

"The issue involved in this appeal by special leave is:

Whether the service of notice under sub-section (2) of Section

52 of the Rajasthan Urban Improvement Act , 1959 ('Act' for short) served on the respondents at their registered office at 18-B, Brabourne Road , Calcutta by the Special Officer, Town Planning Department, Jaipur was an integral part of the cause of action and was sufficient to invest the Calcutta High Court with jurisdiction to entertain a petition under Article 226 of the Constitution challenging the validity of a notification dated February 8, 1984 issued by the State Government of Rajasthan under Section 52 (1) of the Act for the acquisition of certain lands belonging to them required by the Urban Improvement Trust, Jaipur for a public purpose, namely, for implementation of a development scheme viz. Civil Lines Extension Scheme.”

15. While answering to above question, Hon'ble Apex Court observed as follows:-

“7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad-interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of section 52 of the Act the appellants were entitled to require the respondent to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so,

take immediate steps to secure such possession under sub-section (6) thereof.

8. *The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure:*

"The 'cause of action' means every fact which , if traversed , it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

In other words , it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under section 52 (2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action....."

16. As per provisions of Article 226 of Constitution of India, there are two limitations placed on the exercise of jurisdiction by this Court. Firstly, that the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction; and secondly, that the person or authority, to whom this Court is empowered to issue writ, must be within those territories i.e. amenable to its jurisdiction either by residence or location. When the aforesaid tests are applied the safe conclusion, which can be drawn in this case is that this Court lacks jurisdiction in facts and circumstances of this case. All the actions against petitioner were being

taken in Mumbai. The incident had accrued in Mumbai. He has violated the provisions of law in Mumbai. He was arrested there; released on bail; and also filed writ petition before the High Court of Mumbai in that regard. Taking recourse to above provisions, the competent authority of Government of Maharashtra issued his detention order in exercise of power under Section 3 (1) of COFEPOSA Act. It is clear from observations of Hon'ble Apex Court in above referred cases that no part of cause of action has accrued to petitioner within the jurisdiction of this Court. The petitioner, if wants to challenge the act of competent authority which passed the order of his detention, he could approach Bombay High Court for redressal of his grievance. The jurisdiction lies only with Bombay High Court within whose jurisdiction cause of action arose and lies. In judgments referred by learned counsel for the petitioner, the view taken by Hon'ble Apex Court was neither discussed nor taken note of, as such, observations therein are not helpful to petitioner. Consequently, I find no merit in contentions of learned counsel for the petitioner that this Court has got jurisdiction to entertain this petition and same are discarded. This petition is dismissed on the ground of lack of jurisdiction with this Court to entertain this petition.

August 23, 2017

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No