

(1959) 05 CAL CK 0021
In the Calcutta High Court
Case No : Matter No. 11 of 1959

Bipin Behari Sadhukhan

APPELLANT

Vs

The First Land Acquisition Collector, Calcutta and Others

RESPONDENT

Date of Decision : 21-05-1959

Acts Referred:

West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3, 3(1), 4, 4(b)

Citation : 64 CWN 179

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : E.R. Meyer and T. Bose, for the Appellant; A.C. Mitra and B. Das, for the Respondent

Judgement

Sinha, J.—The facts in this case are briefly as follows : The petitioner, Bipin Bihari Sadhukhan is the owner of premises No.1/A and 1/B Hungerford Street Calcutta. By a registered Indenture of Lease dated 26th July, 1937 the Governor of the Province of Bengal represented by the Manager, Murshidabad Estate became lessee in respect of the said premises for a period of 5 years from the 15th July, 1937. After the expiry of the said lease, the lessee held over upon a monthly tenancy. On or about the 5th of May, 1949 the premises was requisitioned and an order was made u/s 3(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (hereinafter referred to as the "Act"). On the 10th of May, 1949 the petitioner preferred objection against the said order of requisition. On the 20th June, 1949 the petitioner filed a petition before the Revenue Minister, Government of West Bengal, complaining against the acquisition and inter alia stated that the premises was being requisitioned for the interest and benefit of the Murshidabad Estate which did not constitute a "public purpose", and in fact, the Nawab Bahadur of Murshidabad had got several houses in Calcutta. Thereupon, the petitioner was asked to interview the Secretary concerned, and on the 2nd September, 1949 the premises was derequisitioned. By mutual consent the petitioner let out the premises to the

Manager of the Estate of the Nawab Bahadur, Murshidabad. It is stated in the petition that some time in 1957, the petitioner wanted to go and live in the house himself. The reason was that he has been suffering for a long time from various forms of heart diseases namely, hypertension, coronary sclerosis and auricular fibrillation. As a matter of fact, he has annexed to the petition medical certificates from eminent physicians in Calcutta to that effect. He stated that the house where he was living, namely the premises No.13, Surendra Nath Banerjee Road lies near the junction of Wellington Street and Surendra Nath Banerjee Road, which is a very congested area, and the house has no sufficient access to light and air and has no open space whatsoever. The petitioner's medical advisers have advised him to find accommodation in a less congested area in the town, preferably a house with an open space. As a matter of fact, the petitioner has annexed a certificate from Dr. J. C. Bannerjea, Professor of Medicine (Cardiology) of the Medical College, Calcutta, in which there is a specific recommendation that the petitioner should remove to a less congested and a more quiet locality. This house in Hungerford Street belonging to the petitioner answers his requirements. It is a house in a quiet locality with plenty of open space. It I stated that in view of these facts the petitioner, on or about the 22nd February, 1957 served a notice on the Manager, Murshidabad Estate, calling upon him to quit the premises by the last day of March, 1957 on the ground that the said premises was required for the petitioner's own use and occupation. Before the expiry of March, that is to say, on 28th March, 1957 an order was made for requisition of the said premises under sub-section (1) of Section 3 of the Act. A copy of the order of requisition is set out in the annexure and marked with the letter "G". All that this order says is that in the opinion of the State Government the premises requisitioned were needed for a "public purpose". On the 3rd of April, 1957 an objection was filed on behalf of the petitioner a copy whereof is annexure "I" to the petition, in which all the above facts have been stated, together with the submission that the petitioner wanted to use the house for purposes of his health and that the requisition was not for any "public purpose". It was also pointed out in this petitioner that the Nawab Bahadur of Murshidabad has got several business in Calcutta and Murshidabad. I find in this petition that mention was made for the first time of the eldest son of the Nawab Bahadur and it was stated that so far as he was concerned, he might reside in any of the houses of Nawab Bahadur. It appears that immediately thereafter the petitioner was asked to interview the Assistant Secretary. ON the 31st May, 1957 the petitioner replied that he was himself suffering from high blood pressure and other complications and mentioned that his son had already seen the Assistant Secretary and he had placed all the facts in his petition which he had sent inter alia to the Chief Minister of West Bengal. He requested an early release of the requisitioned premises. On the 29th August, 1957 the following letter was written by the Deputy Secretary, Board of Revenue, West Bengal, to the petitioner :-

Subject:- Release of premises No.1/A and 1/B, Hungerford Street, Calcutta, from the requisition order.

Sir,

With reference to your letter dated 12th August, 1957 on the above subject I am directed to say that the premises will be released as soon as a suitable accommodation is found out for the sons of Nawab Bahadur."

2. It is from this letter that I find for the first time that the premises were being requisitioned for the "sons" of the Nawab Bahadur of Murshidabad. The petitioner thereafter waited for this promise to be fulfilled, but strangely enough, on the 9th October, 1958 received a notice, a copy whereof is annexure "L" to the petition. This notice, issued in exercise of powers conferred by Section 4 of the said Act, called upon the petitioner to execute a long list of repairs, including plastering, white-washing, distempering and painting, etc. This was followed by a letter dated 14th October, 1958 written by the Land Acquisition Collector to the petitioner, the relevant part whereof runs as follows:-

"In this connection it may be stated that it has since been intimated by the Manager of the Murshidabad Estate that Sahebjada Syed Karim Ali Meerza, Deputy Minister for Commerce & Industry, Government of West Bengal, the allottee of the premises will leave for Murshidabad with his family during the Puja holidays and the house will remain vacant.

You are, therefore, requested to take up and complete the repairs noted in the notice u/s 4(b) of the Act within the Puja holidays when the house will remain vacant. As the allottee has been extremely inconvenienced for want of repairs you are requested to treat this matter as extremely urgent."

3. The petitioner having no other remedy open to him has come to this Court and a rule was issued on the 6th February, 1959, calling upon the respondent to show cause why the order of requisition should not be quashed or cancelled and for other reliefs, and an interim injunction was issued restraining the respondent from giving effect to the notice dated 9th October, 1958. In this application the above facts have all been stated. In paragraph 14, the petitioner has stated his grounds. The respondent No.6 is now stated to be the allottee of the requisitioned premises, being a son of Nawab Bahadur of Murshidabad. In the grounds it has been stated that the premises have not been requisitioned for any public purpose and that the requisition of a house or a Deputy Minister in the Department of Commerce & Industry is not a public purpose. In support of this submission it has been alleged that under the provisions of West Bengal Salaries and Allowances Act (Act V of 1952) a Deputy Minister of the State Government is not entitled to a house without paying any rent or to a furnished residence in Calcutta. Finally it has been categorically stated that the Nawab Bahadur of Murshidabad, the father of the respondent No.6, has got the following houses in Calcutta. I am setting out the exact description as contained in sub-paragraph (c) of paragraph 14.

"(i) A palatial building standing on approximately 4 bighas of land being premises No.85 Park Street, Calcutta. The said premises contains approximately 40 large

rooms most of which are lying vacant. In addition thereto there are about 30 small rooms in the said premises.

(ii) A huge mansion being premises No.26 Chowringhee Road, Calcutta which is situate next to the Indian Museum. The ground floor of the said premises is let out as shop rooms to various parties e.g., Samuel Fitze & Co. Ltd. and others. There are large numbers of flats on the upper storeys of the said premises. The annual Municipal valuation of the said premises is approximately Rs.50,000/-.

(iii) Premises No.25 Upper Chitpore Road, Calcutta.

(iv) Premises No.17, Lord Sinha Road, Calcutta.

(v) Premises No.132, Acharyya Prafulla Chandra Road previously known as Upper Circular Road, Calcutta.

(vi) Premises No.5, Nawab Lane, Calcutta."

4. It has been stated further that none of the members of the family of the Nawab Bahadur can in any sense be said to be in need of any accommodation of any kind whatsoever. In paragraph 15 it has been stated that the petitioner had provided certain furniture and fittings. The only return is this Rule nisi has been made by the First Land Acquisition Collector, Calcutta and is contained in the affidavit affirmed by S. K. Banerji on the 4th of March, 1959. I might mention here that the respondent No.6 who has been made a party and served with the Rule nisi, has not filed a return. So far as the facts are concerned, the First Land Acquisition Collector (hereinafter referred to as the "Collector") has not controverted anything mentioned in the petition. With reference to the facts mentioned in sub-clause (c) of paragraph 14 of the petition, all that is said is that the Collector has no knowledge regarding the contention and submission made therein. He says that he does not know whether there is any property of the Nawab Bahadur of Murshidabad in Calcutta or whether any such premises are available for the residence of the respondent No.6 or whether the Nawab Bahadur of Murshidabad would allow the said respondent to occupy any of the said houses. The respondent No.6 has not chosen to deny these statements himself, and I must assume that he is not in a position to do so. In the said return, so far as the question of public purpose is concerned the only allegation made is as follows:-

"I state that the premises have been requisitioned for a public purpose within the meaning of the said Act. I further state that it is necessary that the respondent NO.6 who is the Deputy Minister, should reside in Calcutta for the sake of his public duties."

5. There is no information given to the Court as to whether the respondent No.6 has made any attempt to obtain accommodation in Calcutta, whether he has failed to obtain such accommodation, or has found it difficult to do so. He has not stated whether he has made any attempt to and accommodation in any of the houses belonging to the Murshidabad Estate and particularly in the palace of the

Nawab Bahadur, in which, it is stated, there are 40 rooms most of which remain vacant.

6. The grounds upon which the petitioner relies in this application are 3 in number. The first is that the requisition is bad inasmuch as there exists no public purpose. The second point is that the notices given are bad, and the third ground is that the requisition order is a colourable exercise of power and not bonafide. Coming to the 1st question namely, whether there is a "public purpose" it is not denied that the condition precedent for the exercise of power u/s 3(1) of the said Act is the existence of a public purpose. Although Mr. Das appearing on behalf of the appearing respondents commenced an argument that the authorities holding that the issue of public purpose was justiciable in Court, were wrongly decided, he did not press this objection home. I shall proceed therefore, upon the footing that the Court is entitled to consider the question as to whether the respondents have made out a case in support of the existence of a "public purpose", which has been challenged by the petitioner. As I have stated above, the facts in this case are in a short compass. These premises were occupied by the Manager of Nawab Bahadur. At a certain stage there was an attempt to requisition them and in fact, an order of requisition was passed. The petitioner thereupon took a point that there existed no "public purpose", and the requisition was withdrawn, although the parties amicably entered into an arrangement for letting out the premises to the Manager of the Murshidabad Estate. Thereafter, the petitioner wants it for his own purpose because his health is in a dangerous condition and he has been advised by the leading physicians of Calcutta to shift his residence to a quiet locality. He owns a house in Calcutta, which exactly answers his requirements. As soon as he expresses his desire to resume possession of the house the Government of West Bengal makes a second attempt to requisition the house. Previously we find that the "public purpose" constituted of finding a house for the Manager of the Estate. Then, at some indeterminate stage it was for the accommodation of the "sons" of the Nawab Bahadur and now at last, it is for the residence of the respondent No.6 who is a Deputy Minister in the department of Commerce & Industry, Government of West Bengal. The question is whether this kind of requisition can be said to be for a "public purpose". The question whether a requisition under the Act for the purpose of finding accommodation for a Deputy Minister constitutes a "public purpose" is a question which has been exhaustively discussed and decided by a decision of P. B. Mukharji, J. in Sachindra Nath Mukherji Vs. The State of West-Bengal and Others, . The learned Judge pointed out that the provision of the West Bengal Salaries and Allowances Act, 1952 (West Bengal Act V of 1952) does not provide that a Deputy Minister of the State was to be furnished with a residence in Calcutta. It only states that in the case of a Deputy Minister, a house allowance at the rate of Rs.250/- per month and conveyance at the rate of Rs.200/- per month will be provided. Thus, the statute itself does not indicate that the Deputy Minister must be furnished with a house within the city of Calcutta. In that case also, the Deputy Minister concerned had to come forward and denied the

allegations in the petition. The learned Judge rightly held that in the absence of his denial, the allegations must be taken to be correct. The learned Judge proceeded to apply the tests laid down in the Appeal Court decision *Satya Narain Nathani v. The State of West Bengal*, (2) 62 CWN 420 and held that the tests were not satisfied. What these tests are, have been stated by me in *Gobardhan Jayaswal Vs. The First Land Acquisition Collector and Another*, . The first test is whether the Government servant in question has made every possible effort on his own account to secure accommodation and such efforts had failed. This test is not satisfied in this case. Apart from any allegation, it is not even suggested that the Deputy Minister concerned has made the slightest attempt on his own account to secure accommodation and such efforts had failed. Usual in such applications, affidavits are filed on behalf of Government showing an application by the person in whose favour the requisition is made, complaining that the person concerned be made every effort to find accommodation but had failed to find it, and that regard being had to the specific nature of his duties it was incumbent that he should be found accommodation within the city of Calcutta. In this case, no such affidavit has been filed, and I must infer that such is not the fact. The respondent No.6 has not himself condescended to file a return to the rule nisi or to state any of the facts. Coming back to the tests, it has been laid down that where the condition of service of a Government servant does not require that accommodation has to be provided for him, or there is nothing to show that there is some special reason for which it is essential to provide him with residential facilities, or to find accommodation for him in a particular locality where he may be enabled to perform or perform efficiently the duties of his office, it would not be a "public purpose" to provide him with accommodation, merely because, he is in need of accommodation. To start with, there is no evidence that the Deputy Minister concerned is, at all, in need of accommodation. As I have said, the Murshidabad Estate possesses a number of houses in Calcutta and the father of the respondent No.6 has a palatial building in the heart of Calcutta, and it is said, and not contradicted, that most of its rooms remain vacant. I do not for a moment say that the father of the respondent No.6 is bound to find accommodation for his adult son. All that I want to say is that the respondent No.6 has not come forward to say that there exists any difficulty whatsoever for him to find accommodation in the city of Calcutta. The exact duty of a Deputy Minister has not been described in the return. Let me assume however that it is desirable that all members of the State-Ministry should reside in the city. As I have said, there is no law which casts a duty upon the Government to provide residential accommodation on for a Deputy Minister. Assuming again for a moment that the public is interested in the Deputy Minister properly discharging his functions and that the discharge of such functions cannot adequately be done without staying in the city of Calcutta, still, Government cannot be called upon to requisition such accommodation until and unless the Deputy Minister concerned states that he has himself tried his utmost but failed to find any accommodation. In the absence of any such allegation in the return, I must presume that the Deputy Minister has not made the slightest

effort in this direction. I do not see, therefore, why Government should go out of its way to requisition the houses of other citizens, to provide for his accommodation. Then again, if accommodation must be found in the city of Calcutta, why should it be found in any particular locality? Accommodation could be found in the outlying or suburban areas where accommodation can be more easily obtained. There is no particular reason why a Deputy Minister should be provided with a large house in the best part of the city, while even Ministers and other high officials are unable to obtain accommodation, even half as good. In my opinion, whether the case of *Satya Narain Nathani v. The State of West Bengal* (supra) has been correctly decided or not, it is obvious that on the facts of this case it must be held that no "public purpose" has been established. In brief, because a person is a Deputy Minister Government is not called upon to furnish him with residential accommodation. If special facts existed, it might have been said that a "public purpose" had been created under the stress of circumstances. But no such special facts exist in this case, or have been proved. That being so, this requisition order and the order u/s 4(b) of the Act should be quashed and set aside. I shall however briefly deal with the other points taken. The second point taken is that the notices are defective. u/s 4 of the Act, there has to be a ten days notice issued by the Collector ordering the existing tenant or occupier, if any, to vacate the premises. He may also order the landlord to execute such repair as may be specified in the notice. In this case the notice dated 28th March, 1957 directed the petitioner to place the property at the disposal and control of the Collector on and from the 30th March, 1957. This is obviously not a ten days" notice. Mr. Das appearing on behalf of the respondent argues that a ten days" notice has to be served only on the tenant or the occupier and the petitioner is neither a tenant nor an occupier. If that is so, then I do not see why this notice was issued at all. However, strictly speaking, sub-section (a) of Section 4 does not apply in the case of the particular notice issued by the Collector and therefore, I cannot declare that it is bad because it is not a ten days" notice. Coming to the notice for repairs u/s 4(b) a copy whereof is annexure "L" to the petition the repairs which the petitioner has been asked to carry out include fancy repairs. In an ordinary tenancy the tenant is liable to make only tenantable repairs to keep the premises wind and water tight. In my opinion, Section 4(b) does not give power to the Government to order the landlord to ext any repairs excepting tenantable repairs. Any other interpretation might make the provision of the Act itself an unreasonable restriction upon the fundamental rights of the landlord to hold property. However, since the order of requisition itself fails, it is not necessary to say anything further with regard to the order for repairs, which necessarily falls with it. In view of my findings it is not necessary to deal with the third point raised. The Rule is accordingly made absolute and the order of requisition dated 28th March, 1957 (Ex "G" to the petition) and the order of the Collector dated 28th March, 1957 and the further order of the Collector u/s 4(b) of the said Act dated 9th October, 1959 (Ex. "L" to the petition) are all set aside and/or quashed by a writ in the nature of certiorari and there will be a writ in the nature of mandamus directing the respondents not

to give effect to the same. There will also be a direction upon the Collector to restore possession he has taken under the notice dated 28th March, 1957. But this will not affect any tenancy that may exist. There will be no order as to costs. Interim stay of proceedings refused.