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**(1988) 07 DEL CK 0034**  
**In the Delhi High Court**  
**Case No : L.P.A. No. 73 of 1979**

Brij Narain

APPELLANT

Vs

Union of India (UOI) and etc.

RESPONDENT

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**Date of Decision :** 15-07-1988

**Acts Referred:**

**Citation :** AIR 1989 Delhi 116

**Hon'ble Judges :** S.S. Chadha, J;S. Duggal, J

**Bench :** Division Bench

**Advocate :** M.L. Verma and S.K. Bagga, for the Appellant; P.P. Khurana, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.S. Chadha, J.—This Letters Patent Appeal under Clause X of the Letters Patent is directed against the judgment dt. Feb. 6, 1979 of Hon'ble Mr. Justice Dalip K. Kapur dismissing the writ petition under Article 226 of the Constitution of India for quashing the entire acquisition proceedings including the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894.

2. The appellant is one of the co-owners of the property known as Sat Narain Building situated at Roshanara Road, Delhi which falls in khasra nos. 395 to 398 in Patti Jahanuma and in khasra Nos. 90,92,530/89 to 93 in Mauza Sadhora Khurd. The said property was requisitioned in the year 1944 under the Defence of India Rules for a period of one year and was released from requisition in the year 1945. The Central Government again requisitioned on July 31, 1948 the said property u/s 3(4) of the Delhi Premises (Requisition and Eviction) Act, 1947. The said property was used for several public purposes and from 1948 it is being used by the Central Government for running girls school. The Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as the Act) was enacted to provide for the requisitioning and acquisition of immovable property for the purposes of the Union and received the assent of the President on Mar. 14, 1952. Section 23 of the Act provided for validation of certain

requisitions and acquisitions. All immovable property which purports to have been requisitioned by the State Government for any public purpose, being a purpose of the Union, under any Provincial or State Act and which, immediately before 25th Jan. 1952, was used or occupied by the Central Government or by an officer or authority subordinate to that Government was deemed to be property duly requisitioned u/s 3 of the Act. Every such requisition, notwithstanding any judgment, decree or order of any Court, was deemed always to have been valid as if the Act had been in force on and from the date of the requisition and the requisition had been duly made by the Competent Authority under the Act, and all the provisions of the Act would apply accordingly. The Delhi Premises (Requisition and Eviction) Act, 1947 was repealed. By virtue of S, 24(2), Section 3 of the Act applies to all requisitions of properties made before the Act and the Act is to be taken to have been in force on the day on which the original requisition order about that property was made in view of proviso (b) to Section 24(2) of the Act. In other words, the said property requisitioned under the Delhi Premises (Requisition and Eviction) Act, 1947 was deemed to have been requisitioned under the provisions of Section 3 of the Act.

3. The Chief Commissioner of Delhi issued a notification dt. April 19, 1963 u/s 4 of the Land Acquisition Act, 1894 notifying that the land is likely to be needed for the public purpose, namely, for the construction of Government school. The persons interested were given opportunity to file objections u/s 5A of the Land Acquisition Act, 1894. After holding of an enquiry, the Land Acquisition Collector submitted a report. The Chief Commissioner of Delhi issued the declaration u/s 6 of the Land Acquisition Act in the notification dt. July 26, 1963 that the land described in the notification was required to be taken by the Government at the public expense for a public purpose, namely, for the construction of Government school.

4. One Seth Sat Narain claiming to be the owner of the said property had filed C.W.P. 776-D/63 challenging the acquisition. The said writ petition was dismissed on Sept. 5, 1972. Thereafter Seth Sat Narain filed Letters Patent Appeal which was also dismissed on Feb. 12, 1973.

5. The petitioner in the writ petition is the grandson of Seth Sat Narain and claims to be one of the co-owners of the said property. He filed the writ petition under Article 226 of the Constitution seeking a writ of certiorari to quash the entire acquisition proceedings including the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894. A preliminary objection was taken by the respondents that an earlier writ petition was filed by Seth Sat Narain, being C.W.P. 776- D/63 which was also dismissed on Sept. 5, 1972 and a Letters Patent Appeal against the said judgment was also dismissed on Feb. 12, 1973. It was claimed that in fact the subject matter of the writ petition had already been decided in a previous case and against the petitioner's contentions. Another objection taken was that the petition was hopelessly belated because it was filed 13 years after the impugned notifications. The learned Single Judge in the

judgment under appeal expressed that he would have rejected the petition on the ground that it was belated or that the petitioner's rights were already adjudicated upon in the previous petition but he did not decide the petition solely on that ground. The learned Single Judge then dealt with the main question urged on behalf of the appellant-herein based on the language of Section 7 of the Act. The submission was whether the said property had to be acquired u/s 7 of the Act and if not, could it be acquired under the Land Acquisition Act? Another facet of the same submission was whether the property at all be acquired under the Land Acquisition Act when it was under requisition. The learned Single Judge came to the conclusion that there is nothing in the provisions of the Act or under the Land Acquisition Act which can debar an acquisition of the requisitioned property under the Land Acquisition Act.

6. Shri M. L. Verma, Sr. Advocate, the (sic) counsel for the appellant invited our attention to the provisions contained in Sections 3, 6 and 7 of the Act. His contention is that the provisions of the Act are exclusive, exhaustive and a complete Code for acquisition of the requisitioned properties. The Act gives a scheme of acquisition of requisitioned properties under the provisions of Section 7 of the Act and, therefore, no resort could be had to the Land Acquisition Act. If the Government wanted to perfect its title to the said property, the same could have been acquired u/s 7 of the Act, failing which the said property had to be restored to the rightful owners. The Act is a special latter Act enacted in the year 1952 and thus the provisions of a special Act would prevail over the general Land Acquisition Act of 1894. The counsel has heavily leaned on the decision of the Calcutta High Court in *Dhone Gopal Mukherjee and Others Vs. The Secretary, Land and Land Revenue Dept., Govt. of West Bengal*, . According to the counsel, the principle laid there is that derequisitioning is not an idle formality as it affords valuable right to the owner of the land and it would be a mala fide exercise of power to depart from the application of the Act when it would be applicable and to seek a resort to the provisions of the Land Acquisition Act, when the derequisitioning had not taken place. The submission is that the requisition was continuing in the year 1963 when the notification u/s 4 and the declaration u/s 6 of the Land Acquisition Act were issued. When the requisition was continuing, urges the counsel, it could not be acquired by applying the provisions of the Land Acquisition Act because it could never be that the property requisitioned under one Act was contemplated to be acquired under another Act.

7. It is apposite to advert to the facts of *Dhone Gopal's* case (supra). In that case, lands were requisitioned on May 21, 1944 by the Land Acquisition Collector under Rule 75 A of the Rules framed under the Defence of India Act, 1939 for providing accommodation to mill workers who were dislodged by military personnel. The petitioners' case was that after the termination of World War II, the purpose for which the lands had been requisitioned, ceased and at the request of the petitioners to release the lands for their own use for their Rubber Factory, the Government of West Bengal stated in a number of letters from 1959 onwards that the question of derequisitioning those lands was being actively

considered by the Government and that the lands would be released. Ultimately, the Government issued the notification on April 26, 1956 u/s 4 of West Bengal Land Development and Planning Act, 1948 stating that the lands were required for the settlement of immigrants who have migrated to West Bengal. The case of the petitioners in the writ petition was that the original purpose for which the lands had been requisitioned, namely, the housing of mill workers whose basti is had been demolished, ceased to exist with the termination of the War and this was found as a fact by D. Basu, J. It was then ruled:

Once it is held that Respondent No. 5 was under a legal duty to release the property from requisition and to restore it to the Petitioners at any point of time earlier than the application of the West bengal Act to that property, Respondent 5 cannot be heard to say that he did not comply with his legal duty under one statute because there was another statutory power, provided for by another legislature and for another purpose, which could be used in respect of the same property. There is no doubt, in view of the decision of the Supreme Court in *The Union of India (UOI) Vs. Ram Kanwar and Others*, , that it was the mandatory duty of respondent No. 5 to make an order of release u/s 6 of the Act of 1952 and that he had no discretion in the matter, as soon as the purpose for which the lands had been requisitioned had ceased to exist. The pleas that are available to a public officer when mandamus is sought for in cases like this are well settled. I do not find any authority for the proposition that a public officer would be exonerated from performing his legal duties enjoyed by one statute simply because another statute may be applied against the same object, whether by that authority or any other. Even though the order under the former statute may be nullified by an act done under another statute a moment later, there is no excuse for non-compliance with the previous statute, before proceeding under the latter. Even the beneficial purpose of the latter statute would afford no excuse. When a statute prescribes the manner in which a legal duty is to be performed, the statutory authority will be compelled to do it in that very manner and no other: vide *R. v. Shore ditch Assessment Committee*: (1910) 2 KB 859.

8. The judgment is based, in our view, on the finding that the original purpose for which the requisition was made under Rule 75A of the Defence of India Rules ceased to exist at least in 1949-50 when the letters had been written by the Government of West Bengal and it was the legal duty of the Collector to make the order of derequisition immediately and every moment since then that he retained the land without making such order, he was doing an illegal act. The compelling reason of the judgment was that no statute can be used for enabling a public official to commit an illegal act or to avoid his liability to do an act enjoined by another statute. A statutory power could not be used for a purpose other than that for which the statute was enacted and its use for any other purpose makes the resultant act void on account of mala fides or abuse of power. This is the ratio of the judgment of D. Basu, J. He did not rule that a requisitioned property could not be acquired under another statute.

9. There is a basic and fundamental distinction recognised by law between requisition and acquisition. The two concepts, one of requisition and the other of acquisition, are totally distinct and independent. The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority or the Government. The concept of requisition merely involves taking of domain or control over property without acquiring rights of ownership. From the very nature of things, it is only of a temporary duration. The said property was being used for a public purpose which was continuing and subsisting. The property was not released from requisition or could not be released as the purpose for which the property was requisitioned, did not cease to exist. There was a legal obligation to release the property from requisition only where the purposes for which any requisitioned property was being used ceased to exist, unless the property was acquired u/s 7 of the Act.

10. Section 7 of the Act empowers the acquisition of the requisitioned property. Where any property is subject to requisition, the Central Government may, if it is of the opinion that it is necessary to acquire the property for a public purpose, at any time, acquire such property. Sub-section (3) of Section 7, however, lays down that no property shall be acquired under this section except in the following circumstances:

(a) Where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the Central Government and the Government decides that the value of or the right to use, such work should be secured or preserved for the purposes of Government; or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Central Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property.

This power of acquisition of a requisitioned property is conditional on the existence of the circumstances enumerated therein. It is not a general power of acquisition for a public purpose. If the public purpose exists on account of circumstances outside Sub-section (3) of Section 7, then one has necessarily to resort to the Land Acquisition Act, 1894. There is no specific bar in the Act that the provisions of the Land Acquisition Act cannot be invoked in case of requisitioned properties. It is not the case of the appellants that the provisions of the Land Acquisition Act have been invoked with any mala fide purpose or to deprive the appellants of the compensation under the Act.

11. Compulsory acquisition of land has been provided by several special or local Acts such as Indian Railways Act, 9 of 1890, Land Acquisition (Mines) Act, 18 of 1885, Indian Telegraph Act, 13 of 1885, Indian Tramways Act, 11 of 1886, Indian Works of Defence Act, 1903, Defence of India Act, 1935, Damodar Valley Corporation Act, 14 of 1948, State Acquisition of Land for Union Purpose (Validation) Act, 23 of 1954, Ancient Monuments and Archaeological Sites and

Remains Act, 24 of 1958, Atomic Energy Act, 33 of 1962, Petroleum Pipeline (Acquisition of Rights of User in Land) Act, 1 of 1962, Coal Bearing Areas (Acquisition and Development) Act, 1957, Land Acquisition (Companies) Rules, 1963, Northern India Canal & Drainage Act, 8 of 1873.

12. A question arose before the Supreme Court in *Collector of Akola and Others Vs. Ramchandra and Others*, when proceedings were initiated under the Land Acquisition Act, 1894 after the lands had been requisitioned under the Bombay Land Requisition Act, 1948. The Collector, Akola under powers conferred on him by Section 15 of the Bombay Land Requisition Act, 1948 passed the impugned order. The order stated that the lands set out in the schedule thereto were needed or were likely to be needed for the public purpose, viz., for a new gaothan at Kasarkhed for the victims of floods, the old village site where they lived having been rendered unsuitable by floods and that it was, therefore, necessary to requisition the said lands for the said purpose. At a later stage, the State Government also initiated proceedings under Land Acquisition Act, 1894 in respect of those very lands and issued a notification u/s 4 thereof. It was ruled:

We do not also see any antithesis between the power to requisition and the power of compulsory acquisition under the Land Acquisition Act. Neither of the two Acts contains any provision under which it can be said that if one is acted upon, the other cannot. Indeed, Part VI of the Land Acquisition Act provides for temporary occupation of waste or arable land needed for a public purpose or for a Company and empowers the appropriate Government to direct the Collector to procure the occupation and use of the same for such purpose as it shall think fit, not exceeding three years from the commencement of such occupation. Apart from these provisions in the Land Acquisition Act there are several State Acts which empower the appropriate Governments to acquire property which is subject to requisitioning orders. If the reisan emergency to meet which the power to requisition is exercised there is nothing in the Act to prevent the authority at a subsequent date to initiate proceedings in a suitable case for permanent acquisition. The exercise of power under the Requisitioning Act does not exhaust or make incompatible the exercise of power under the Land Acquisition Act. The initiation of proceeding under the Land Acquisition Act after requisitioning the lands u/s 5(1) of the Act does not and cannot mean abuse of the power under the provisions of the Act. In our view the High Court was in error in holding that the power to requisition under the Act cannot be exercised where the public purpose is not temporary or that the exercise of that, power for the purposes of rehabilitation of flood sufferers was either in abuse of or unjustified under the Act.

13. As already noticed, the provisions of the Act does not contain any provision that it has an overriding effect on the provisions contained in the Land Acquisition Act. The Act also does not contain any provision under which it can be said that if an order of requisition is made u/s 3 of the Act, then the resort has to be had to the provisions contained in Section 7 of the Act for acquisition of the

property. The exercise of power of requisition u/s 3 of the Act does not exhaust the power of acquisition under the Land Acquisition Act.

14. For the above reasons, the appeal fails and is dismissed leaving the parties to bear their own costs.