

(1992) 09 CAL CK 0006
In the Calcutta High Court
Case No : F.M.A. 576 of 1988

Central Valuation Board, West Bengal

APPELLANT

Vs

Bimalesh Gupta

RESPONDENT

Date of Decision : 15-09-1992

Acts Referred:

Constitution of India, 1950 — Article 132
Land Acquisition Act, 1984 — Section 49(1)
West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3(1), 3(4)

Citation : (1993) 1 ILR (Cal) 41

Hon'ble Judges : S.K. Hazari, J; Paritosh K. Mukherjee, J

Bench : Division Bench

Advocate : Amal Baran Chatterjee, Arun Prakash Chatterjee and Arabinda Chatterjee, for the Appellant; Samar Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Paritosh K. Mukherjee, J.—This appeal arises out of the judgment delivered by Monoranjan Mullick J. of this Court dated July 15, 1987, whereby the writ petition filed by Bimalesh Gupta and Anr. was allowed and the purported order of requisition in respect of flat No. III, 9th Floor. 8 Camac Street, Calcutta, covering an area of about 1573 sq.ft., was quashed. The Respondents (Appellants herein), however, was directed to hand over possession of the said flat to the writ Petitioner, within two months from the date of judgment.

2. A time barred appeal was preferred against the said judgment, on behalf of the Appellant, and on September 16, 1987, G.N. Ray J. (as His lordship then was) and K.M. Yusuf J. passed an order of status quo, regarding possession of the premises, to be maintained. Thereafter, on April 4, 1988, the said Appeal Bench granted stay of operation of the order appealed from, on the condition that within a period of six weeks from April 4, 1988, the entire rent compensation, which has been offered by the State Government for requisition of the disputed flat, should be paid to the Respondent/writ Petitioners Bimalesh

Gupta and Basudev Gupta, for the period from April 1987 to March 1988 and the appeal being F.M.A.T. No. 2954 of 1987 was directed to be heard analogously with F.M.A.T. No. 2948 of 1987 and all formalities were dispensed with.

3. The appeal ultimately came up for final hearing before U.C. Banerjee and S.K. Guin JJ. on April 11, 1991 and was heard-in-part on June 27, 1991, July 4, 1991, July 11, 1991, when the matter was released by Their lordships.

4. This appeal came up for final hearing before us on October 1, 1991, and it was heard on January 31, 1992 and February 7, 1992, when hearing was concluded and parties were directed to submit written notes of arguments, together with Case laws, within a period of fortnight, as the Bench was not sitting regularly.

5. The Respondents writ Petitioners filed their notes of arguments within a period of fortnight from the said date, but, as the Appellant, Central Valuation Board did not file their written notes of argument till September 1, 1992, the judgment could not be delivered by the Court of Appeal.

6. On September 1, 1992, an application for appropriate order and/or direction being filed in Court on August 31, 1992, on behalf of the Respondents/writ Petitioners, this Court after hearing Mr. Samar Banerje, learned Advocate for the Respondents/writ Petitioners and Mr. A.P. Chatterjee, learned Advocate for the Appellant, had taken note of the letter dated August 24, 1992, written on behalf of Central Valuation Board, West Bengal, to the Director, Eastern Zonal Cultural Centre, New Secretariat Building, wherein the Member Secretary of the Central Valuation Board had requested the Director, Eastern Zonal Cultural Centre, that the rent from the month of August 1992 onwards may be paid directly to the landlord at the following rates:

(1) Rent Compensation Rs. 3932.50 per month

(2) Occupier's share of Rs. 1944.00 per quarter (1st

Corporation Tax April, 1st July,

1st Oct. and 1st

January)

(3) Surcharge Rs. 1944.00 do.

7. After placing the aforesaid letter, Mr. Samar Banerjee, learned Advocate for the Respondents/writ Petitioners, submitted that although the Central Valuation Board has already shifted from the disputed flat sometime in the middle of August 1992, the said flat was kept under "lock and key".

8. Mr. A.P. Chatterjee, learned Advocate for the Appellant, upon instruction submitted that the Eastern Zonal Cultural Centre has already taken over possession, in respect of the said flat from August 4, 1992.

9. On the basis of the aforesaid claims and counter claims, this Court was

surprised to take note of the fact that the Central Valuation Board having shifted to their own accommodation, how could it maintain the appeal arising out of the judgment delivered by the learned Single Judge, allowing the writ petition by directing the Respondents (Appellants herein) to hand over the possession within a period of two months from the date of judgment.

10. To dissolve the said dispute this Court of Appeal appointed Mr. Ekramul Bari, a learned Advocate of this Court, as Special officer and directed the said Special Officer to go to the locale by September 5, 1992, and inspect as to whether the said flat is under lock and key or is in occupation of the Eastern Zonal Cultural Centre and submit a report by September 7, 1992.

11. The facts of this appeal are as follows:

The Respondents Nos. 1 and 2, being the original writ Petitioners, are the owners of the flat being flat No. III, ninth floor, 8 Camac Street, Calcutta, covering an area of about 1573 sq.ft. (hereinafter referred to as the said disputed flat).

12. An agreement in writing was entered into by and between the Respondents Nos. 2 and 3 (Petitioners herein) on the one part and the West Bengal Housing Board on the other for letting out the said disputed flat to the said Housing Board at a monthly rent calculated at the rate of Rs. 2.50 per sq.ft. plus occupier share of Corporation taxes.

13. The said agreement, inter alia, provided that the agreement would be terminated by giving three months prior notice by either side. The said tenancy agreement commenced from July 28, 1978, a photo copy of which is set out at p. 19 of the Paper Book.

14. The West Bengal Housing Board issued a notice of termination of the said tenancy agreement to be effective from April 1, 1980, in terms of the said agreement. A copy of the said notice is set out at p. 23 of the Paper Book.

15. The Respondents/writ Petitioners accepted the termination notice and requested the Secretary, West Bengal Housing Board, to deliver up vacant possession of the flat by March 31, 1980, a copy of which is set out at p. 24 of the Paper Book.

16. On April 18, 1980, the Respondents/writ Petitioners sent another letter for delivery of vacant possession of the said letter is set out at p. 25 of the Paper Book.

17. In the meantime, the impugned order of requisition was passed by the State of West Bengal on March 26, 1980, u/s 3(1) of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947, hereinafter referred to as 1947 Act, which is set out below:

Whereas in the opinion of the State Government the premises described in the schedule below are needed for a public purpose:

Now, therefore, in exercise of the power conferred by the Sub-section (I) of Section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (West Bengal Act v. of 1947), the Government is pleased hereby to requisition the premises described in the schedule below and under Sub-section (4) of the said section the Governor is further pleased to direct the First Land Acquisition Collector, Calcutta, to take such further action as is necessary in connection with such requisitioning of the premises in accordance with the provision of the said Act and to take possession of the premises requisitioned.

The Schedule Description of premises 8 Camac Street, Calcutta-700017 (known as santiniketan Building) (9th floor of the premises comprising more or less 1573 sq.ft.)

18. The said order of requisition has been challenged by the Respondents/writ Petitioners and they obtained C.R. No. 7159 (W) of 1980, mainly on the following grounds:

(a) the order of requisition dated March 26, 1980 was not served upon the owners and as such it was bad in law and as such it cannot be acted upon;

(b) there was or is no material for forming an opinion by the State Government that the said flat is required for "any public purpose";

(c) the condition precedent for exercise of power u/s 3(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, were absent and/or not fulfilled or satisfied and, as such, no order could be passed u/s 3(1) of the said Act;

(d) there was total non-application of mind as would appear from the order itself as in the order, some persons have been named "as owners", namely, one Smt. Suchitra Sarogi, Jain House, who has nothing to do with the said flat; and

(e) there was "no public purpose" for requisitioning the said flat nor the requisitioning order discloses any such public purpose.

19. The above writ petition was moved on June 20, 1980, before D.K. Sen J. (as His lordship then was), and Rule, being C.R. 7159 (W) of 1980, was issued together with the order of injunction. On July 10, 1980, D.K. Sen J. was pleased to pass further order directing that in any event none of the Respondents would be allowed to take actual physical occupation of the said flat, without the leave of the Court.

20. An interlocutory application having been filed by the writ Petitioner for payment of arrears of rent by the West Bengal Housing Board, T.K. Basu J, (as His lordship then was) was pleased to pass an order on May 4, 1981, inter alia, that the Respondents Nos. 1 to 3, i.e. the State of West Bengal, the Deputy Secretary, Land and Land Reforms and the First Land Acquisition Collector, Calcutta, were willing to take possession of the said flat, which was then being

vacated by the Respondent No. 4, the West Bengal Housing Board. The said order was passed in the presence of the learned Advocate for the West Bengal Housing Board.

21. On April 6, 1987, the Respondents/writ Petitioners made further application praying for a direction that the Respondents be directed to vacate the said flat, as it appears that the said flat has been requisitioned for the purpose, which is of permanent nature, on the strength of decisions of Supreme Court in the case of H.D. Vora Vs. State of Maharashtra and Others, and in the case Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others,

22. The said writ petition was contested by filing affidavit-in-opposition, which was affirmed by Himangshu Chowdhury, on behalf of the Respondents, without disclosing his identity, regarding his position and status.

23. In para. 2 of the said affidavit-in-opposition, it was stated that the said flat was now occupied by the West Bengal Housing Board and the same was requisitioned for a public purpose.

24. Two things appear from the said affidavit: (i) that on the date of swearing of the said affidavit, West Bengal Housing Board was in occupation of the said flat and (ii) excepting a bald statement that the said flat was requisitioned for a public purpose, no further continuance of public purpose was disclosed.

25. In para. 2 it has been stated as follows:

That an area of 1573 sq.ft. at the 9th floor of "Santiniketan Building", situated at 8 Camac Street, Calcutta (hereinafter referred to as the said premises) was requisitioned on 26.3.1980 by the authorities under Sub-section (I) of Section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (hereinafter referred to as the said Act) because in the opinion of the State Government the above premises was needed for a public purpose and the said premises is now under the occupation and/or possession of the West Bengal Housing Board.

26. Ultimately, the writ petition came up for hearing before Monoranjan Mallick J. and the learned Single Judge by his judgment dated July 15, 1987, has allowed the writ petition holding, inter alia, that there was no existence of public purpose for passing the order of requisition and in view of the decisions of the Supreme Court in the case of H.D. Vora v. State of Maharashtra (Supra) and Jiwani Kumar Paraki v. First Land Acquisition Collector, Calcutta (Supra) the State Government cannot continue the order of requisition for "an indefinite period".

27. Following the aforesaid decisions of the Supreme Court, His lordship also referred to the unreported judgment of Padma Khastagir J. Unreported judgment dated August 5, 1986 in Matter No. 1231 of 1985. and judgment passed by B.C. Basak J. (as His lordship then was) Unreported judgment dated October 10, 1985, in Matter No. 278 of 1985. which were filed before His lordship.

28. In both the cases, as the premises was kept under requisition for a considerable period, Their lordships directed that the premises must be de-requisitioned, if the State did not acquire the property within a certain period.

29. In conclusion, His lordship directed the State Respondent to hand over the possession of the flat, within two months from the date of judgment, as referred to hereinabove.

30. This appeal has been preferred under Clause 15 of the Letters Patent, arising out of the said judgment.

31. After considering the rival submissions of both the parties and in view of the relevant fact that the Appellant in F.M.A. 576 of 1988, Central Valuation Board, West Bengal, since had already been shifted from the disputed flat with effect from August 4, 1992, as stated by the Appellants, we are of the view that there was no necessity on the part of the State Government to continue with the order of requisition.

32. Further, we are of the view that the order of requisition dated March 26, 1980, cannot be sustained in law, in view of the direct pronouncement of the Supreme Court, in the case of H.D. Vora v. State of Maharastra (Supra) wherein it has been observed by the Supreme Court as follows:

The two concepts, one of requisition and the other of acquisition are totally distinct and independent. Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing (sic) former. Vide: Observations of Mukherjee J. in Chiranjitlal case. 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. But the concept of requisition involves merely taking of "domain or control over property without acquiring rights of ownership" and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1984. We do not think that the Government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the Government: If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property, but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the Government only for a public

purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial nature of permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the Government would be requisitioning the premises when really speaking they want the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the Government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely.

It is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because ultimately the answer to this question must depend on the facts and circumstances of each case but there can be no doubt that whatever be the public purpose for which an order of re-requisition is made, the period of time for which the order of requisition may be continued cannot be an unreasonably long period such as thirty years. The High Court was, therefore, in any view of the matter, right in holding that in the circumstances, the order of requisition could not survive any longer and derequisition the flat and to take steps to evict the Appellant from the flat and to hand over vacant possession of it to Respondent 3.

33. Further, we are of the view that in view of the conduct of the West Bengal Housing Board in the first instance and the Central Valuation Board in the next place to remain, in the said disputed flat as a tenant, even after expressing their intention to terminate the tenancy agreement, the State Government has no right to continue the order of requisition, far less to accommodate the Eastern Zonal Cultural Centre, another body of the State Government, to remain in the said flat, during the pendency of this appeal at the instance of Central Valuation Board.

34. Further, we are of the opinion that the Central Valuation Board, in their turn having shifted to their new accommodation, is not entitled, under the law, to unilaterally hand over the possession of the said disputed flat, during the pendency of this appeal, in favour of Eastern Zonal Cultural Centre, another body of the State Government, which is not a party in this connected appeal.

35. As such, in our reasoned opinion, the continuance of the order of requisition for an indefinite period, cannot be justified on the aforesaid reasons, apart from the reasons put forward by the learned Single Judge.

36. In this context, it will be convenient for us to refer to the following observations of the Supreme Court in the case of *Jiwani Kumar Paraki v. First Land Acquisition Collector* (Supra):

It will not be correct to say that in no case can an order of requisition for

permanent purpose be made but in a situation where the purpose of requisitioning the property is of a permanent character and where the Government has also the power and the opportunity to acquire the property or a part thereof especially upon the fulfilment of the conditions of Section 49(1) of the Land Acquisition Act (as amended by the West Bengal Act 32 of 1955) to the extent applicable, if the Government chooses not to exercise that power nor attempts to exercise that power to achieve its purpose, then that will be bad not because the Government would be acting without power of requisition but the Government might be acting in bad faith. In other words, if there is power to acquire as also the power to requisition and the purpose is of permanent nature by having the property or a part thereof for the Government then in such a case to keep the property under requisition permanently might be an abuse of the power and a colourable exercise of the power not because the Government lacks the power of requisition but because the Government does not use the other power of acquisition which will protect the rights and interests of the parties better.

Where one is repository of two powers that is power of requisition as well as power of acquisition qua the same property and if the purpose can equally be served by one which causes lesser inconvenience and damage to the citizen concerned, unless the repository of both the powers suffers from any insurmountable disability, user of one which is disadvantageous to the citizen without exploring the use of the other would be bad not on the ground that the Government has no power but on the ground that it will be a misuse of the power in law.

37. This view of the Supreme Court, expressed in the case of *H.D. Vora v. State of Maharashtra* (Supra) and in the case of *Jiwani Kumar Paraki v. First Land Acquisition Collector Calcutta* (Supra) has been followed by one of us (Paritosh K. Mukherjee) in the case of *M/s. Adarsh Properties Ltd.* 1987 (2) C.H.N. 129 wherein it was held that the order of requisition was bad as it was passed to bypass the Civil Court's order and for an oblique purpose, which was also followed in the case of *Sri. Sri. Gopal Jew and Ors. v. State of West Bengal* 1988 (1) C.H.N. 420 as well as in the unreported judgment in *Anjali Bhowinik v. State of West Bengal* Unreported judgment dated April 27, 1992 in C.O. No. 30 (W) of 1992. affirmed in appeal.

38. In the result, the appeal preferred by the Central Valuation Board being F.M.A. No. 576 of 1988 is dismissed.

39. The judgment of the learned Single Judge is affirmed. All interim orders are vacated. This order will also govern the connected appeal being F.M.A.T. No. 2948 of 1987, which was directed to be heard analogously by the earlier order of the Appeal Court dated April 4, 1988.

40. Since we have not allowed the prayer of Mr. A.P. Chatterjee, learned Advocate, for adding the Eastern Zonal Cultural Centre, as a party to the appeal,

by our order dated September 1, 1992, in our view the said Eastern Zonal Cultural Centre has no locus standi to put a lock on the door of the said disputed flat and/or to take steps for whitewashing before taking over formal possession of the disputed flat, as pointed out by the report of the Special Officer.

41. The Special Officer, appointed by the Court, is directed to break open the lock, if necessary, and to take possession of the said disputed flat forthwith. The Special Officer is also directed to hand over the possession of the said flat to the Respondents/writ Petitioners by November 30, 1992.

42. Until delivery of possession to the Respondents/writ Petitioners, by November 30, 1992, the Special Officer will be entitled to get remuneration of Rs. 1700 per month, from the Respondents/writ Petitioners.

43. The Respondents/writ Petitioners, however, will be entitled to recover rent and/or compensation from the Appellant, upto July 1992.

44. The Officer-in-charge, Park Street Police Station is directed to see that there should not be any disturbance in taking over possession of the said flat by the Special Officer, within a week from the date of judgment.

45. Prayer for stay of operation of the judgment made on behalf of the Appellant is considered, and refused in the facts of the present case.

46. Prayer for leave to appeal under Article 132 of the Constitution is considered and is also refused.

47. As xerox copy will take some time, all parties will be entitled to have plain copy of the operative part of this judgment, countersigned by the Assistant Registrar (Court), on usual undertaking.

S.K. Hazari, J.

48. I agree.