
(1977) 09 CAL CK 0036
In the Calcutta High Court
Case No : Matter No. 494 of 1977

Chittaranjan Sen Majumdar

APPELLANT

Vs

First Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 29-09-1977

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3, 3(2), 4, 4(1)

Citation : 82 CWN 628

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : S.D. Banerjee and Mohiuddin, for the Appellant; N.N. Guptoo and Shyamal Sen and S. Roy Chaudhury for the Official Trustee, for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—The subject matter of challenge in this application under Article 226 of the Constitution is the notice of requisition dated the 26th May, 1977. By the impugned notice issued u/s 3 of the West Bengal Premises Requisition and Control (Temporary provisions) Act, 1947, the flat No. 3 on the 5th Floor of premises No. 26, Chowringhee Road, Calcutta, was requisitioned and the occupants were directed to vacate on 3rd June, 1977. The petitioner in this case is one Chittaranjan Sen Majumdar. He states that he belongs to the West Bengal Civil Service and he is an officer attached to the Writers' Buildings. He took the flat in question for his own use. He stated in his petition that he formerly used to reside, due to lack of accommodation, at C (W) 47A, Rabindra Nagore, P. O. Bartola in the district of 24 Parganas but as the place was distant he had applied for a flat under the Official Trustee and had obtained the flat in question. He stated further that he is a monthly tenant of the said flat at the rate of Rs. 330/- per month.

2. This challenge has been based on four main grounds. It has been contended

that no notice under sub-section (2) of section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 had been served upon the petitioner. It is, secondly, stated that no order u/s 4(1) of the said Act had been served upon the petitioner. It has been alleged that in any event the period given in the notice in the instant case was too short. It has been, thirdly, urged that no hearing had been given to the petitioner before making the impugned order. It has been submitted that as the requisition of the flat affected the property rights of the petitioner, the petitioner was entitled to a hearing before the impugned order had been passed. It was, lastly, contended that the impugned order was passed mala fide.

3. It is the case of the respondent government authorities that the petitioner owned and possessed a house at premises No. C(W) 47A, Rabindra Nagore, Metiabruz, Calcutta. The petitioner did not state in the paragraph 2 of the petition that the petitioner owned such a house. The petitioner was, therefore, guilty of suppressing a vital and material fact. The petitioner did not state that the house in question, which the petitioner owned and in which the petitioner resided, belonged to him and was in Calcutta. It is further stated on behalf of the respondents that a telephone at the government cost had been installed at the said house of the petitioner and the petitioner had been drawing House Rent allowance on the basis of the said house. The case of the respondents is that the petitioner had sub-let the said flat to one "Aparbrenu Prokash" and had allowed the said flat to be utilised by them for the purpose of publishing a monthly magazine named "Aparbrenu". According to the respondent, the petitioner is not using the flat for his residential purposes. These statements have been made by the respondents on the basis of the local enquiries made by the Land Acquisition Department. It further appears from the statements made on behalf of the Official Trustee, being the landlord of the premises in question, that the petitioner had made a statement before being allotted the premises in question that the petitioner had no residential accommodation in Calcutta and that the petitioner would use the flat, if allotted to him, for his own residential purposes. According to the landlord, the petitioner had not been using the said flat himself but has allowed others for being so used. The case of the petitioner, however, is that the petitioner was a heart patient. Though he used to reside at Rabindra Nagore prior to the allotment of the flat in question, he had shifted there and Aparbrenu Prokash was a magazine run by the daughter of the petitioner from the flat in question. It is in this background of disputes of these facts that the challenge to the requisition order will have to be judged. If the facts alleged in the affidavit on behalf of the respondents are true then of course the petitioner is guilty of suppression of material facts and the petitioner has no cause for grievance because the petitioner not being the person in occupation was not entitled to the notice nor was the petitioner entitled to make any grievance of absence of the hearing before the impugned order had been passed. In this state of affairs it would be inappropriate to embark upon to decide the disputed questions of fact in this application under Art. 226 of the Constitution. But quite

apart from the same, it is necessary to examine the contentions urged on behalf of the petitioner. The petitioner's first contention was, as mentioned before, that no notice u/s 3 (2) of the said Act as well as no notice u/s 4(1) of the said Act had been served upon him.

4. It is indisputable that notice is required to be served under the Act. The tenant and occupier are entitled to notice. The notice addressed to Aparbrenu Prakash had been left at the premises in question on the refusal of the said Aparbrenu Prakash to accept the service. That the said notice was left in the premises in question is undisputed. That Aparbrenu Prakash is in occupation of the premises is also not disputed. Therefore, in my opinion, there has been compliance with the said requirement of service of the notice. It was, however, contended that two separate notices were required to be served. This, however, I am unable to accept, because what Sec. 4(1) requires is that where the premises is requisitioned under the Act, the Collector may by notice in writing order the person in occupation of the premises, if any, to vacate the premises within a period of 10 days of the service of the notice. Therefore, the notice has to be served on the person to vacate the premises. Sub-sec. (2) of Sec. 3 enjoins the notice of requisition should be served on the landlord and when it relates to premises let out also on the tenant or the subtenant the notice in question has to be given. Here, notice was given to Aparbrenu Prakash who, according to the respondents, was the sub-tenant of the premises in question and who admittedly was in occupation of the premises in question. Therefore, one notice may sub serve the two purposes. In such a case it is not necessary to serve two independent notices.

5. Another contention on behalf of the petitioner is that the minimum time required had not been given. Now, the time required is 10 days. The respondents' case is that the notice was duly given and the notice is dated 25th May, 1977 and the requisition to vacate was with effect from 3rd June, 1977. On the face of it the requirement of time has been complied with. On the evidence it is not possible to accept the submission that notice dated 25th May, 1977 had been served subsequently.

6. It was then contended that the petitioner was entitled to a notice or hearing before the order was passed. Neither sub-section (3) nor sec. 4 nor any other provisions of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 in express terms speak of any notice or of any hearing before the order requisitioning the premises is passed. Counsel for the petitioner, however, drew my attention to the observations of the Supreme Court in the case of Madan Gopal vs. District Magistrate, AIR 1972 SC 1056 where the Supreme Court dealing with U. P. (Temporary) Accommodation Requisition Act, 1947 observed that under the scheme of that Act a notice was required to be given to the person who was affected by the requisition proceedings. Second proviso to Section 3 of the said Act stipulated that no accommodation which is actually in occupation of any person shall be requisitioned unless suitable

alternative accommodation exists for his needs or has been provided for him. The Supreme Court found on the analysis of three parts of the main section that on these separate facts the District Magistrate had to be satisfied and also on the question whether the suitable accommodation existed or had been provided for. The party aggrieved has a lot to say. Therefore, in that background the Supreme Court felt that before depriving the person of the property in question the Act required that the person should be provided with a suitable accommodation and whether this has been done or not is a fact upon which the person affected has the right to be heard. Whether the premises in question is required for public purposes or not that is a matter on which the person whose premises in question is being acquired or requisitioned, in my opinion, as such has no right to be heard. But if an order is passed malafide that person has always the right to challenge the order in question. Therefore, where the Act does not contain the provision of the nature or type contemplated by Sec. 3 of the U. P. (Temporary) Accommodation Requisition Act, with which the Supreme Court had to deal with, in my opinion, it would not be right to insist that before any order of requisition is passed the person whose property is being requisitioned should be given the right of hearing. In any event, if the respondents' allegations are true the petitioner has nothing to say about the impugned order because he has a house and he resides in that house and took the premises in question by suppressing material facts from the Administrator General and Official Trustee. The last contention urged in support of this application is that the order in question was passed mala fide. There is no material to sustain the allegation of mala fide. Government was stated that a large number of Government Officers are waiting for flats to be allotted to them. It is also common knowledge of which judicial notice can be taken. The respondents have also annexed a long list of officers waiting allotment of flats to them. In the premises, if the Government has requisitioned the premises in question for allotment to other claimant, in my opinion, then the action of the Government cannot be challenged as malafide.

In the aforesaid view of the matter, this application fails and is accordingly dismissed. The Rule Nisi is discharged. Interim order, if any, is vacated. There will be no order as to costs.

Stay asked for is refused.