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**(1982) 09 DEL CK 0036**

**In the Delhi High Court**

**Case No : Civil Writ Appeal No. 1380 of 1970**

Daulat Ram Public Trust

APPELLANT

Vs

Collector, Delhi and Others

RESPONDENT

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**Date of Decision : 16-09-1982**

**Acts Referred:**

**Citation : (1983) ILR Delhi 35**

**Hon'ble Judges : A.B. Rohtagi, J**

**Bench : Single Bench**

**Advocate : S.K. Mehra and Y.K. Sabharwal, for the Appellant;**

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## **Judgement**

Avadh Behari Rohatgi, J.

(1) By this petition the petitioner, Daulat Ram Public Charitable Trust (Trust) challenges the requisitioning order dated 17-11-1970 passed by the competent authority under the Requisitioning and Acquisition of Immovable Property Act, 1952 (the Act).

(2) These are the facts : Building No. 849 situated at Joshi Road, Karol Bagh, New Delhi is owned by the Trust. On March 11, 1970 the Collector issued a notice u/s 3(1) of the Act to the Trust requiring it to show- cause why property be not requisitioned for a public purpose, namely, for housing hospital of the Delhi Administration. The notice was withdrawn.

(3) A similar notice was again issued on 18th September, 1970 intimating that the property is needed for a public purpose, namely, for housing a hospital of Delhi Administration. The Trust filed objections to the show cause notice. The objections were dismissed. The competent authority on 17-11-70 ordered the Trust to surrender or deliver possession to the Tehsildar. An appeal was filed from the order of the competent authority u/s 10 of the Act. Stay of dispossession was asked for. The appellate authority refused to grant stay. Thereupon the present writ petition was filed on 18-12-1970.

(4) Counsel for the Trust impugners the requisitioning order dated 17-11-70 (at lop dated as 20-11-70) on four grounds. In the first place he says that housing a hospital for Delhi Administration is not a purpose of the Union u/s 3. The Section empowers the competent authority to requisition immovable property if he is of opinion

" THAT any property needed or likely .to be needed for any public purpose, being a purpose of the Union and that the property should be requisitioned."

(5) Housing a hospital of Delhi Administration is a public purpose. No one will deny his. The Trust does not dispute this. What is said is that in addition to being a public purpose the purpose for which the property is requisitioned must also be a "purpose of the Union". What is the "purpose of the Union" ? This was decided by a division bench of this court in Sarup Singh v. Union of India (1970) Delhi 464. Delhi is a Union Territory .Parliament has plenary powers of legislation for the Union territories with regard to any subject including health and hospitals. Article 246(4) of the Constitution in terms provides that :

" PARLIAMENT has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

(6) Under Article 73 of the Constitution the executive power of the Union is co-extensive with the legislative power of the Parliament. If the Union can legislate on this subject it can also establish hospitals in exercise of its executive powers. Though

" PUBLIC health and sanitation, hospitals and dispensaries" appears in State List (item No. 6) the Parliament can legislate on it for the Union territory. The status of Union territory of Delhi was considered by a full bench in M/s. Indian Tourism Development Corporation v. Delhi Administration C.W. 713 and 1472 of 1981 decided on January 29, 1982(2) (Prakash Narain Cj, Chadha and Goswami JJ.). They followed the earlier full bench decision in Management of M/s. Patiala Iron Works v. Union of India, (1975) 1 Delhi 613 (Tatachari Cj, Avadh Behari and H. L. Anand JJ.) where I spoke for the court. It must Therefore be held that housing a hospital of Delhi Administration is "a purpose of the Union".

(7) Counsel referred me to The State of Bombay Vs. Ali Gulshan, . That case was decided before the amendment of the Constitution (7th Amendment) Act, 1956. As was said in Sarup Singh :

" THE decision in Ali Gulshan's case made this clear and. was largely responsible for the amendment of the Constitution with a view to avoid unnecessary technical difficulties in legislation arising out of the existence of three separate entries in three legislative lists relating to what essentially a single object of acquisition and requisitioning of property by the Government. The result of the amendment is that it is now open to the Union as well as the State to legislate for the purpose of acquisition or requisitioning of property: for a public purpose."

(8) The second objection is that the original purpose for which property was being requisitioned in 1970 has now ceased to exist. For this counsel for the Trust relies on the return made by the Delhi Administration in this case. He says that from the return it is clear that the Administration has already started a hospital in adjacent buildings and for this purpose it has rented buildings Nos. 846, 847 (portion), 875, 874, 868, 862 (portion). As the hospital is functioning at present the purpose has ceased to exist, counsel says. In my opinion this is a misreading of the return. What is stated in the return is that the hospital has got only 34 beds and the Administration wants to make it a 100 bedded hospital. They want a large area of land for a 100 bedded hospital. The return says that "there would be a minimum need of 65000 sq. ft. of land for the purpose of 100 bedded hospital whereas the present land in occupation and available with the Administration is 34686 sq. ft. only." So what appears from the return is that though the hospital is functioning in certain rented buildings the Trust property is required for extension of the present hospital. If the Government wants additional space for extension of the present Joshi Memorial Hospital and the need is still unsatisfied it cannot be said that the original purpose has ceased to exist.

(9) Counsel referred me to *The Union of India (UOI) Vs. Ram Kanwar and Others*, . In that case a certain flat was requisitioned under the defense of India Rules, 1939. But it was not used for any of the purposes for which it was requisitioned for a number of years. It was held that the purpose for which the property was requisitioned had ceased to exist and the owners were entitled to be put in possession thereof. If a property is being used for a purpose other than that for which it was requisitioned, the owners are entitled to be put in possession. In *Deep Chand v. Lt. Governor* Air 1981 Delhi 162 we in the division bench held that the requisitioning authority is bound to release the property from requisitioning where the purpose for which it was requisitioned has partially, if not wholly, ceased to exist. But here there is no evidence to hold that the purpose has ceased to exist. That the Government needs the Trust property for extension of the hospital shows that the purpose still exists. Extension is not a new purpose. This is the fallacy in the argument of counsel. It is a continuation of the original purpose. It is merely an enlargement in area. The extent in the spatial sense changes. In the main building as well as in the extended building the hospital will be housed. So the purpose remains the same. It is merely an expansion in space. If the property is required for housing the hospital of the Delhi Administration whether for nucleus or extension, it is legitimate to hold that the public purpose exists..

(10) Thirdly it was said that under the proviso to section 3(2) this property cannot be requisitioned. The material proviso is in these terms :

"PROVIDED that no property or part thereof (a) which is bonafide used by the owner thereof as the residence of himself or his family, or (b) which is exclusively used either for religious worship by the public or as a school, hospital, public

library or an orphanage or for the purpose of accommodation of persons connected with the management of such place of worship or such school, hospital, library or orphanage, shall be requisitioned."

(11) In the rejoinder the Trust has said that they started a Homeopathic Clinic in February, 1979 and a Nature Cure Clinic in the premises in question where thousands of people are being daily treated and given medical aid. It is said that since the building in question is being used for a public purpose, that is, a Homeopathic and Nature Cure Clinic, the present building cannot be requisitioned under the law. This argument has no merit. The requisitioning order was passed on 17-11-1970. On that date there was no hospital or clinic in the premises. The homeopathic clinic was started in 1979 on the Trust's own showing. Similarly the nature cure clinic was opened only recently. The proviso applies where the building is being used for the purposes named therein at the time of requisitioning. In my opinion reliance on the proviso is misconceived because it has no application.

(12) Fourthly, it was said that the Government has no power to requisition the premises under the Act since the Act itself came to an end in 1980. The Act has been extended up to 1985 (see L.N. Goswami and Ors. v. Collector Competent Authority and Ors. C.W. 630180 decided on 24-9-1980) (7). The Parliament has, given a further lease of life to the Act. The Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1975 substituted the words 10 years in place of 5 years. The further amendment of the Act by Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance 1980 increased the period to 15 years. Thus the competent authority can retain the property up to 1985.

(13) Apart from this, section 6(1-A) says :

"(1-A) Notwithstanding anything contained in sub-section (1), the Central Government shall release from requisition (a) any property requisitioned or deemed to be requisitioned under this Act before the commencement of Requisitioning and Acquisition of Immovable Property (Amendment) Act 1970, on or before the expiry of a period of five years from such commencement; (b) any property requisitioned under this Act after such commencement, on or before the expiry of a period of five years from the date on which possession of such property was surrendered or delivered to, or taken by, the competent authority u/s 4 unless such property is acquired u/s 7 within the period of five years aforesaid."

(14) This clause (1-A) was inserted by the Requisitioning and Acquisition of Immovable Property (Amendment), 1970. This means that the period of 5 years will be computed "from the date on which possession of said property was surrendered or delivered to or taken by, the competent authority". The Trust did not surrender possession to the Delhi Administration. On the other hand they filed a writ petition in this court in 1970 and obtained a stay order from this

court. One of the grounds alleged in the writ petition was that the Trust was never heard on its objections by the competent authority. This was found to be patently wrong because the competent authority obtained the signatures of Mr. S. K. Mehra, counsel for the Trust, who was present at the hearing. He was heard in support of the objections. On this inaccurate and misleading statement they were able to obtain a stay order from the court. This writ petition is liable to be dismissed on this ground alone that it contains a misleading and inaccurate statement, [see Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, ]. No litigant can obtain stay orders by suppressive or suggestio false .This stay has continued for more than 12 years. On this long lasting stay the argument cannot be founded that the period of requisitioning has expired and that the Government cannot ask for possession now. Nor can it be argued with any show of justice that the purpose has by long lapse of time ceased to exist because of stay. The stay order in equity cannot be used as a weapon of attack. It was mean to be a shield: To use it as an argument for the cessation of the purpose is illegitimate. This argument like the above three arguments is also misconceived.

(15) For these reasons the writ petition is dismissed. I announced the order on 13-9-1982 at the conclusion of the hearing. Now I have given my reasons for doing so. No costs.