

(1959) 12 CAL CK 0007
In the Calcutta High Court
Case No : Matter No. 82 of 1959

Gobinda Chakravartty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-12-1959

Acts Referred:

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

Citation : 64 CWN 823

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : S. Banerjee, for the Appellant; M.M. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The petitioner carries on business under the name and style of Lyndon & Co. as a chemist and druggist. Formerly, his business was carried on in a portion of the ground-floor of premises No. 29/31, Park Street, in the town of Calcutta. It appears that in 1943 the petitioner purchased this shop including the tenancy and goodwill and was carrying on business at that address. He is an exclusive supplier of medicines to the Harrington Nursing Home situated at No. 6, Harrington Street, Calcutta. He says in the petition that in the beginning of 1958 he opened a branch shop at No. 6, Harrington Street, and removed his old stock and furniture from the main shop to the branch shop. The idea was to make extensive renovations and thorough repairs to the Park Street shop, decorating it with modern furniture and equipment and transform it into an upto-date shop, in keeping with other shops in the locality. On the 22nd August, 1958 an order of requisition of the said shop room was issued under sub-section (1) of section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, it being stated that it was needed for a public purpose. A copy of the order is annexure "A" to the petition. It recites the public purpose but- the particulars thereof have not been mentioned. The process-server in the

office of the Land Acquisition Collector, Calcutta, when to premises No. 6, Harrington Street, to serve the notice on Messrs. Lyndon & Co., in which name the order for requisition had been issued. It is stated in the affidavit of the process-server affirmed on the 22nd July, 1959 that the process-server found an employee of the firm who gave out his name as M. Pall. When told about the order and the service thereof, the said employee informed the process server that he would accept service and, thereupon a copy of the order was served upon him and he accepted the service and acknowledged receipt by signing his name at the back of the copy of the order. On the 2nd September, 1958 the petitioner preferred objection before the First Land Acquisition Collector. In December, 1958 the Land Acquisition Collector heard the objection and made his report to Government rejecting the same. On the 27th May 1959 the Land Acquisition Collector gave notice that possession should be delivered on the 29th May 1959 at 3-30 P.M. The petitioner, through his solicitor, objected, and on the very same day this Rule was taken out, calling upon the respondents to show cause why the impugned order of requisition should not be quashed and for other reliefs. In order to understand the defence, it is necessary to state certain other facts. For some time past, the Government of Assam were on the look out for procuring a suitable accommodation for housing its "Sales Emporium" for the sale of products of the State Cottage Industries of Assam. The Trade Advisor and Director of Movements of the Government of Assam was in charge of it. In May, 1958 the Chief Minister of Assam wrote to the Chief Minister of West Bengal for assistance in the matter. On or about 6th August, 1958 the Trade Advisor etc. of Assam wrote to the Assistant Secretary, Land and Land Revenue Department of the Government of West Bengal stating that a part of premises No. 29/31, Park Street, Calcutta, being the shop room occupied by the firm of Messrs. Lyndon & Co. was vacant, because that firm had shifted to some other place. He requested that the shop room be requisitioned and made over to the Government of Assam. Bimalananda Roy, an enquiring officer of the Land & Land Revenue Department, Government of West Bengal, was directed to make enquiries. In August, 1958 he went to the said premises twice and made enquiries and found that Messrs. Lyndon & Co. had shifted to 6, Harrington Street and this shop room in Park Street was lying vacant. It was under lock and key and in front of the shop room there was a Board affixed stating that Messrs. Lyndon & Co. had removed to premises No. 6, Harrington Street. After the objection was preferred, the officer again went to enquire in December, 1958. but found the room in the same condition, except that an attempt had been made to put in a few phials of medicine and some old furniture to give it the appearance of an occupied room. He did not find any sign of repairs or any move towards the same. Even in April, 1959 another enquiring officer, Sudhir Kumar Mukherjee went to inspect, but found the conditions almost the same, the notice stating that Messrs. Lyndon & Co. had removed to premises No. 6, Harrington Street was still hanging. When he went to premises No. 6, Harrington Street he found that the petitioner was carrying on business there in every sense of the word. Those being the facts of this case. I have to consider two points. The first is whether a requisition of

premises by the West Bengal Government for the purposes of the Government of Assam is a "public purpose", and secondly, as to whether the requisition order is bad, because it had not been properly served. Although in the affidavits a great deal has been stated about the facts, it is obvious that I cannot decide any disputed question of facts without taking evidence. It seems however that the story of having shifted to 6, Harrington Street for the purposes of renovating the Park Street shop is a very unconvincing story. The shifting had been done nearly one year ago and in the meanwhile no attempt had been made to repair or renovate the shop. On the contrary, a Board had been hung up, stating that the firm had been shifted to 6, Harrington Street, where in fact, the business was and is being carried on in full force. A shop room in Park Street is difficult to come across and it is almost unthinkable that it should be deserted and lie derelict for nearly a year, if there was any real intention of utilising the same. A suggestion has been made that the petitioner was seeking an opportunity of transferring the tenancy of the shop at a considerable profit. However, although this may explain the conduct of the petitioner, the truth of it cannot be decided without further evidence. As I have stated, the two points raised are really points of law. If the petitioner succeeds, the requisition may be affected, otherwise, there is no ground for interference on facts. The first point raised is certainly of very great public importance. That there cannot be a requisition without a "public purpose" is admitted. The right of "Eminent Domain" of the State can only be exercised where there is a "public purpose", Mr. Banerji appearing on behalf of the petitioner argues that if the State of West Bengal wanted the shop for its own purposes it would amount to a "public purpose", but that it was no public purpose, so far as this State is concerned, to acquire property for the benefit of another State. His argument is that a "public purpose" is a purpose in which the public of the State are interested, because it is a State requisition and not a requisition by the Central Government which might be said to represent all the States in the Indian Union. He says that if the purpose of other States are to be considered, then it might as well be for the purposes of other countries in the World and there would be no limit to such a "public purpose". This argument appears to be plausible at first, but requires more serious consideration. Inasmuch as the facts are similar, it is necessary to refer to a decision of the Supreme Court, *State of Bombay v. Ali Gulshan* (1) (1956) S.C.A. 17. The question there was whether the Government of Bombay was entitled under clause (a) of sub-section (4) of section 6 of the Bombay Land Requisition Act, 1948 (Act XXIII of 1948) to requisition, as for a public purpose, certain premises for "housing a member of the staff of a foreign consulate". In the first Court, before Tendolkar, J., the State succeeded on the ground that the purpose for which the requisition was made was a "public purpose" On appeal it was held by Chagla, C.J. that the requisition was for a "public purpose", but it was invalid because a public purpose must be either a purpose of the Union or a purpose of the State and in this case the accommodation being required for housing a member of a foreign consulate staff, it was a Union purpose and therefore, it was outside the scope of the powers of the State; Aiyar, J. said as follows: --

We are unable to uphold this view as regards both the standpoints. Item 33 in the Union Legislative List (List I) refers to "acquisition or requisition of property for the purpose of the Union". Item 36 in the State List (List II) relates to "acquisition or requisition of property, except for the purpose of the Union. subject to the provisions of Entry 42 of List III". Item 42 of the Concurrent Legislative List (List III) speaks of "the purpose of the Union or of a State or any other public purpose". Reading the three items together it is fairly obvious that the categories of "purposes" contemplated are three in number, namely, Union purpose, State purpose and any other public purpose. Though every State purpose or Union purpose must be a public purpose it is easy to think of cases where purpose of the acquisition or requisition is neither one nor the other but a public purpose. The acquisition of sites for the building of hospitals or educational institutions by private benefactors will be a public purpose, though it will not directly be a State or Union purpose. When we speak of a State purpose or a Union purpose we think of duties and obligations cast on the State or the Union to do particular things for the benefit of the public or a section of the public. Cases where the State acquires or requisitions property to facilitate the coming into existence of utilitarian institutions, or schemes having public welfare at heart will be found within the third category mentioned above.

2. The learned Judge then held that. looked at close quarters, the particular requisition appeared to be more a State purpose than a Union purpose. The Union is certainly interested to provide for consular representation of foreign States but no duty is cast upon the Union to provide accommodation for the consular staff. The learned Judge proceeds to say as follows: --

..... routine duties of a consul in modern times are to protect the interests and promote the commercial affairs of the State which he represents, and that its powers, privileges and immunities are not analogous to those of an ambassador. The trade and commerce of the State which appoints him with the State in which he is located are his primary concern. The State of Bombay is primarily interested in its own trade and commerce and in the efficient discharge of his duties by the foreign consul functioning within the State. We are inclined to regard the purpose for which the requisition was made in this case more as a State purpose than as a Union purpose. In any event, as already pointed out, "the other public purpose" is a distinct category for which the State of Bombay can legislate, as the acquisition or requisitioning of property except for the acquisition or requisitioning of property except for the purpose of the Union is within its competence under Item 36 of the State List.

3. Before we proceed further it will have to be remembered that by the Constitution (7th Amendment) Act, 1956, Entry 33 in List I as well as Entry 36 in List II have been totally omitted and Item 42 of the Concurrent List has been amended. It now reads as "acquisition and requisition of property". The Supreme Court decision which is based on the 7th Schedule to the Constitution as it before the amendment, has decided that requisition for a public purpose even other

than Union or State purpose may be covered by Item 36 in List II. Now however, after the amendment of the schedule the nice distinction between the Union and State purposes in Lists I and II has no meaning, because now only the relevant item is item 42 in the Concurrent List. Therefore, the State can requisition property for any purpose provided it is a public purpose. According to Aiyar, J., the State is interested in the proper functioning of the consular staff who, although primarily interested in developing the trade and commerce of the country which they represent, also help the trade and commerce of the State. Applying that principle to the facts of this case, a requisition for the purpose of finding a shop to facilitate the trade and commerce between the State of Assam and the State of West Bengal is obviously a public purpose in which the State of West Bengal is also interested. The State of Assam, in opening a shop in this State, where the produce of cottage industries of Assam will be readily available, is not only helping to develop the trade and commerce of Assam, but is also helping to develop commercial transactions in which the State of West Bengal, and the people of West Bengal are equally interested. It is well known that the products of the cottage industries of Assam are in great demand in this State, and the existence of a shop where such materials or goods are readily available, will certainly benefit the people of West Bengal and will be an incentive to traders and industrialists in West Bengal to expand their own trade with Assam. Looked at from this point of view, it certainly seems that the purpose is a public purpose and well within the competence of the State of West Bengal so far as the requisition order is concerned.

4. The second point is that of service. The rules regarding service of such order have been set out by me in *Gobardhan Jayaswal v. The First Land Acquisition Collector* (2) C.W.N. 158 at 161. Like any other service, there should be an effort in the first instance to find out the person on whom the order is to be served. Here, the person in whose name the requisition order was issued bears a firm name. It appears that it is a proprietary firm. The order and/or the notice was accepted by an employee of the firm, and there is no allegation anywhere that the employee was not duly authorised to accept service. Indeed, he agreed to accept it and the petitioner actually received the notice and put forward objections. It is only now that an objection is advanced to the effect that the service was "not in accordance with law". Even in the affidavit before me, the objection goes no further. Nothing has been said as to the want of authority of Shri Pall who accepted service on behalf of the firm. In my opinion, this objection is belated and of no substance. A requisition of the property of a citizen is certainly a serious matter and the rules must perforce be observed. But a Court of equity is entitled to look into whole facts and will not declare a service to be illegal on subtle points, and particularly when the notice has reached the person concerned, who in fact preferred objections and whose objections were duly heard. In my opinion, this point is of no substance. The result is that both the points of law formulated fail and I see no reason to interfere. The application is dismissed. The Rule is discharged. Interim orders, if any, are vacated. There will

be no order as to costs. The operation of this order is stayed for a period of six weeks to enable the petitioner to file an appeal but any further order must be obtained from the Court of Appeal if an appeal is preferred.