
(1988) 04 CAL CK 0034
In the Calcutta High Court
Case No : Matter No. 1370 of 1986

Gour Roychowdhury

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-04-1988

Acts Referred:

West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 10B, 3

Citation : AIR 1989 Cal 225 : (1989) 1 CALLT 120

Hon'ble Judges : Prabir Kumar Majumdar, J

Bench : Single Bench

Advocate : Jayanta Kumar Mitra, Ranjit Mitra and Tapan Kumar Dey, for the Appellant; Prabir Kumar Roychowdhury, for the Respondent

Judgement

Prabir Kumar Majumdar, J.—This is an application under Article 226 of the Constitution challenging an order of requisition of first floor flat in premises No. 12, Abdul Hamid Street, Calcutta (formerly known as British Indian Street) made under West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947. The said first floor flat of the said premises No. 12, Abdul Hamid Street, Calcutta was requisitioned as early as 1961 for the purpose of accommodation of a Government servant employed by the State of West Bengal.

2. The petitioner is the Administrator pendente lite in a Testamentary Suit No. 24 of 1980 in respect of estate of one Phulmoni Dasi since deceased. The said estate of said Phulmoni Dasi included, inter alia, the property being the said premises No. 12, Abdul Hamid Street, Calcutta (hereinafter referred to as the said premises). By virtue of the said appointment of the petitioner as Administrator, the petitioner claims to be the custodia legis of the estate of the deceased abovenamed including the said premises. The petitioner has come to know from the records available to the petitioner that the first floor flat in the said premises was requisitioned under the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 (hereinafter referred to as the said Act) under

the provision of Section 3 of the said Act. The petitioner has also come to know from the records available to the petitioner that the said first floor flat in the said premises was allotted to one Mr. Animesh Basu Majumdar who was working as an Officer Finance (Budget) Department, Government of West Bengal. According to the petitioner the said Animesh Basu Majumdar had left the flat and one Prabhat Kumar Ghosh the respondent 4 is now occupying the flat which has been allotted to him. The respondent 4 is also a Government employee.

3. The petitioner challenges the said requisition on the ground that the said requisition being under a temporary Act cannot continue for an indefinite period. It is the contention of the petitioner that if the Government intends to take over the property for an indefinite period of time, the Government cannot exercise the power of requisition for achieving such object under a temporary Act being the said Act, and such requisition, according to the petitioner, being for an indefinite period amounts to an acquisition under a cover of a temporary Act and not following the procedure for acquiring a property under the relevant law. It is not in dispute that the said requisition was made in or about 1962 and has been continuing till now. The said requisition order is also challenged by the petitioner on the ground that the original requisition order having been made in respect of a particular person, the same ceased to have any effect when such person for whom the flat was requisitioned vacated the said flat and the public purpose for which such requisition was made had also come to an end after the said flat had been vacated by the person for whom such flat had been requisitioned. It is also contended by the petitioner that the said requisition order made in 1962 cannot continue for the purpose of accommodating another officer. The petitioner has also contended that the requisition is made for the purpose of accommodating an officer who could discharge his official duties by residing in a flat which would be near to his place of working, but according to the petitioner, that is not the case here as the present occupant the respondent 4 is now employed at Salimpur Employment Exchange which is about 8 and 9 K.M. away from the requisitioned flat in which he resides. This, according to the petitioner, cannot be a public purpose for accommodating a Government servant considering the occupant's need of the present space for smooth discharge of his Government duties.

4. The respondent 2 the First Land Acquisition Collector has filed an affidavit which is also an affidavit on behalf of the respondents 1 and 3. The case of the respondent is that at the time of allotment of the said requisitioned flat to the respondent 4, the respondent 4 was working in employment exchange at 5, Council House Street, which was very close to the said premises. It is also the case of this respondent that the said requisition was made for a public purpose i.e., to provide the accommodation for a Government servant and the authority after being satisfied about his need allotted the present space for being utilised as a residence of the respondent 4. It is the contention of the respondent State that the said requisition order was made for the purpose of providing residence to the Government employee and such is the public purpose for which the said flat was requisitioned. The respondent State also contends that the public

purpose does not come to an end when the original allottee vacates the flat and the flat is being re-allotted to another Government employee for the purpose of the residence.

5. The learned Counsel appearing for the petitioner has mainly challenged the order of requisition on the ground that the requisition made under the Act being of a temporary nature cannot continue for an indefinite period and in this case such requisition has been continuing since 1962 till date. The learned Counsel for the petitioner submits that such requisition really amounts to an acquisition although not acquired under the provision of relevant law. The learned counsel has also submitted that the act of the respondents 1, 2 or 3 in continuing the order of requisition for a long period of 24 years is a fraud upon the powers conferred on them under such temporary Act. It is also submitted by the learned Counsel that the rent for the said flat is Rs. 75/- per month and the respondents are enjoying the use of such flat at such low rate in the very busy commercial area of the city under a cover of requisition made under the said Act the very caption of which suggests that the requisition is of a temporary nature.

6. The learned Counsel has cited a few Supreme Court decisions in support of his contention that the requisition order cannot continue for an indefinite period made under a temporary Act and the respondents are bound to de-requisition the property or to acquire the same under the relevant Acquisition Act. The learned Counsel has cited a case of H.D. Vora Vs. State of Maharashtra and Others, . The other Supreme Court decision cited by the learned Counsel for the petitioner is the decision in the case of Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, . The first decision of the Supreme Court is under Bombay Land Requisition Act, 1948 and the second one is under West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947.

7. The learned Counsel or the petitioner has also assailed the requisition order by contending that the public purpose alleged to have been for this requisition was to accommodate a Government employee one Animesh Basu Majumdar and when he left such flat the public purpose for which such requisition was made, namely, to accommodate the particular Government employee, came to an end and the respondent authorities are bound to de-requisition the property. In support of that the learned Counsel has relied on the decisions reported in Chayarani Mukherjee Vs. Assistant Secretary to the Government of W. Bengal, Land and Land Revenue Dept. Requisition Branch and Others, and State of West Bengal and Others Vs. Pulin Krishna Roy Estate (P) Ltd. and Another, .

8. The learned Counsel for the respondent has submitted that it is true that the requisition order has been made in 1962 and has been continuing till now. It has been submitted by the learned Counsel for the State that the said temporary Act has been still in force and the Government is continuing the requisition already in force under this Act, It has also been contended by the learned Counsel for the State that the rent may be enhanced subject to 10% under the provision of the Act and if applied for, the respondent authorities will favourably consider the

same. The learned Counsel for the State has also referred to a recent amendment being West Bengal Act XXVII of 1986, By, the said Amending Act a new Section being 10A has been incorporated to the said Act, which, inter alia, provides that an order under Sub-section (1) of Section 3, which provides for power to requisition, shall remain valid and operative and the person in occupation of such premises requisitioned under the order shall continue to remain in possession thereof, so long as the public purpose exists. The learned Counsel for the respondent State has also pointed out that in terms of the said Amendment Act another Section being 10B has also been inserted in the said Act and S. 10B provides that the State Government shall release from requisition any property requisitioned or deemed to be requisitioned under this Act on or before the expiry of a period of 25 years from the date of such requisition provided that the benefit of this section shall not be available until after the expiry of the period of 5 years from the date of coming into force of the West Bengal Premises Requisition and Control (Temporary Provision) Second Amendment Act, 1986. It is, therefore, the submission of the learned Counsel for the State that in the facts and circumstances of the case the Government may derequisition any premises requisitioned under the Act, but the requisition made under the Act cannot be challenged if continuing for an indefinite period as the Government in terms of the said Amendment Act is entitled to continue such requisition until after the expiry of the period of 5 years from the date of coming into force of the said Amendment Act. The said Amendment Act received the assent of the President on 31st Mar., 1987. The learned Counsel for the State has, however, submitted that the Government is considering the case for de-requisitioning of the said flat and the said flat would be derequisitioned as soon as the Government would be in a position to offer an alternative accommodation to the present occupant of the flat who is a Government employee.

9. I will deal with the first point raised by the learned Counsel on behalf of the petitioner, namely, the requisition under a temporary Act for an indefinite period amounts to acquisition although not acquired by any relevant law of acquisition, It has been contended on behalf of the petitioner that the Government cannot under the guise of requisition continue for an indefinite period of time and in substance acquire the property because that would be a fraud on the power conferred on the Government. It has also been contended on behalf of the petitioner that if the Government allows the requisition order to continue for an indefinite time the Government must either de-requisition the property as the requisition has outlived its purpose, or to acquire the property under the provisions of the relevant law and pay appropriate compensation therefore.

10. The learned Counsel for the petitioner has also contended that the public purpose cannot be of the perennial nature or a permanent character and if there is a public purpose of permanent character, then the proper course left to the Government is to acquire the property, and pay compensation therefore. It has also been contended on behalf of the petitioner that the object of this very Act under which the requisition order in the present case has been made is transitory

in character and for the purpose of fulfilling some immediate public purpose the Act empowers the authority concerned to requisition the property, but this Act does not empower the authority concerned to continue such requisition order for an indefinite period and in this case it is more than 20 years and the continuance of such requisition would be contrary to the very purpose of the said Act.

11. It has, however, been contended by and on behalf of the respondent State that the requisition although being for a considerable time can be continued for a period of 25 years or until the expiry of 5 years from the time when the said Amendment Act came into force and the State Government is not bound to de-requisition on the ground that the requisition order has continued for a long period of time nor the Government is bound to acquire the property on the ground that the requisition order under the temporary Act is continuing for a long period of time.

12. It is true that the requisition order made under the said Act can continue for a period of 25 years or until the expiry of the period of 5 years from the date when the said Amendment Act came into force. But, in my opinion, that should not give a right to the authority concerned to continue the requisition order made under a temporary Act for an indefinite period of time and also on a meagre rent under a temporary Act which Act was enacted for meeting a temporary public purpose. The legislature did not contemplate empowering authority concerned to requisition the premises under a temporary Act and to continue the same for an indefinite period of time. I have already said that this Act was enacted for the purpose of meeting some immediate public purpose and it cannot be said that this Act empowered the authority to continue the requisition for meeting some immediate public purpose for an indefinite period of time, and that, in my opinion, would be against the very object of the temporary Act. In my opinion, the effect of this requisition order is to keep the premises on requisition for an indefinite period which is not the object of such a temporary Act. It is not in dispute that the authority concerned has got power to acquire the property under the Land Acquisition Act at the time of the issuance of the order of the requisition and such power is still there. It may be said that the authority concerned here resorted to the requisition with the intention of permanently acquiring the property in an indirect manner and that would be against the very object of the Act. I am further of the view that the said Act being of a temporary nature the requisition thereunder can be for a temporary period and for a temporary purpose, but if such requisition is allowed to continue for an indefinite period of time then that would be contrary to the object of the said Act and that should not be allowed to continue any further. It is also not in dispute that if this property is acquired now, the owner of the property would fetch a compensation at the present market value but the Government under the guise of a temporary enactment should not be allowed to continue the requisition order made in as early as 1962 by paying a meagre compensation at the rate of Rs. 75/- per month. It is, however, contended on behalf of the State that there is a provision for increase of the rent by 10%. Even then it would be a very meagre

enhancement. Nobody would, however, dispute that the said Act was enacted to remain in force for a short period and the very caption of the said Act suggests that. But the said Act, however, has been renewed from time to time and is still in force, and by resorting to this process, a requisition has been kept alive for an indefinite period of time.

13. It is, however, not in dispute that the requisition, order was made initially for a public purpose and accommodation of Government employees in a requisition, fiat is a public purpose.

14. The Supreme Court in the case of *Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others*, has observed as follows (at P. 1713) :

"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 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 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."

The Supreme Court in another decision reported in *H.D. Vora Vs. State of Maharashtra and Others*, has also observed that (at p. 870) :

"If the public purpose for which the premises are required is of a perennial or 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 for acquisition, the object of taking 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."

15. In the instant case, admittedly the requisition order has been allowed to

continue since 1962 and the first floor flat of the premises is still under requisition. It is also not in dispute that the public purpose for which such requisition is made, according to the State, is still continuing and thereby giving a character of a permanent nature. It is also not in dispute that the Government has power to acquire the premises for such public purpose under the Land Acquisition Act, 1894. Following the observation of the Supreme Court as set out above, I am inclined to hold that the Government should not be allowed to continue that requisition for an indefinite time when there is a specific power of acquisition under the law and when admittedly the purpose for which such requisition was made has been continuing till now.

16. Therefore, in my view, this requisition order should not be allowed to continue further and the Government should either de-requisition the premises as prayed for, or acquire the premises under the Land Acquisition Act, 1894 or under any other relevant law.

17. Considering the facts and circumstances of this case, I dispose of this writ application by the following directions. The respondent No. 1 is directed to take steps to acquire the premises in question or part thereof under the Land Acquisition Act, 1894 or under any other relevant law, if the Government decide to acquire the premises. If the Government desire to acquire the property the acquisition proceedings should be initiated and concluded within a period of two years. But such initiation of acquisition proceedings, in the event the Government decide to acquire, should be initiated within a period of 3 months from date. If the Government do not decide to acquire the premises, or fail to take steps for initiation of the acquisition proceedings within a period of 3 months from date, then the Government should de-requisition the premises within a period of 6 months from date and make over the possession of the requisitioned premises to the petitioner forthwith.

18. This writ application is thus disposed of as indicated above. There will be no order as to costs.