

(1985) 07 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No's. 102 and 922 of 1985

Jagannath Ganeshram Agrawal and Another, etc.

APPELLANT

Vs

State of Maharashtra and Another, etc.

RESPONDENT

Date of Decision : 31-07-1985

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 6

Citation : AIR 1986 Bom 241 : (1986) 1 BomCR 179 : (1986) MhLj 87

Hon'ble Judges : K. Madhava Reddy, C.J.; S.M. Daud, J

Bench : Division Bench

Advocate : R.M. Agrawal and Rajendra Sawant, for the Appellant; A.M. Salik and W.N. Yande, Addl. Govt. Pleaders, for the Respondent

Judgement

Madhava Reddy, C.J.—A common question of law that arises in these two writ petitions is, whether the requisition of certain buildings made under the Bombay Land Requisition Act, (hereinafter referred to as "the Act") of 1984, more than twenty-five years ago can validly be continued? The petitioner in writ petition in writ petition No. 102 of 1985 is the owner of Block No. 11, Ganesh Building at 122 Navi Peth, Jalgaon. It was requisitioned on 18th April 1953 for the allotment to the employees of the Maharashtra State. Ever since the date of requisition it has been continuously allotted to different officers. The last such order of the allotment was made on 16th Oct. 1984 and the order of requisition was continued. Likewise the petitioner in Writ Petition No. 922 of 1985 is the owner of the building i.e. Alai Bungalow bearing House No. 1369, Kanheri Wadi, near Shivaji Garden, Nasik, which formed the subject-matter of the requisition first made on 27th June 1949. It has been allotted continuously up to this day to several officers. The petitioner herein purchased this bungalow on 19th June 1982 and made a representation to the government to derequisition it for his personal occupation since he was suffering from Asthama. That representation was rejected on 11th June 1984. Both the buildings thus continue to be under requisition from 1953 and 1949 respectively.

2. The point that arises for our consideration is no longer *res integra*. In the case of *H.D. Vora Vs. State of Maharashtra and Others*, considering the validity of the requisition made under the Bombay Land Requisition Act, 1948, and which continued for over 25 years, the Supreme Court confirming the order of the High Court quashing the Requisition Order held that :

"..... the concept of requisition involves merely taking of "domain or control over property without acquiring rights or 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, 1894.

.....

The Government (Karnataka) cannot under the guise of requisition continue 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.

.....

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 require the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely."

the facts of this case are identical to the facts in the aforementioned Supreme Court case.

3. Shri Salik the learned Government Pleader appearing for the State, however, contends placing reliance on the case of *Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others*, that the Requisition is not invalid. He relies on the following observations of the Supreme Court :-

"That the purpose of requisitioning was indisputable a public purpose. the premises has remained under requisition for over 25 years and the purpose of

having the premises in question was of a permanent and perennial nature. But that by itself without anything more would not enable the Court to draw the inference that the exercise of the power was bad initially, nor would the continuance of the requisition become mala fide or colorable by mere lapse of time."

He submits that in view of what the Supreme Court said in this latter case the requisition order cannot be quashed. Alternatively he submits that in the event of the requisition being held inconsistent the government may be granted three years" time to acquire the same. In, our view, the latter decision of the Supreme Court does not lay down any principle different from the one laid down in the former case (H.D. Vora's case). In fact, in para 12 of the judgment Mukharhi, J. speaking for the Court held that :-

"the principal argument advanced was that though the order of requisition was good when made, it ceased to be valid and effective, because it could not legitimately be continued for an indefinite length of time. The order of requisition in that case (Vora's case) had been allowed to continue for a period of 30 years and that is why this Court said that the order or requisition had ceased to be valid and effective and the premises must therefore be derequisitioned. It is no doubt true that some observations have been made in the judgment in that case with regard to the permanent or temporary character of the purpose for which an order of requisition could be made and to that extent what is said in that judgment may have to be slightly modified, but the principal decision in that case was that an order of requisition is by its very nature temporary in character and cannot be allowed to continue for an indefinite length of time because then it would be tantamount to an order of acquisition and would amount to a fraud on the exercise of the power of requisition, especially where there is no impediment in making the acquisition and no effort was made to acquire, must be regarded as a correct enunciation of the law which does not in any way conflict with what was laid down in the case of Collector of Akola and Others Vs. Ramchandra and Others, ".

4. Far from differing from the earlier view and far from laying down a different principal, in para 22 the Supreme Court categorically observed :-

"In view of the decision in the case of H.D. Vora Vs. State of Maharashtra and Others, in the light of the decision of this court rendered by a Bench of three Judges in Collector of Akola and Others Vs. Ramchandra and Others, and bearing in mind the distinction between "requisition" and "acquisition" as also the provisions of West Bengal amended S. 49(1) the correct position in law would be that it will not be correct to say that in no case can an order or requisition of r 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 fulfillment of the conditions of S. 49(1) of the Land Acquisition Act (as amended by the West Bengal Act) to the extent

applicable, if the Government chooses not to exercise that power to achieve its purpose, then that will be bad not because of 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 acquired and also the power to requisition and the purpose is of a 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 colorable exercise of the power not because the government lacks the power of requisition, but because the government does not use the power of acquisition which will protect the rights and interests of the parties better."

Thus the latter decision emphasis's that if requisition is of a permanent nature the property validly requisitioned initially should not be continued under requisition but the government should proceed to acquire the same. In this view of the matter the government should consider taking up and completing acquisition proceedings. To our mind, what emerges from a reading of the two judgments is that Requisition can be resorted to for a public purpose which is of a temporary nature. On the date of the requisition the authority may feel that the need is temporary and there is no need to retain the property requisitioned permanently. The requisition would not be bad. Merely because the property so requisitioned is continued under requisition for any length of time, the initial order of requisition by itself does not become invalid, but the long period during which the requisition continues would establish that the requisition is no longer for a temporary purpose. That requisition has now become one to satisfy a permanent need. For satisfying such a need the property has to be acquired and requisition cannot be continued. But when the power to requisition the property as well as the power to acquire the property is vested in the Government and where the need to retain the property under the possession of the requisitioning authority continues for an inordinately long and indefinite period that authority may be given an opportunity to acquire the property. Quashing the requisition and putting the property in possession of the owner and again permitting the requisitioning authority to exercise its power of acquisition would not advance the cause of justice. The Court in exercising the jurisdiction under Art. 226 of the Constitution taking all the facts into consideration would be justified in quashing the requisitioning order but allowing the authorities if they so choose to acquire the property within a reasonable time and staying delivery of possession to the owner. The decision of the Supreme Court in *Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others*, relied upon by Mr. Salik, learned Additional Government Pleader, proceeds upon the goosing that the Land Acquisition Act as applicable to the West Bengal State stands amended by the West Bengal Act 32 of 1955 under which the land acquisitioning authorities are empowered to acquire a part of the building. There is no such provision under the Land Acquisition Act as applicable to the State of Maharashtra. Therefore, the requisition made under the Bombay Land Requisition Act, 1948, cannot be quashed when there is a necessity to retain the building requisitioned for a

further period of time. The contention is that in Maharashtra neither under the Bombay Land Requisition Act nor under the Land Acquisition Act as applicable to the State of Maharashtra there is any provision to acquire a part of the building. We are unable to agree with this contention. Of course, under the Bombay Land Requisition Act there is no provision for acquiring the land but under the Land Acquisition Act the definition of the word "land" in S. 3(a) of that Act includes things attached to the land and thus takes within its ambit buildings as well. When a part of the land can be acquired, a part of the building also can be acquired. That a part of the building could be acquired is further clear by S. 49 of the Land Acquisition Act, 1894, itself which reads as follows :-

"49.(i) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired :

Provided that the owner may, at any time before the Collector has made his award under S. 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under S. 23, sub-sec. (1), thirdly by a person interested, on account of the severing of the land to be acquired from his other land, the (appropriate government) is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings u/s 6 to 10, both inclusive, shall be necessary, but the Collector shall without delay furnish a copy of the order of the (appropriate Government) to the person interested, and shall thereafter proceed to make his award u/s 11".

Section 49(i) postulates that the land acquisition authority can acquire a part of the building that the only embargo is that when it initiates proceedings to acquire a part of the building, the owner of that building may insist upon the entire building being acquired. Under sub-s. (2) such owner is given the further option to go back upon his instance under sub-sec. (i) to acquire the entire building and allow the authorities to acquire a part of the building. S. 49 far from declaring

that a part of the building cannot be acquired, clearly postulates that such power vests in the land acquisition authority. There is, therefore no impediment in the Government acquiring block No. 10 or any portion of the said building. In view of shortage of accommodation at Jalgaon and in many towns in Maharashtra, judicial notice could be taken of the fact that buildings requisitioned for public purpose to accommodate public servants posted at such places for discharging their official duties is a continuing necessity. With the present allocation of funds for construction of buildings, it is doubtful whether this need would ever be fully met in the foreseeable future in the State of Maharashtra. the need to requisition accommodation is a continuing need. But then, if the need is perpetual or of a permanent character, even as laid down in both the decisions of the Supreme Court referred to above, power to requisition cannot be resorted to. The authorities must make up their mind to acquire the building or a portion of the building, as the case may be. In the case of Collector of Akola and Others Vs. Ramchandra and Others, under the amended S. 49(1) of the West Bengal Premises Requisition and Control (Temporary Provision) Act, the Court granted three years" time to the Government to acquire the property as the government wanted that property. So too in this case, we find that the government undoubtedly requisitioned the property for a valid public purpose to wit, to accommodate the employees of the State of Maharashtra. There is no gainsaying that acute dearth of accommodation continues to persist. Providing accommodation for the officers is urgently necessary in the public interest. As the initial requisition of the premises was in public interest, that order is unassailable inasmuch as that need continued to exist all these 30 years and even now. But nothing apparently has been done to meet the need. The requirement of the government appears to be of a permanent character, and consequently the requisition which as observed by the Supreme Court, can only be to satisfy a temporary need cannot be resorted to or having been resorted to continue indefinitely. That practically amounts to acquiring the property without following the procedure laid down under the Land Acquisition Act and paying the full market value of the property. However under the Land Acquisition Act the Government undoubtedly has power to acquire. As the need appears to be of a permanent nature, while the requisition cannot be continued for any length of time because the Government would be very well within its right to acquire it, any order quashing the requisition would not be in the interests of justice provided the government considers the question of acquiring this property within a reasonable time. In the circumstances of the present case, we think, the government should be able to make up its mind in this regard within a period of 18 months from today, Already the petitioners have been deprived of this property for the last almost 30 years and these writ petitions have been pending now for over 10 months. We are, therefore, not inclined to accede to the submission of the learned Government Pleader that further three years time should be given to the government in these petitions, as was done by the Supreme Court in the case of Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, for deciding upon acquiring the property.

5. In the result, the order of requisition is quashed but the government is allowed 18 months" time to continue to be in occupation of the premises and in the meanwhile make up its mind to acquire it to complete the acquisition of the premises expeditiously failing which the government shall hand over vacant possession of premises to the petitioners at the end of the period of 18 months from today. Rule made absolute in the above terms but in the circumstances of the case, with no order as to costs.

6. Rule made absolute.