
(2009) 03 JH CK 0080
In the Jharkhand High Court

Jayant Karnad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 6, 7

Citation : AIR 2009 Jhar 144

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Heard the parties.

2. A piece of land measuring an area of 4.46 acres, bearing M.S plot No. 557 of Ward No. 7 (old), situated at Morhabadi, Ranchi owned and possessed by one B.M. Lakshman Rao, maternal grandfather of the petitioner situated contiguous to the land requisitioned by the Army was forcibly occupied by the authorities of the Army in the year 1943 but the occupation of the land was admitted by the Army only with effect from 1.4.1946, that too without there being any settlement of compensation. As the property was occupied forcibly by the personnel of the Army, the said B.M. Lakshman Rao went on agitating the matter. Ultimately Army personnel agreed in the year 1957 to grant recurring compensation @ Rs. 446/- per annum from 1.4.1946 to 30.3.1960. In course of time, when the value of the land increased considerably, the said B.M. Lakshman Rao took up the matter for enhancing recurring compensation to the extent of Rs. 3600/- per annum which was enhanced to Rs. 3600/- with effect from 1.4.1963. Before said B.M. Lakshman Rao died in the year 1966 he had executed a will in favour of his son B.M. Mukund Rao, who brought a case of Probate, bearing case No. 67 of 1969 in the court of Judicial Commissioner, Chotanagpur, Ranchi, who granted probate in favour of said B.M. Mukund Rao. Thereupon compensation which was due from 1963 to September, 1970 was paid on 3.9.1970. However, in the year 1974, the said B.M. Mukund Rao filed an application making request to release the property

in his favour. When nothing was done in the matter, an application was filed by him for enhancing the compensation to the extent of Rs. 12,000/- per annum and also made request to release the land. But respondent No. 2 did not agree for enhancement of compensation though recommendation had been made for the same. Thereafter compensation was enhanced @ Rs. 5000/- per annum with effect from 1.2.1978 but no decision was taken by the authority regarding release of the property in favour of him, as a result of which, B.M. Mukund Rao on his superannuation started living at Pune. When the wife of B.M. Mukund Rao pre-deceased her husband issueless, B.M. Mukund Rao started living at Jamshedpur with his sister Malati Rao Karnad, who also died on 14.1.1991. Thereafter said B.M. Mukund Rao started living with the petitioner at Jamshedpur and at some times at Pune, who ultimately died on 4.9.1998 without leaving any will. Under this situation, petitioner being sole successor to the estate of the deceased, asked for payment of arrears of compensation which had fallen due to be paid from the year 1998 and also made prayer before the authorities for release of the property but nobody made any response and, therefore, this writ application has been filed with a prayer to direct the respondent to pay arrears of recurring compensation due since 1998 @ Rs. 5000/- per annum and also for release of the property in terms of Section 6(1A) of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as "the Act").

3. From the counter affidavit filed on behalf of the respondents it appears that it has been admitted that the land in question was occupied on 1.4.1946 as the same was contiguous to other requisitioned property. Still it has been pleaded that since the property had been occupied by Army at the time when the Defence of India Rule, 1939 was in force and as such, the petitioner is not entitled to any relief in terms of the provisions of Requisitioning and Acquisition of Immovable Property Act, 1952. The stand taken on behalf of the respondents seems to be baseless. It has already been noticed that respondents have admitted that the land in question was occupied by Army and in that view of the matter, the land in question would certainly be taken to have been requisitioned in terms of definition of "requisition" as given in Rule 2(11) of the Defence of India Rule, 1939 and that requisition, according to the respondents, had been made in the year 1946 though, according to the case of the petitioner, it was requisitioned in the year 1943 and as such, it remained in possession for about 61 years according to respondents and now the petitioner in terms of Section 6(1-A)(a) of the said Act has filed this application for release of the property.

4. The said provision reads as follows:

6. "Release from requisitioning - (1) The Central Government may at any time release from requisition any property requisitioned under this Act and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force : Provided that where the purposes for which any requisitioned property was being used cease to exist, the Central

Government shall, unless the property is acquired u/s 7, release that property, as soon as may be, from requisition.

(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 (seventeen years) from such commencement:

5. From bare perusal of the said provision it would appear that even the property requisitioned much before the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970 would be deemed to have been requisitioned under the said Act and as such, even the property requisitioned under the Defence of India Act, 1939 would be encompassed within the provisions as contained in Section 6(1-A)(a) of the Act.

6. In order to have a clear picture, one needs to have history of the legislations relating to requisition of property for the use of the Army. During the war, the lands and buildings were requisitioned under the Defence of India Act, 1939 and the Rules made thereunder and such property continued to be the subject to requisition under the Requisitioned Land (Continuance of Power) Act, 1947. That Act was due to expire on 31.3.1952 and as Government of India had no power to requisition any property outside Delhi, necessity was felt to take measure to ensure the continuance of the requisition of the premises already requisitioned under the Defence of India rule and continued to be the subject to requisition under the Requisitioned Land (Continuance of Power) Act, 1947 also to secure power for the Central Government to make fresh requisition in order to meet its demand, the Requisitioning the Acquisition of Immovable Property Act, 1952 was enacted and thereby the Act of 1947 got repealed. The said Act of 1952 was initially to operate for a period of 6 years but its duration was extended from time to time. Then came the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970 which made the Requisitioning Act of permanent nature but restricted the period for which requisitioned property could be retained under requisition to 3 years from the commencement of the aforesaid Amendment Act in the case of properties requisitioned before such commencement. Thus, the properties requisitioned before the commencement of the said Amendment Act could be retained under the requisition upto March 10, 1973. Even after expiry of March 10, 1973, large number of properties could not be released as there was still necessity of those properties and, therefore, it was decided to have a continued requisition for a longer period by amending Act from time to time. Lastly, the Act was amended by the Act 20 of 1985 whereby all the properties which were requisitioned prior to the amendment of requisitioning Act in 1970 were required to be released from requisition by 10th of March, 1985.

7. Thus, it is evidently clear that even the properties requisitioned under the

provision of Defence of India Act read with Rules will be subject to de-requisition in terms of the provisions as contained in Section 6(1-A)(a) of the Requisitioning and Acquisition Act, 1952. Therefore, under the said provision the land in question should have been released by 10th of March, 1985, but the Army has retained its possession till date which is certainly in gross violation of the law.

8. Accordingly, the petitioner is entitled to have the property released in his favour. Consequently, respondents are hereby directed to release the land in question in favour of the petitioner without any further delay, preferably within a period of two months from the date of receipt/production of a copy of this order. With the aforesaid direction/observation, this writ application is allowed.