

(1991) 07 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 599 of 1988

Kant Kumari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1991) 44 DLT 694

Hon'ble Judges : D.K. Jain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : M.L.Bhargav, S.K. Tiwari, Y.R. Sharma and Lily Thomas, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) This petition has been filed under Article 226 of the Constitution of India by one of the co-owners of Bungalow No. 5, Sikhadera Road, New Delhi wherein it is, inter alia, contended that the vacant physical possession of the said Bungalow should be handed over to the co-owners inasmuch as the act under which the said Bungalow was requisitioned has now ceased to be in operation.

(2) Briefly stated the facts are that the aforesaid Bungalow was owned by late Sir Hoti Sagar. The property was on perpetual lease and the land measured about 26 acres on which super structure had been erected. After the death of Sir Moti Sagar, the property was inherited by his son Seth Prem Sagar. It is further averred in the writ petition, and not denied by the Union of India, that after the death of Prem Sagar the said property devolved on his widow, namely, Smt. Kant Kumari, the petitioner and his two sons Seth Shanti Sagar and Vinod Sagar. Both Shanti Sagar and Vinod Sagar have also expired and their shares have devolved on Smt. Prem Kumari, respondent No. 4 and Smt. Madan Lata, respondent No. 5.

(3) Vide orders dated 21st August, 1947 the said property was requisitioned

under the provisions of Section 3 of the Delhi Premises (Requisition and Eviction) Ordinance, 1947. This property was requisitioned because it was required for a public purpose, the public purpose being that the property was to be handed over to respondent No. 6, namely, The Lady Irwin College, for its use. The possession of the property was taken over and subsequently handed over to respondent No. 6.

(4) The Delhi Premises (Requisition and Eviction) Ordinance, 1947, was superseded and replaced by the Requisition and Acquisition Act, 1952 (hereinafter referred to as the said Act). The requisition, which was effected in 1947 by the aforesaid order, thereafter continued under the provisions of Act of 1952. This Act of 1952 also provided that the requisition was for the period specified therein.

(5) The period for which the property could be requisitioned was specified in Section 4 of the said Act. In 1970 sub-Section 1A was inserted in Section 6 which provided that the property which had been requisitioned shall be released after the period of 5 years of 1970. Subsequently this period of 5 years specified in Section 6 (IA) of the Act was substituted by the words 10 years by the amendment in 1975. This meant that the requisition of the property in question would continue till 1980. In 1980, however, the Act was again amended and for the words 10 years in sub-Section 1a, words 15 years was substituted. Thereafter in 1985, once again, the amendment was affected and the words 17 years was substituted in place of 15 years. The effect of the aforesaid legislation again was that the property which had been requisitioned could only be retained as requisitioned property, for a period of 17 years after 1970, when sub-Section I A was inserted in Section 6 of the said Act.

(6) The claim of the petitioner is that as the requisition of the property had come to an end in March, 1987 by efflux of time then as per the provisions of the Act the respondent should deliver vacant possession of the premises to the owners of the said property. A legal notice to this effect was sent on 15th May, 1987 to which no reply was received. Thereafter reminders were sent on 21st August, 1987 and 23rd November, 1987, but to no effect. It, however, appears that being conscious of the fact that the period of requisition had come to an end, the Estate Office took proceedings against the College, respondent No 6 to obtain vacant possession of the building. Eviction order, under the provisions of the Public Premises Eviction of Unauthorised Occupants Act was passed against the College authorities on 22nd. September, 1986. The College was directed to hand over the vacant possession of the building within 15 days. Appeal against the said order was filed and the eviction was quashed presumably because the time for requisition had been extended to 1987 by virtue of amendment of 1985.

(7) The Estate Office once again initiated proceedings for eviction of respondent No. 6 and an eviction order was passed on 22nd August. 1990. Against this an appeal had been filed and the same is pending before the appellate authority.

(8) It is contended by the learned counsel for the Union of India that it is taking action under the provisions of the Public Premises Eviction of Unauthorized Occupants Act to obtain vacant possession of the premises. In effect it is conceded that after the requisition has come to an end the property in question is liable to be handed over to the petitioner and the other co-owners. We may also note that according to the respondents rent of the property in question was originally fixed at Rs. 593.75 per month which has been increased from time to time and the rent now payable was Rs. 11,929.66. This rent is being paid by respondent-College to the petitioner as well as respondents 4 and 5. It means, Therefore, that the department as well as respondent No. 6 have acknowledged the right of these persons to receive the rent. We, Therefore, do not find any merit in the contention of Ms. Lily Thomas that the petitioner has to establish that she is entitled , receive possession of the said Bungalow. It has been averred in the writ petition, and paragraph I in particular, that property in question was owned by Sir Moti Sagar and after his death and the death of his two sons the property has devolved on the petitioner and respondents 4 and 5. The averment to this effect which has been made in paras 1 and 2 of the writ petition has been admitted by the Estate Officer in his affidavit. Therefore, there is no manner of doubt that according to the department the co-owners of the property in question are the petitioner and respondents 4 and 5 as well as one Kumari Arti who is the daughter of respondent No. 5; Smt. Madan Lata.

(9) The period of requisition having come to an end the provisions of Section 6 come into operation. According to sub-Section 1A of Section 6 the Central Government is required to release the property from requisition on the expiry of the period of 17 years from the commencement of the amended Act, 1970. The language of sub-Section 1A of Section 6 is mandatory. There is a right which is given to the co-owners to get back the possession of the property in question. The only exception to the restoration of the property is if the said property is acquired u/s 7. The said property could, under the provisions of Section 7, have been acquired only during the period of requisition. That period, as already noted, has admittedly expired in 1987. Mr. Tewari informs that no proceedings have been taken for acquisition of the property in question in accordance with the provisions of Section 7 of the Act. This being so, the petitioner and the other co-owners are entitled to get back the possession of the property in question. We may note that a similar. question had arisen before a division bench of this Court in Civil Writ No. 1577 of 1985, Raj Dev Singh and others v. Union of India and the Union of India was directed in that case to hand over possession of the property to the co-owners after the requisition under the said Act had come to an end.

(10) Ms. Thomas informs us that respondent No. 6 is conducting some classes and has Laboratory in the property in question. This being so it would be appropriate if reasonable time is given to respondent No. 6 to vacate the premises in question. We, Therefore, issue a writ of mandamus directing respondents I to 3 and 6 to deliver vacant and peaceful possession of the

property in question to the petitioner and the other co-owners, including respondents 4 and 5 on or before 31st December, 1991. There will be no order as to costs.