

(1951) 08 CAL CK 0022
In the Calcutta High Court
Case No : Civil Rule No. 595 of 1951

Krishna Khandelwal and Another

APPELLANT

Vs

Director of Land Hiring and Disposal Eastern Command and
Others

RESPONDENT

Date of Decision : 17-08-1951

Acts Referred:

Constitution of India, 1950 — Article 13(2), 14, 226, 31, 31(5)
Defence of India Rules, 1939 — Rule 43, 75A
Requisitioned Land (Continuance of Powers) Act, 1947 — Section 3

Citation : AIR 1952 Cal 16 : 56 CWN 306 : (1953) 1 ILR (Cal) 155

Hon'ble Judges : Das, J

Bench : Single Bench

Advocate : Amaresh Chandra Roy and J.M. Bannerjea, for the Appellant; E.R. Meyer, B.L. Pal and Jajneswar Majumdar, for the Respondent

Judgement

Das, J.—This Rule was obtained by the petitioners calling upon the opposite parties to show cause why a writ in the nature of mandamus should not be issued and possession of the premises mentioned in the petition should not be restored to the petitioners or such other or further order should not be made as to this Court may seem fit and proper.

2. The petitioners are two ladies who are resident of No. 3, Ashutosh De Lane in the City of Calcutta. The opposite parties to the Rule are (1) Director of Land, Hirings and Disposal, Eastern Command, (2) Assistant Director of Land, Hirings and Disposal, Eastern Command, (3) State Manager, Government of India States, Calcutta Area, (4) Land Acquisition Collector, Calcutta, and (5) Post Master General, Bengal Circle.

3. The petition was supported by an affidavit of" Chandalal Khandelwal, husband of petitioner No. 2. The counter-affidavit on behalf of the opposite parties was sworn to by opposite party No. 3. The further affidavit on behalf of the petitioners was also sworn to by Chandalal Khandelwal, husband of petitioner No.

2.

4. The premises in respect of which the dispute has arisen is plot No. 352 Southern Avenue Extension. The area of the said plot is 47 cottas out of which 17 cottas is alleged to be covered with buildings. The petitioners are the owners of the said premises. On the 8th of May, 1943, the aforesaid premises were requisitioned under Rule 75 (a) of the Defence of India Rules and the petitioners were directed to place at the disposal of the Additional Land Acquisition Collector the said premises from the 20th of May, 1943. In pursuance of the said requisition possession of the said premises was delivered to the Land Acquisition Collector on the 25th of May, 1943. The premises were derequisitioned on the 3rd of July, 1943. On the 19th of October, 1943, the petitioners submitted a bill claiming compensation to the tune of Rs. 16,555/-.

5. On the 11th of March, 1944, the said premises were again requisitioned under Rule 75 (a) of the Defence of India Rules. The petitioners allege that the premises were placed in the possession of the military authorities and thereafter they are in the possession of the employees of the Postal Department who have opted to West Bengal from East Pakistan. It may be noted that the bill which was submitted by the petitioners claiming Rs. 16,555/- was settled for a sum of Rs. 1200/-. The petitioners allege that this settlement was not a voluntary one. On the 30th of May, 1945, the petitioners entered into an agreement with the Government that the latter would remain in possession of the said premises for the period of the requisition and a sum of Rs. 600/- per month was settled as the compensation to be paid to the petitioners for the occupation by the Government. On the 19th of May, 1949, and thereafter there are demands by the petitioners for payment of adequate compensation. The petitioners allege that these demands were unheeded by the opposite parties. The petitioners, therefore, allege that they have made a demand for justice and that they have accordingly made this application under Article 226(1) of the Constitution.

6. Mr. Roy appearing on behalf of the petitioners has raised several contentions. In the first place, he contends that there should have been a fresh order made under the different legislations extending the operation of the Defence of India Act for requisitioning the premises. He also contends that the requisition of the premises was a mala fide one. He also contends that the impugned legislation, namely, the Requisitioned Land (Continuance of Powers) Act, 1948, (Act XVII (17) of 1947) is void of the Constitution under Article 31 thereof. He also contends that the said Act is void under Article 14 of the Constitution.

7. On behalf of the opposite parties Mr. Meyer has raised certain preliminary objections. In the first place, he contends that the Union of India on whose behalf the requisition was made was a necessary party to the application. In the second place, he contends that assuming that the Union of India is a necessary party, this Court has no jurisdiction under Article 226(1) of the Constitution to issue the writs prayed for. He also contends that the petition should be thrown out on the ground that it is not supported by the affidavit of any of the

petitioners. I shall deal with these preliminary contentions after I have disposed of the contentions raised on behalf of the petitioners.

8. As regards the first contention raised by Mr. Roy, it is not disputed that the powers to requisition the premises for the purposes for which they were requisitioned have been continued by successive legislations passed since the expiry of the Defence of India Act. The Defence of India Act (Act XXXV of 1939) expired six months after the official termination of the War. The power to requisition was, however, preserved by Requisitioned Land (Continuance of Powers) Ordinance, 1946. The power was further continued by the Requisitioned Land (Continuance of Powers) Act, 1948, (Act XVII (17) of 1947). The question which has been urged is that on every occasion that the power was continued by the different Acts, a fresh order of requisition was necessary and in the absence of such orders the opposite parties had no right to continue in possession and their possession must be deemed to be that of trespassers.

9. Section 3 of the Requisitioned Land (Continuance of Powers) Act, 1948, runs as follows:

"Notwithstanding the repeal of the Defence of India Act, 1939, (Act XXXV (35) of 1939) and the rules, made thereunder and the repeal of the Ordinance of 1946 (XIX (19) of 1946), all requisitioned lands shall continue to be subject to requisition until the expiry of this Act and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to be expedient - provided that the appropriate Government may at any time release from requisition any requisitioned land."

The section expressly states that the requisition made shall continue which means, in my opinion, that the old requisition continues in force without any fresh order made under the different Statutes. The operation of the requisition which was made under the Defence of India Rules in 1944 must therefore be deemed to have continuous operation in spite of the fact that the power of requisition was conferred by different legislative enactments and Ordinances from time to time. The first contention raised by Mr. Roy must therefore be overruled.

10. The second contention raised concerns the mala fides of the opposite parties in requisitioning the premises for the second time. It is pointed out that the compensation which was awarded by the opposite parties for the period of the first requisition was unduly low. It was also pointed out that the petitioners have been compelled to agree to a monthly payment of Rs. 600/- as compensation in spite of the fact that the premises in question cover an area of 47 cottas in Southern Avenue Extension and the built up area measures 17 cottas. It is also pointed out that the opposite parties have been unnecessarily delaying compliance with the demands made for refixing the amount of compensation. It is also pointed out that Clause 5 which contains an agreement to refer disputes to arbitration is unmeaning and oppressive because the clause confers on the

Government the power of nominating an arbitrator which means that the Government may refuse or may make unreasonable delay in appointing the arbitrator and the arbitrator would be a person to be nominated by the party liable to pay compensation.

11. On behalf of the opposite parties the allegations of mala fides and unnecessary delay and the presence of an improper motive in requisitioning the premises once again have been denied. The Rule which was issued by this Court merely refers to the prayer of the petitioners for the derequisitioning of the premises. No rule was issued as regards the amount of compensation to be paid in respect of the premises. The mere fact that there has been delay in refixing the compensation is not sufficient to show that the opposite parties were actuated by an improper motive. The allegation that the petitioners were compelled to accept a small sum as compensation for the period of the first requisition has been traversed on behalf of the opposite parties. In these circumstances in my opinion the petitioners have failed to discharge the burden which rested on them to show mala fides on the part of the opposite parties. The second contention raised on behalf of the petitioners must also be overruled.

12. The third contention raised by Mr. Roy concerns the validity of the impugned legislation. It is contended that the impugned legislation is void of Article 31 of the Constitution because the effect of the requisition is to deprive the petitioners of the possession of their lands. It cannot be disputed that Article 31(1) of the Constitution has not been transgressed because possession has been taken under a valid piece of legislation. Article 31(1) of the Constitution merely says that no person shall be deprived of his property save by authority of law. Nor has Article 31(2) of the Constitution been contravened. The impugned legislation was passed more than 18 months before the Constitution came into force. It is therefore saved by Article 31(5)(a) & 31(6) of the Constitution. This contention must therefore be overruled.

13. It is further contended that the impugned legislation is void of Article 14 of the Constitution. Article 14 of the Constitution states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This means that every person has a right to protection of equal laws. It is not suggested that the impugned legislation suffers from this defect. What is contended for is that in the matter of the requisition of the disputed premises the local officers have discriminated the petitioner; from other persons owing lands near about. This cannot be regarded as discrimination within Article 14 of the Constitution. This contention must also be overruled.

14. It now remains for me to consider the preliminary objections raised by Mr. Meyer. It, is first contended that the Union of India must be made a party to these proceedings. The question as to the parties on whom these prerogative writs can be issued depends largely on the practice which prevailed before the Constitution came into force. The matter is dealt with in Short & Mellor : the Practice of the Crown Office. It is obvious that the writs should be served on all

persons interested in supporting the legal process which was the occasion for the petitioners seeking relief under Article 226(1) of the Constitution. It does not appear that in the present case the petitioners cannot get adequate relief by a direction on the opposite parties. The order of requisition was made by the Land Acquisition Collector, Calcutta. It is not clear as to whether the requisition was made on behalf of the Union of India but even so, in my opinion, this may be a ground for issuing a further notice on the Union of India. It is also contended by Mr. Meyer that no relief can be granted under Article 226 as against the Union of India because the Union of India is not located within the jurisdiction of this Court. This matter has been answered in favour of the Union by a Bench of this Court in the matter of "Case reported under Ch. V Rule 3 of the Original Side Rules and in the matter of Lloyds Bank Limited v. Lloyds Bank Indian Staff Association (Calcutta Branches)" disposed of on the 17th of January, 1951. It is also contended that the petition should be thrown out on the ground that it is not supported by the affidavit of the petitioners. Reference was made to the case of "P.K. Banerjee Vs. L.J. Simonds and Another, . The decision relied on is a Bench decision of this Court and concerned an application u/s 45 of the Specific Relief Act. The Bench was of the opinion that the petition in that case which was supported by an affidavit of the Manager of the petitioners, and on which the Rule was issued did not fulfil the Statutory requirements of Section 46 of the Specific Relief Act. The Bench also held, that the defect was not cured by the fact that the affidavit in reply was sworn to by the petitioner himself. That case, however, is distinguishable from the facts of the present case. That was a case which related to a subject-matter which was situated within the ordinary original jurisdiction of this Court. Section 46 of the Specific Relief Act was therefore attracted. It is not necessary for me to consider whether the procedure which was held to be obligatory in that case would have to be followed in applications under Article 226(1) of the Constitution. This is a matter with which I am not concerned. In the present case the disputed property is situate in Southern Avenue Extension. The requisition was made of that property. The subject-matter in dispute is therefore property which is outside the ordinary original jurisdiction of this Court. The prayer for derequisition and restoration of possession has also to be complied with at a place outside the said jurisdiction. The question therefore arises whether in such cases the petition must be supported by the affidavit of the persons swearing the petition. Rule 43, Ch. II, Part II of the Appellate Side Rules lays down that the procedure in applications on the Appellate Side must conform to the procedure which is adopted in Civil Revision cases on the Appellate Side. There are no specific rules on the Appellate Side which require that the petition should be supported by the affidavit of the petitioners themselves. The rules of the Supreme Court, 1950, do not lay down that the affidavit supporting a petition under Article 32 of the Constitution must be sworn to by the petitioners themselves. Rule 6 of Order XXXV of the Rules of the Supreme Court, 1950, merely says that the application for a writ under Article 32 shall be supported by an affidavit. It does not state that the persons swearing the affidavit must be the petitioners themselves. A strict compliance

with these requirements may lead to complexities. The petitioner may be a Corporation or the petitioner may be a person who is illiterate, deaf and dumb in which case it would be impossible for the petitioner to strictly comply with the requirements contended for. In such cases even in an application u/s 45 of the Specific Relief Act the rule was relaxed if the petitioners sufficiently explained the reason for their inability to verify the petition. In these circumstances, I am of the opinion that the affidavit of the husband of one of the petitioners is a valid compliance with the requirements of the law. This objection, in my opinion, cannot be given effect to.

15. I have already held that the petition fails on the merits.

16. The Rule is accordingly discharged with costs to the appearing opposite parties, - hearing fee being assessed at five gold mohurs.