

(1952) 07 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 18 of 1952

Narain Dass and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 02-07-1952

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948 —
Section 9(2)

Citation : AIR 1953 P&H 193

Hon'ble Judges : Kapur, J;Falshaw, J

Bench : Division Bench

Advocate : H.L. Sarin, for the Appellant; S.M. Sikri, General, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This petition has been brought by Narain Dass for issue of an appropriate writ under Article 226 of the Constitution of India against the State of Punjab, the District Magistrate of Amritsar and the Executive Engineer, Municipal Committee, Amritsar. In his petition he alleged that Government had made a grant of 10 kanals 7 marlas of land to his ancestors about 80 or 85 years ago and that he had occupied the land since then and had been carrying on the business of a piggery and had also constructed other buildings for carrying on his trade and had rented out certain portions of these buildings to certain tenants. On 31-8-1944 the Municipal Committee through respondent 3 brought a suit for ejectment against the petitioner which was dismissed by Mr. Ram Lal, Subordinate Judge, 1st class. Another suit was brought in 1951 for ejectment and for a mandatory injunction which is still pending. He further alleges that the District Magistrate of Amritsar at the instance of respondent 3 has passed a requisitioning order dated 29-12-1951 under the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act 48 of 1948 and that in spite of his representations the property has not been derequisitioned. This requisitioning order, it is submitted, is "mala fide" and is, therefore, inoperative and it is also

bad because it is vague and for an Indefinite period and illegal and unenforceable because the building standing on the land has not been requisitioned.

In their reply the respondents" have pleaded that the buildings put up by the petitioners were unauthorised and against the provisions of the Punjab Municipal Act, that in the suit referred to it has been held that the petitioners are mere tenants-at-will but it was dismissed on a technical ground that no proper notice had been given. In para. 10 of their petition the respondents pleaded as under :

"With respect to para. 10 of the petition, it is denied that it was in view of the weakness of the position of the Municipal Committee that respondent 3 approached respondent 2 with the request that the land in dispute might be requisitioned for the purpose of building shops for displaced persons as they have constructed temporary stalls by encroaching upon the P. W. D. land abutting on roads and national highways. It was necessary to requisition the land for establishing a refugee market in order to rehabilitate them and clear the Grand Trunk Road which is a national highway of great military importance."

2. The requisitioning order by the District Magistrate is in the following terms :
"Whereas it is necessary and expedient for securing the maintenance of supplies and services essential to the life of the community to requisition the property detailed in the schedule.

Now, therefore in exercise of the powers provided by the East Punjab Requisitioning of Immovable property (Temporary Powers) Act, 1948, read with Punjab Requisitioning of Immovable Property (Amendment and Validation) Ordinance, 1951, and delegated to me, I direct the requisition of the said property and do further order that the owner occupier deliver possession of the same to the Executive officer, Municipal Committee, Amritsar, on demand and that for the period during which this order remains in force :

(i) the owner shall intimate to me without delay every change of ownership in respect of the whole or any part of the aforesaid property furnishing full particulars of (a) the new owner (b) extent of his interest and (c) the date of acquisition thereof,

(ii) the owner and occupier shall inform me at least 15 days before the aforesaid Executive Officer vacates the aforesaid property and

(iii) no structural alterations shall be made to the building comprised in the aforesaid property without my permission. Land known as Ahata Suran, situated near. Police Station Sadar, at present occupied by Kessi Dass Narain Dass."

3. The submission of the petitioners is that the order is bad because it does not conform to the provisions of the Act of 1948 as it does not specify in writing that the property is being requisitioned for a public purpose. It is true that the order itself is very inartistically worded and it appears that the District Magistrate did not take the trouble of putting down in the order itself, that the requisitioning was for a public purpose e. g., the construction of a refugee market, but this in

my opinion is not a fatal defect in the circumstances of this case. In their affidavit the respondents have given the purpose.

4. Mr. Sarin relied on a judgment of this Court -- V.N. Wanchoo, etc. Vs. Collector of Delhi, etc., In that case the notice no doubt was vague but there was the further fact that the requisition order was for the ulterior object of punishing the owner who had transgressed the provisions of U. P. Town Improvement Act as applied to Delhi. In the present case although there is a suggestion of "mala fides" there is, in my opinion, no proof of it. It cannot be said that to remove the refugees from the stalls which they have constructed by trespassing on public roads and providing them with a proper place to carry on their trade is not a public purpose. In another judgment of this Court, -- Sardarni Gurdial Kaur Vs. The State, it was held that it is not within the competence of Civil Courts to determine whether a particular purpose is or is not a public purpose within the meaning of the Act. The learned Chief Justice at p. 57 said

"The question before us is, when a finding has been come to by the requisitioning or acquiring authority that the requisitioning or acquisition is for a public purpose, whether the Courts can enquire into that question. Section 9(2), East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, in terms excludes the jurisdiction of the Civil Courts to call in question proceedings taken or orders made under the Act."

5. In -- Province of Bombay Vs. Kusaldas S. Advani and Others, it was held by the Supreme Court that, a decision by the Bombay Government that the property was required for a public purpose, was not a judicial or a quasi-judicial decision but an administrative act and the High Court, therefore, had no jurisdiction to issue a writ of certiorari in respect of the order of requisition. Following these judgments I am of the opinion that the requisitioning authority in the present case came to the conclusion that the property was required for a public purpose. This decision of the requisitioning authority is not subject to review by the High Court. If that is so and if no "mala fides" have been proved in this case this Court cannot then interfere.

6. The petitioner in his allegations has made out in para 5 of his petition that a Civil Court had already decided in his favour and had dismissed the suit of the Municipality for ejectment of the petitioner and for a mandatory injunction. It is true that the suit of the Municipality was dismissed but the petitioner had carefully suppressed the fact that it was dismissed on a technical ground and that it had been held that he was a tenant-at-will. This, in my opinion, is a suppression of a material fact in the affidavit and this alone would be sufficient for refusal to make the rule absolute. This was held by this Court in --"U. C. Rekhi v. income Tax Officer 1st T" Ward, New Delh AIR 1951 Sim 1 (D).

7. I am, therefore, of the opinion that this petition fails and must be dismissed but in the circumstances of this case parties will bear their own costs in this Court.

Palshaw, J.

8. I agree.