

(1961) 03 CAL CK 0002
In the Calcutta High Court
Case No : Matter No. 191 of 1959

Paresh Nath Nandi and Another

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 24-03-1961

Acts Referred:

West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3

Citation : 65 CWN 794

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : R.C. Deb and R.L. Sinha, for the Appellant; E.R. Meyer and T.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are shortly as follows. One Anukul Chandra Nundi was the owner of premises No. 56, Ramdulal Sarkar Street in Calcutta. He was also the owner of premises No. 62, Masjidbari Street in Calcutta. The premises No. 56 Ramdulal Sarkar Street is situated almost next to the Bethune College, and take premises No. 62, Masjidbari Street is about a mile and a half away. The said Anukul Chandra Nundi had a well-known sweetmeat shop running under the name and style of Girish Chandra Dey and Nakur Chandra Nandi, on the ground-floor of premises No. 56, Ramdulal Sarkar Street. In 1952, the respondent No. 3 became a tenant in respect of the first floor of the premises No. 56, Ramdulal Sarkar Street, The respondent No. 3 Dr. R. N. Chakravarty works as a Professor in the Department of Chemistry of the School of Tropical Medicine, Calcutta. The respondent No. 4, Dr. (Mrs.) D. Chakravarty is the wife of Dr. R. N. Chakravarty. She is the Head of the Department of Chemistry, under the West Bengal Education Service, at Bethune College. The way in which this tenancy came into existence been described in a joint affidavit filed by the respondents Nos. 3 ad 4. In 1952, the first floor of the premises No 56, Ramdulal Sarkar Street was under the process of construction. Dr. Chakravarty rendered

considerable assistance for the purpose of completing construction, and Anukul Chandra Nandi promised to give him the tenancy. After the first floor of the said building became ready for occupation the landlord went back on his word and refused to grant the tenancy. Thereupon, the respondent No. 3 approached Government and the flat requisitioned. Thereafter, better sense dawned upon the landlord, and by mutual consent of the parties the requisition order was vacated, but the respondent No. 3 continued to be a tenant and he and his wife the respondent No. 4 have since been residing at the said flat, which consists of five rooms, a covered corridor, a corrugated iron shed and an open terrace. In July, 1956 the said Anukul Chandra Nandi executed a Deed of Trust appointing his son, Paresh Nath Nandi and his son's wife Sm. Kalpana Nandi together with his own wife, Sm. Annakali Nandi since deceased as trustees, in respect of his estate. On or about 16th February, 1959 the petitioners through their lawyers, informed the respondents Nos. 3 and 4 that they wished to occupy the whole of the premises. No. 56, Ramdulal Sarkar Street, and offered to exchange accommodation, suggesting that the said respondents should move to premises No. 62, Masjidbari Street, Calcutta. It was stated that Paresh Nath Nandi was carrying on business at the sweetmeat shop, and it was convenient for the family to reside on the first floor of the said premises. It was further stated that the premises No. 62, Masjidbari Street had better accommodation, consisting as it does. of nine rooms, and the other amenities were practically the same. The said respondents were not willing to relinquish the flat in Ramdulal Sarkar Street, and the respondent No. 4 applied to Government for requisition of the flat, of which the said respondents were already in occupation. On the 17th March, 1959 the entire first floor of the premises No. 56, Ramdulal Sarkar Street was requisitioned by an order made under sub-section (1) of section 3 of the West Bengal Premises Requisition and Control (Tern]) Provisions) Act, 1947. The petitioners thereupon objected to the requisition and as Government has refused to derequisition the flat, the present application has been made.

2. Mr. Sinha appearing on behalf of the petitioners, has argued as follows:

He says that the petitioners have two houses. In the Ramdulal Sarkar Street House, they have already a very old-established sweet-meat shop. Previously, the father of the petitioner No. 1 used to run the shop, but now the petitioner No. 1, in partnership with his uncle, has to run it. It is, therefore, convenient for the family to live in Ramdulal Sarkar Street. They are not putting the respondents Nos. 3 and 4 out in the street, but they offer them accommodation which is not only equally good, but even better, than what they occupy at present. It is pointed out that Government servants can not enjoy the accommodation of their choice by compelling the owners to part with their property irrespective of their own inconvenience. From one aspect this is certainly a reasonable view to take. If a man cannot use his own property according to his own requirements and convenience, then there, seems to be no point in guaranteeing the right to hold property as being one of the fundamental rights under the Constitution. But there are other things to consider. The right of

the individual may, under certain circumstances, be made subservient to the needs of the public. In other words, where there exists a public purpose the right of "Eminent domain" of the State, comes into operation, and what has to be considered is public benefit rather than the benefit of the individual. In the case of a requisition of property, there must undoubtedly exist a public purpose. That is the fundamental requirement. What constitutes a public purpose, and the tests to be applied in regard to the requisition of premises, has been the subject matter of several decisions. The law on the subject is more or less well-established. It was first formulated in *Satya Narayan Nathani Vs. State of West Bengal and Another*, by Chakravarti, C.J. I analysed the decision and laid down the tests in a tabular form in *Gobardhan Jayaswal Vs. The First Land Acquisition Collector and Another*, . It has also been explained in *Bipin Behari Sadhukhan v. First Land Acquisition Collector, Calcutta*, (3) 64 C.W.N. 179. A reference may also be made to a decision of Mukharji, J. in *Sachindra Nath Mukherji Vs. The State of West-Bengal and Others*, . Mr. Sinha has himself relied upon the tests laid down in Nathani's case (supra) as explained by me in *Bepin Behari*'s case (supra) He points out that the first test was that the Government servant in question must make every possible effort of his own accord to secure accommodation and such efforts must have failed. In this case it is argued this test has not been satisfied, because there is nothing to show that the respondents Nos. 3 and 4 made any efforts to find cut alternative accommodation. It is further pointed out that the other tests also were not satisfied. Firstly, the condition of service of the respondent No. 4 did not require that accommodation was to be provided for her, nor was there anything to show that there were some special reasons for which it was essential to provide her with residential facilities, or to find accommodation for her in a particular locality, where she may be enabled to perform more efficiently, the duties of her office. Before I proceed to deal with these objections, it is necessary to state the "public purpose" which is being advanced in this case, to justify the requisition. This is contained in the joint affidavit affirmed by the respondents Nos. 3 and 4 on the 3rd February, 1960. It appears that the respondent No. 4 is a Master of Science of the Calcutta University and is also a Premchand Roychand Scholar and Monab Medalist of the Calcutta University. In December, 1947 she was sent to Oxford by Government with a State Scholarship, for training in higher researches in Organic Chemistry, under Professor, Sir Robert (Robinson). President of the Royal Society of England, a Nobel Laureate and a World authority on the Chemistry of plant products. The said respondent was ultimately admitted to the Degree of Doctor of Philosophy of the Oxford. University. She came back to Calcutta in December, 1949 and joined the Bethune College, Calcutta as the Head of the Department of Chemistry under the West Bengal Education Service. She is, however, not the ordinary Head of a Department, but has been provided by Government with a special Development Grant and a laboratory for carrying out researches on the Chemistry of active principles of Indian Medicinal Plants, so that the active principles of Indian Medicinal Plants may be utilised for the betterment of the health of Indian citizens. Not only a valuable research is carried on in this

laboratory, but the respondent No. 4 is building up a body of research students and their contributions have appeared in the scientific journals both in India and abroad, and have earned a world-wide reputation. It is stated that for the purpose of conducting the said research work, the respondent No. 4 has to work upto late hours at night along with her students such work frequently continuing upto 10 P.M. or 11 P.M. at night. The reason why this is so has been explained in paragraph 10 of the joint affidavit. During the day the respondent No. 4 has got to take classes consisting of normal students and time cannot be devoted to research work. It is only in the evening and at night that the research work is conducted. It is, therefore, absolutely essential that the respondent No. 4 should stay near the college and it is also convenient for the research students because they can also call at her flat to consult her collection of scientific books and journals, which are not available in the college. It is, therefore, a two-way traffic between her flat and the College, not only for herself, but for research students. It is pointed out that it would be impossible, or at least highly inconvenient, for such a thing to happen, if the respondent No. 4 is compelled to go and live in a premises which is about one and a half mile from the College, even though the accommodation may be larger which, of course, is not admitted. These being the facts, what remains for me to do is to weigh the two things in the balance, remembering that the greater good of the community and public benefit should come first, and the need of the individual must be subordinated to it. In other words, I have to weigh in the balance two things. On the one side, we have the owner of a sweetmeat-shop who thinks that it will be more convenient for him to live on the top of his shop, instead of travelling one and a half mile daily to the shop, as he and his father and uncle have always been doing. On the other side, we have a research of national importance going on in a laboratory equipped by Government for training up-research scholars in a branch of research, the utility and importance of which cannot be gainsaid by anyone, having the good of the country at heart. It is well-known that at one time we had in this country a system of Ayurvedic medicine primarily based on extracts from indigenous medicinal plants. Much of that system has become lost to posterity. I do not think that it can be doubted for a moment that research on this line by a person well-qualified in research technique by modern methods, is a matter of national importance. Bearing that in mind, we have to see whether the research, such as it is, can be linked up with the requisition of the flat in question. Here, we have a lady scientist, and a band of lady students, who are doing research work at night, sometimes having to stay at the College upto late hours at night, and during that time frequently visiting the flat in question, where there is a valuable collection of scientific books and journals, not available at the College. In my opinion, there can be little doubt that the requisition of the flat can be connected, or is closely linked up with the public purpose. It can be visualised how difficult it would be for the respondent No. 4 or the girl students to go to and fro between the College and Masjidbari Street, late at night, and perhaps unattended. In my opinion, the inevitable conclusion is that priority must be given to the needs for research. Apropos the first point raised, I must point out that it is not applicable

to this case at all. There is a great deal of difference between a Government servant trying to get accommodation by requisition where hi or she is not in possession, and trying to stop eviction from possession which already exists. Where a Government servant is already in possession of an accommodation, it is not public purpose to acquire another accommodation simply on the ground that he wants accommodation of his choice, for example, where a more luxurious flat or house is wanted. That is not a public purpose, and in such a case, it must be shown that the Government servant concerned, has made efforts to obtain a suitable alternative accommodation, but has failed, and that it was necessary that accommodation should be found at any specified location or of a particular kind. This however, is a case where the Government servant is already occupying the accommodation which is sought to be requisitioned. There is in such a case, no question of the Government servant attempting to find alternative accommodation. She is already there, and the question is whether she should be removed. The test to be applied in such a case, must therefore be suitably modified. It has been argued that the respondent No. 3 also carries on research work, but he is content to live far from the School of Tropical Medicine. I do not think I am concerned with his case, and I am not in a position to decide as to whether he carries on work of public importance. However, it will be remembered that at one time the premises was requisitioned for him, and his tenancy came to be accepted by the landlord. For purposes of this case his needs need not be considered because the requisition has not been made for him.

For the reasons aforesaid, I think no grounds have been made out for my interference and the application is dismissed. The rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.