

(1963) 11 CAL CK 0006
In the Calcutta High Court
Case No : A.F.O.O. No. 124 of 1961

Paresh Nath Nundi and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-11-1963

Acts Referred:

West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3(1)

Citation : AIR 1964 Cal 175 : (1964) 1 CALLT 357 : 68 CWN 264

Hon'ble Judges : H.K. Bose, C.J;G.K. Mitter, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mitter, J.—The question involved in this appeal is whether the requisition of a flat opposite Bethune College for the use of the head of its department of Chemistry where research work on the active principles of Indian medicinal plants presently being conducted under her supervision, is for a public purpose.

2. The facts are as follows: The appellants Paresn Nath Nundi and Kalpana Nundi are trustees of premises No. 56, Ram Dulal sarkar street and No. 62, Masjid Bari Street, both situate In north Calcutta and at a distance of about a mile from each other. They live in the latter premises and one of them carries on business in sweetmeat at the ground floor of the other premises No. 56, Ram Dulal Sarkar Street. The last mentioned premises is a two storied house, the first floor being in the occupation of a tenant -- one Dr. 8. N. Chakravorty attracted to the School of Tropical Medicine, Calcutta, the tenanted portion consists of five rooms, a covered corridor etc. with an approximate total floor area of 990 sq. ft. the monthly rent being Rs. 150/-. His wife Mrs. Chakravorty is the head of the department of Chemistry already mentioned. Premises No. 62, Masjid Bari street has three floors, the ground floor extending over 890 sq. ft. with five rooms, a covered corridor and an open court-yard etc. The first floor has four bed rooms etc. with the same area as the ground floor. The second floor has two living

rooms and an open terrace covering a total area or 230 sq. ft. There is no dispute that premises No. 62, Masjid Bari Street is situate in a respectable locality. Ram Dulal Sarkar Street premises is situate opposite the well known college for girls Bethune College. On February 10, 1959 the appellants intimated their tenant Dr. r. n. Chakravorty that the Nundies wanted to occupy the first floor of the Ram Dulal sarkar Street premises with a view to enable them to look alter the sweetmeat business more efficiently and they desired that Dr. Chakravorty should move Into premises No. 62, Masjid Bari Street with an accommodation of 9 rooms in lieu of the five rooms they were occupying at Ram Dulal Sarkar Street premises on the same rent. Falling to get any reply to this letter the appellants caused a notice of ejectment dated February 27, 1959 to be served on Dr. Chakravorty requiring him to quit and deliver up vacant possession or the portion of 56 Ram Dulal Sarkar Street premises occupied by him on the expiry of the last date of March 1959, on March 9, 1959 the respondents 3 and 4 (the Chakravortys) addressed a communication to the Assistant Secretary, Government of west Bengal, Land and Land Revenue Department with a request to requisition the that occupied by them.

3. In this letter the respondent No. 4 mentioned that in addition to her teaching duties she carried on research work on Indian Medicinal plants with the help of students. She stated that in connection therewith it was essential for her to work until late hours at night and this would not have been possible unless she was living quite close to the college premises, very soon after this the Government of West Bengal issued an order on March 17, 1959 requisitioning the first floor of 5b, Ram Dulal sarkar Street-premises under the provisions of Sub-section (1) of Section 3 of the West Bengal Premises Requisition and control (Temporary Provisions) Act, 1947 to the effect that the portion of the said premises in the occupation of Dr. (Mrs.) Chakravorty was in the opinion of the state Government needed for a public purpose. The appellants put in an application for derequisition of the property out to no use. There was an enquiry by the Additional Land Acquisition Collector, Calcutta in the matter who made his report on the demand for derequisition and considered the offer of alternative accommodation to Dr. (Mrs.) Chakravorty at 62, Masjid Bari Street. He noted that her presence in the college laboratory till late hours in the evening was essential for the purpose of guiding research scholars who very frequently had to go to her residence at odd hours.

4. According to the Land Acquisition collector this obliged her to live very near to the college and the alternative accommodation offered being situated at a distance of fifteen minutes walk from the college was not convenient. He further opined that derequisition of the premises would have an adverse effect on the teaching of science in the college.

5. Failing to get redress by representation the appellants moved this Court on December 4, 19b9 for the issue of an appropriate writ for quashing the order dated March 17, 1959 and for other reliefs. According to the appellants there was

no need for requisition under the provisions of the Act mentioned specially in view of the offer of accommodation made to the Chakravorties at premises No. 62, Masjid Bari Street which was equally suitable, it not better than the flat at No. 56, Ram Dulal Sarkar Street. They further contended that the Street or West Bengal and the First Land Acquisition collector had acted in breach of law and in excess of their jurisdiction in interfering with their rights to premises No. 56, Ram Dulal Sarkar street.

6. One Sudhangshu Kumar Banerjee, the first Land Acquisition Collector, Calcutta affirmed an affidavit-in-opposition on behalf of respondents 1 and 2. According to the deponent it was necessary that the respondent No. (sic) should live very close to the Bethune College to enable her to discharge her duties efficiently and properly and as such the requisition was justified. This is amplified in the affidavit-in-opposition of the respondents 3 and 4, in paragraph 10 thereof it is stated that the research was continued frequently till 10 P.M. or 11 P.M. at night and that the respondent No. 4 had to stay in the tenoratory "to conduct the same and specially in view of the fact that all the research workers were girl students." It was also stated that these students could work till late hours only because the respondent No. 4 could be summoned from her residence whenever there was need for it. The latter was busy with her teaching duties until 4.30 p.m. and was free to supervise the research work only thereafter. It was also said that she had a good collection of scientific books and foreign journals which were not easily and readily available in Calcutta and the students had to consult these books and journals very frequently. In paragraph 19 of the affidavit it is stated that "in order to ensure the efficient discharge of the duties of her office, respondent No. 4 should have accommodation in Calcutta very near the Bethune College." It was further claimed that premises No. 62 Masjid Bari Street was situated at a distance of about a mile and a half from the college and there was no direct public conveyance from the college to the said Masjid Bari Street premises and as such the said premises was not suitable to the requirement of the respondent No. 4.

7. On a consideration of the above the learned trial Judge held that it was absolutely essential that the respondent No. 4 should stay near the College and that this helped the research students who could call at the flat of the head of the department to consult her collection of scientific books and journals. The learned judge considered the need of the owner of the sweetmeat shop to five the shop and that of the research professors occupation of a flat quite close to the college and came to the conclusion that the need for research should be given priority. According to the learned judge the case was different from a situation where a Government servant was trying to get accommodation by requisition when he or she was not already in possession of a flat or residence.

8. In my opinion the need of the owner of the sweetmeat shop need not be considered at all. We are not concerned to find out whether the claim of the owners or the premises to occupy the property of their choice should prevail over

that of the Head of the Department of a college carrying on research work. The only thing which we must consider is whether the requisition is justified by the existence of a public purpose. The trustees of 56 Ham Dulal Sarkar street may or may not be able to satisfy the Court of law that they have proper grounds for ejecting their tenant. Whether they will succeed in the threatened ejectment suit or not does not concern us in this appeal. In order to uphold the requisition we must be satisfied that the proper conduct of the research work necessitates the occupation of the flat in question by the respondent No. 4. The admitted facts are that research work is being carried on by girl students under the guidance of a professor of the same sex. The work goes on till late at night and the students resort to the flat of the professor for consulting books and journals as also to secure her guidance and advice from time to time. The occupation of the flat in question is certainly very convenient to the professor who can get to her residence from the college in a couple of minutes. At the same time, however, it must be remembered that the research work involves the finding out of data on the active principles of Indian medicinal plants. The students have to carry out experiments in the laboratory under the directions of the professor and tabulate the results. It is helpful to them to refer to books and journals so as to be able to utilise the experience of other workers who have conducted similar work. So far as the Head of the Department is concerned it is for her to indicate the general lines and the approach to the work and to advise the students when they are in difficulty. The work is not of the kind which requires the constant presence of the professor for continuous guidance by her. The students have to pursue the course of work indicated or chalked out and note the result of their experiments. Rare books and journals do not have to be consulted during the course of an experiment. They must be digested before hand and they can be consulted for guidance out of situations not visualised. If the head of the department is actively carrying on research work herself she must be present in one laboratory all the time. Her presence is necessary for making the experiments she conducts herself. Advising research workers is not like helping students in a class to solve problems in mathematics by constant guidance. All the world over scientists are conducting and guiding research work and it is common knowledge that they do not live in the College premises or quite close to those premises where research work is being conducted or carried out. It may be helpful for persons carrying on research work in Calcutta till late hours at night to have accommodation in the city itself within easily accessible distances from the laboratory. If they have to travel long distances in their journeys to and from the college much time which could have been otherwise devoted to research work would be wasted but I have not been able to follow why it should be necessary for a research worker to live next door to the college. If the head of the department had her own residence situate within a mile of Bethune College could it be suggested that she could not carry on or guide research work from there but that she should be provided with accommodation next door to the college? In my opinion the answer must be in the negative. Suitable accommodation within a reasonable distance of the college is all that may be called for. I do not think we can take into consideration the sex

of the professor or of the students in considering whether they should be provided with accommodation quite close to the college. Our ladies are pursuing avocations of life which were before long followed exclusively by men and it must be said that a large number of them is doing so with credit and distinction. In the changing pattern of life where more and more they are doing the work formerly done extensively by men they must receive the same facilities and face the same disadvantages which man have to put up with Ladies have to go about in public conveyances and stay away from their homes till late hours in the evening for activities other than research work. In such a state of society they cannot have special privileges which would be denied to men. I do not think any male professor would ever suggest that he should be provided with accommodation next door to the college so as to be able to conduct research work properly. It appears to me that accommodation in close proximity of the college is a matter of personal convenience of the professor and is not related to any public purpose in the conduct of the research work.

9. Our attention was drawn to several decisions of this Court and one of the Supreme Court where the existence of a public purpose behind the requisition of a flat had been questioned. The matter was gone into elaborately in the case of Satya Narayan Nathani Vs. State of West Bengal and Another, . It is not disputed before us that the court has jurisdiction to enquire whether an order of requisition is supported by a public purpose, it was pointed out by Chakravarti, C.J. In Nathani's case that public purpose "must include a purpose that has an object and an aim in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned". The learned Chief Justice went on to add a government servant is undoubtedly a public servant in the broad sense of the term though very remotely a servant of the public, and it may also be said that the public are interested in the proper discharge of a government servant of the duties of his office. But where the conditions of a government servant's service do not require that accommodation is to be provided for him or there is nothing to show that there is some special reason for which it is essential to provide him with residential facilities or to find accommodation for him in a particular locality in order that he may be enabled to perform or perform efficiently the duties of his office, I find it difficult to hold that the purpose of providing accommodation to a person merely because he is a government servant and merely because he is in need of accommodation, is a purpose in which the public, who pay him by a salary for such services as he renders are further interested, not to speak of being interested directly or vitally." With respect I agree and would only like to add that the existence of a service rule providing for the accommodation of a Government servant is not necessarily conclusive of the public purpose behind a requisition for his accommodation.

10. In The State of Bombay Vs. R.S. Nanji, the Supreme, Court after referring to several cases of requisition of houses and in particular to Himabai framji v. Secy. of State 42 Ind App 44: (AIR 1914 PC 20) observed that

"in each of them primarily the person directly and vitally concerned would be the person to whom the residential accommodation would be allotted with which prima facie the general interest of the community would not be directly concerned at all."

In Nanji's case itself where the requisition was for a Housing Officer of the State Road Transport corporation, a public utility service, the Court came to the conclusion that the activities of the Corporation were so interlinked with its successful functioning as a Road Transport corporation that requisitioning or acquisition of property to advance and ensure those activities must be regarded as for a public purpose.

11. I find it difficult to hold that apart from very special circumstances the requisitioning of a flat for the residence of a professor would be for a public purpose. As I have already said it may be necessary for a professor carrying on or guiding research work of the type we have before us to live at a place easily accessible from the college or the laboratory. Even then before the Court can uphold any such requisition it must be satisfied that attempts had been made to secure alternative accommodation but that the same had produced no results, indeed in view of the alternative accommodation offered in this case an offer which was repeated before us, that position cannot be maintained at all. It appears to me that on the facts before us the residence of a research professor next door to the college is not related to any public purpose and as such the order appealed from must be set aside. I find myself unable to accept the contention or the appellants that no requisition order can be made unless there is an actual threat of eviction. It was argued on their behalf that as the notice of ejectment had not been followed up by a suit there was no knowing whether, it at all, there would be an occasion for the use of the power of requisition; as such the State Government was not justified in making the impugned order. Ordinarily no doubt the State Government should not requisition a property when there is no immediate need for it but there is no reason why the power should not be resorted to unless the person for whose benefit it was sought to be used, was about to be thrown out on the street. The yardstick is the existence of the public purpose and in the circumstances indicate the presence of such a purpose the power can be utilised.

12. On the other hand I cannot accept the respondent contention that if the State Government is satisfied that a research professor should be provided with accommodation the Court cannot go into the question as to whether a particular house or flat should be requisitioned, if the amenities of two flats be the same the Court will not normally go into the question as to whether flat A or flat B would be more suited to the professor. But the Court must consider (1) whether there is actual need for accommodation of the person concerned and (2) whether the need will be met by requisition of the particular house or flat. A palatial building cannot be requisitioned for a professor even if he was willing to bear the burden of its upkeep nor would the Government be justified in requisitioning flat

A if it was shown that flat B which was equally suitable in all respects was available to the professor without a requisition order.

13. In the result, the appeal must be allowed and the Rule which was originally issued by the trial Court must be made absolute. The order of requisition is hereby quashed.

14. The operation of this order will remain stayed, for a period of six weeks from date.

15. Parties will pay and bear their own costs.

Bose, C.J.

16. I agree.