
(1953) 04 CAL CK 0028
In the Calcutta High Court
Case No : Civil Rule No. 2410 of 1952

Radharaman Das and Another	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 16-04-1953

Acts Referred:

Constitution of India, 1950 — Article 19(1), 31
West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3(1)

Citation : AIR 1954 Cal 98

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Jyotish Chandra Guha and Somendra Chandra Bose, for the Appellant; J. Majumdar and Mihir K. Sarkar, for the Respondent

Judgement

Sinha, J.—The petitioners, Radharaman Das and Kanailal Das are two brothers. They are the owners of a three-storeyed building in the suburbs of Calcutta, viz., premises No. 42A, S. R. Das Road. The first-floor consists of six living rooms, kitchen pantry, bath-room and privy. This floor was partitioned into two flats and one flat consisting of 4 bed rooms, one covered verandah, one kitchen and one combined bathroom, is the subject-matter of this application.

In November, 1948, it was in the occupation of Tarapada Ghosh but the petitioners were obviously looking out for letting it out to tenants. Mr. S. N. Sen, at present working as a Deputy Secretary to the Government of West Bengal began negotiating for it, but in the meanwhile notice requisitioning the flat was served by the West Bengal Government. Thereafter, Mr. Sen went into occupation. According to him, he prevailed upon the Government to de-requisition the premises but it is not clear whether an actual order was passed to that effect. In the last week of April 1952, Mr. Sen became the Deputy Secretary to the Government of West Bengal and got his own rent-free quarters. He informed the petitioners that he would vacate on or before 15-8-1952, and suggested that they should accept another Government officer as tenant. The

petitioners are stated to have been agreeable at first, but ultimately they refused to accept this new tenant.

On 9-8-1952 an order was passed under Sub-section (1) of Section 3, West Bengal Premises Requisition & Control (Temporary Provisions). Act, 1947 (West Bengal Act 5 of 1947) requisitioning the said flat. Copies of the order were served upon the tenant Mr. Sen and the petitioners, directing them to place the said flat at the disposal and control of respondent 4, at 4-30 P.M. on the very same day. The notice is in the usual form and the introductory words are as follows:

"Whereas in the opinion of the State Government the premises described in the schedule below are needed for a public purpose....."

The purpose is not stated in the order. It appears that in spite of protest, the Government have taken possession of the flat. Upon the petition and the affidavits, several facts are in conflict. Mr. Sen says that he had nothing to do with the requisition orders and the petitioners say that they never intended to let out the flat but always wanted it for their own use and occupation. It is however quite unnecessary to decide these points, since the application can be disposed of on a very short point of law.

2. The point taken by Mr. Guha, appearing on behalf of the petitioners is that the order of requisition is bad inasmuch as it merely states that the Government is of the opinion that the premises is needed for a public purpose without stating the purpose.

3. It has now been decided by this Court in -- Phanibhusan Mondal Vs. B.L. Ghose and Others, (A) and by the Bombay High Court in -- State of Bombay Vs. Mohanlal Kapur, (B) (referring to an analogous order of requisition under the Bombay Land Acquisition Act 1948) that such an order of requisition is bad.

4. The ground upon which such orders have been declared to be bad is as follows:

5. Before the Constitution of India came into force, it was held by various decisions that where Government was given statutory power to acquire the property of a subject, "if in its opinion" the same was needed for a public purpose, the Government was the ultimate arbiter about the existence of the public purpose and the matter was not justiciable: -- Province of Bombay Vs. Kusaldas S. Advani and Others, (C); -- A.C. Mohamed and Another Vs. Sailendra Nath Mitra, (D); -- "Patri Shaw v. R. N. Roy" 54 Cal W N 855 (E); -- "Wijeyesekera v. Fasting" AIR 1919 PC 155 (F).

6. In -- "Khushaldas S. Advani's case (C)" (ibid) the requisition order was made under the Bombay Land Requisition Ordinance 5 of 1947, and was dated 26-2-1948. Section 3 of the Ordinance is analogous to Section 3, West Bengal Act and runs as follows:

"3. Requisition of Land--If in the opinion of the Provincial Government it is

necessary or expedient to do so, the Provincial Government may by order in writing requisition any land for any public purpose."

It was held that the determination of the fact whether land was required for a public purpose, was administrative and not judicial, and no writ of certiorari lay.

7. In -- "A. C. Mohammed's case (D)" (ibid) the order of requisition was made under the West Bengal Premises Requisition & Control (Temporary Provisions) Act 1947, and was dated 7-6-1949. It was held that the Legislature had expressly constituted the local Government the sole arbiter as to what premises should be acquired for a public purpose and such decision being final, it was not competent to the Courts to investigate the grounds or the reasonableness of the decision in the absence of an allegation of bad faith.

8. In -- "Patri Shaw's case (E)" (ibid), an order dated 1-4-1949 was passed u/s 25(1), West Bengal Security Act 1948 which runs as follows:

"If in the opinion of the Provincial Government it is necessary or expedient so to do..... for rehabilitating persons displaced from their residence or shops due to communal strife, it may by order in writing requisition any property....."

It was held that the Legislature had selected the Government to come to a decision and no Court could investigate the adequacy of its reasons. In the two cases last mentioned, reliance was placed upon the Privy Council case of -- "Wijeyesekera v. Fasting (F)" (ibid), which construed Ss. 4 and 6 of the Ceylon Ordinance No. 3 of 1876 which gave the Governor the power to acquire lands if it should appear to him that land in any locality was needed for any public purpose. It was held that the subject could not contend in any Court that land so acquired was not for a public purpose. In all these cases it was of course conceded that the power must be exercised bona fide and not for a collateral purpose.

9. The situation however has changed after the passing of the Constitution, the relevant provisions of which came into force on 6-1-1950. The way that it has changed the situation has been explained thus by Harries C. J, in -- West Bengal Settlement Kanungoe Co-operative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others, (G):

"The Advocate-General contended that the purposes for which compulsory acquisition of property was allowed by statute were not justiciable. But it seems to me clear from Clause (2) of Article 31 and the three items in the three lists of the seventh schedule to which I have referred (item 33 of list I, item 36 of list II and item 42 of list III) that it is open to the Courts to scrutinize Acts empowering Government to acquire property compulsorily and to consider whether or not such Acts go beyond the power given to the various Legislatures by the Constitution. No Act can be passed which permits compulsory acquisition of a citizen's property for purposes other than public and it appears to me that the Courts must see that no Act allows acquisition beyond that permitted by the Constitution."

In fact, the learned Chief Justice declared Section 8, West Bengal Land Development & Planning Act 1948, in so far as it made the declaration of the Government as conclusive, as ultra vires, because it purported to oust this jurisdiction of the Court. Following this decision, Bose J. in -- Abdul Hamid Vs. The State of West Bengal and Others, (H), has held that the question whether a requisition u/s 3(1), West Bengal Premises Requisition & Control (Temporary Provisions) Act 1947 was for a public purpose, was justiciable in a Court of law.

10. Although the Supreme Court has not dealt with this precise question, yet in -- The State of Bihar Vs. Sir Kameshwar Singh, (I), it examined the provisions of the Bihar Land Reforms Act 1950 and declared Section 4(b) and Section 23(f) as unconstitutional inasmuch as the purposes of these provisions did not fall within the definition of the phrase "public purpose".

11. The point has been fully dealt with by Chagla C. J. in -- State of Bombay Vs. Mohanlal Kapur, (B)". The learned Chief Justice says as follows:

"It is clear that the very foundation of the power of the State to requisition premises is the existence of a purpose of the State or any other public purpose. It is also beyond dispute that the purpose of the State or any other public purpose is not a purpose which in the opinion of the State satisfies the qualifications laid down in the Statute. Whether a particular purpose is a purpose of the State or any other public purpose is a justiciable issue and the Court may investigate into the purpose for which the State has requisitioned a particular property. If the Court is satisfied that the purpose for which the requisition was made was not a purpose of the State or any other public purpose, then it would be open to the Court to say that the order was made without the condition precedent being satisfied....."

The existence of a "public purpose" being justiciable, the question arises whether the notice u/s 3(1), West Bengal Act, ought to have specified the particular public purpose for which the property was being requisitioned. It is argued that there is nothing in the Act or the Constitution which makes it necessary to mention the public purpose in the order. It is sufficient if the public purpose exists in fact and it would be quite enough if the purpose was brought to the notice of the Court, which was examining the same. In this case, this argument is of no avail because the order was made by the Governor and signed on his behalf by respondent 2, neither of whom has given any indication as to what the public purpose was. The affidavits in opposition have been affirmed by Mr. S. N. Sen and respondent 4. I cannot accept from them what was in the mind of the Government while requisitioning the premises. In fact it is only respondent 4 who speaks about the purpose of the requisition and says as follows:

"13.....I state that the proceedings for requisition of the disputed portion of the premises were taken bona fide for the public purpose, viz., housing and accommodation of a Government Servant,....."

This paragraph has been verified as "true to information derived from records

and proceedings, in the case and from enquiries made (from persons) who were deputed to serve the said notices and to take over possession which information I verily believe to be true."

12. No records or proceedings other than the two impugned orders have been placed before the Court. It would be ridiculous to suggest that the public purpose could be gathered from information received from the ministerial officers entrusted with the service of notices, or the taking over of possession. Thus, no evidence whatsoever has been placed before the Court to show whether the condition precedent has been satisfied. In other words, although the petitioners have expressly challenged it, the respondents have failed to establish that the order of requisition was made for a public purpose. According to Chagla C. J. (ibid), the order itself must state the public purpose, because the validity of the order must appear on the face of the order itself (approved by Bose J. in -- "Phani Bhusan Mondal"s case (A)" ante).

Unless the subject (citizen?) who is served with the order is in a position to know that the order has been validly made, he cannot determine whether he should obey it or not. The officer or authority exercising the power might honestly think that the purpose was a public purpose and yet it may not be so. According to the learned Chief Justice, it could only be tested if the purpose was set out in the order. If the point is justiciable, the Court cannot possibly decide whether the purpose is a public purpose and the order is a valid one, unless the order indicates what the purpose of requisition was. There is another aspect of it which merits consideration. The public purpose mentioned in the order must be such a purpose as was originally contemplated and on the basis of which the requisition order was passed. If the purpose is not stated in the order, it may be conveniently changed or altered if difficulties arise later on in supporting the original purpose. I think the matter can be looked at from still another point of view. Under Article 19(1)(f) of the Constitution, a citizen has the right to hold property. Such property can however be compulsorily acquired under Article 31 if it is for a public purpose. Therefore, before a citizen can be called upon to part with the possession of property he must be apprised of the purpose which must be in fact a public purpose, otherwise he is within his rights to assert his fundamental right and refuse to comply with the order. For the reasons aforesaid, I must hold that there is in the present case no valid order of requisition of the property in dispute.

13. I therefore direct the respondents to forbear from giving effect to the order of requisition dated 9-8-1952 and to withdraw and cancel that order.

14. The Rule is accordingly made absolute. There will be no order as to costs.