
(1972) 01 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 351 and 352 of 1971

Ram Kishan Mehra and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-01-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Defence of India Act, 1962 — Section 29

Citation : AIR 1972 P&H 433

Hon'ble Judges : Ranjit Singh Sarkaria, J

Bench : Single Bench

Judgement

1. Civil Writ Petitions Nos. 352 and 351 of 1971 are inter-connected. The petitioners and the properties which are the subject-matter of dispute, in both the petitions, are the same. It will, therefore, be convenient to dispose them of by one judgment.

2. The petitions arise out of these facts:--

3. The eleven petitioners are co-owners of Bungalow No. 24, Cooper Road, Amritsar. Respondent 3 is the District Magistrate, Amritsar. He has different legal capacities viz., (a) President of Amritsar Central Consumers Co-operative Stores Ltd., Amritsar (hereinafter referred to as Limited concern); (b) Competent Authority under Defence of India Act, 1962 (hereinafter referred to as the Defence Act); (c) Competent Authority under Punjab Requisitioning and Acquisition of Immovable Property Act, 1953 (hereinafter referred to as the Punjab Act); (d) Competent Authority under the Requisitioning and Acquisition of Immovable Property Act, (Central Act) 1952; and (e) Competent Authority under the Sarai Act.

4. Respondent 3 in purported exercise of the emergency powers u/s 29 of the Defence Act and the Rules framed thereunder, delegated to him by the Union of India (respondent 1) and the State of Punjab (respondent 2) made an order, dated April 26, 1963 (Annexure B) requisitioning the ground floor of the

aforesaid Bungalow of the petitioners. In exercise of the same powers, by another order of May 25, 1963 Respondent 3, requisitioned the 2nd storey of the same building of the petitioners for purposes of respondent 4, a Limited concern. Both the requisition orders started with the recital: "Whereas in my opinion, it is necessary and expedient to do for securing maintenance of supplies and services essential to the life of community to requisition property....." In the body of the orders it was further stated that the property detailed therein was being requisitioned "for the period of emergency and six months thereafter but not exceeding three years from the date of possession whichever is earlier." The order further contained a direction "that Mrs. Jai Gopal (Shrimati Pushpa Wati), Petitioner No. 7, and other claimants to the property shall deliver possession thereof to Shri Gurchand Singh Sindhu, P. S. C. S., General Manager, The Co-operative Stores, immediately." "Unless a different intention is expressed, all such references are to Annexures to Writ Petition No. 352 of 1971. By another order, dated May 15, 1963 (copy of which is Annexure "D" to the writ petition), the District Magistrate required respondent 4 to urgently forward a report signed by the petitioners and respondent 4 in case the amount (i.e. the amount of compensation payable under the requisition order) was not agreed upon between the petitioners and respondent 4. Copy of this order purports to have been endorsed on May 15, 1963, to Smt. Pushpa Wati, Petitioner No. 7. However, the petitioners alleged that this order of May 15, 1963 was never communicated to any of them. Respondent 4 never submitted any report as required in this order the respondent 3, nor did the respondents approach the petitioners for the aforesaid purpose. It is alleged by the petitioners that they made representations, verbal and in writing, to the respondents for fixing the compensation payable to them under the said requisition order, in terms of Section 30 of the Defence Act, and that, instead of fixing the said compensation under the statutory mandates, respondent 3 demanded of the petitioners that the Co-operative Stores (respondent 4) be accepted by the petitioners as their permanent tenants and assured them that with the acceptance of the said demand, the respondent would do away with the requisition. It is averred that Respondent 4 also said that on rejection of the said demand, he would get the compensation fixed by respondent 3 at a rate much lower than the one offered by him for the aforesaid tenancy. An agreement form was sent to Petitioner No. 1, Dr. R. K. Mehra, who was, at the material time, a practicing Advocate at Bombay, and he was asked to get that agreement executed by all the owners of the requisitioned premises. One of the conditions of the draft agreement was that rent would be payable from the date of the occupation of the building by the Co-operative Stores at the rate of Rs.400/- per month up to September 30, 1964, and thereafter from October 1, 1964 onwards at the rate of rs.450/- per month. In a subsequent letter, dated February 6, 1965 (Annexure "F") addressed to Dr. Mehra, petitioner, by respondent 4, it was said: "We had agreed to have a direct agreement between the Co-operative Store and yourself and do away with the requisition order". Request for getting the draft agreement signed by all the owners of the building was reiterated. In the penultimate sentence it was said

that "in case however you do not agree to this you may kindly inform the office so that we may request the departments concerned to fix the rent of this building which already stand almost finalized". At the end of the letter it was said: "Please note that if we do not hear anything in this connection by February 20, 1965, we shall take action as indicated above." Copy of this letter purports to have been endorsed to Sarvashri Chaman Lal and Om Prakash for information. This Chaman Lal has been referred to in the letter as the agent of Dr. R. K. Mehra, Petitioner No. 1. It is not clear whether this Om Prakash is Petitioner No. 4. Petitioner No. 1 wrote the letter, dated March 26, 1965 (Annexure G) in reply to the letters, dated January 25, 1965 and February 6, 1965, of respondent 4, whereby he emphatically rejected the demand for direct tenancy made by respondent 4. He also indicated that he did not agree with the other suggestions contained in the letters of respondent 4. It seems that when respondent 4's attempts to seek direct tenancy failed, respondent 3 on September 14, 1965, passed an order (Annexure "H"), fixing the monthly rent for that portion of the house which was requisitioned under the order, dated April 26, 1963, at Rs.260/- per month. Copy of this order purports to have been endorsed also to "Mrs. Jai Gopal and others, 24, Cooper Road, Amritsar.

5. The petitioners made several representations to the 2nd and 3rd respondents praying for de-requisitioning of the property and restoration of its possession on the expiry of the tenure of the requisition orders of April and May, 1963. In reply to the representations, dated October 31, 1965, made by the petitioners, however, a letter, dated February 25, 1966 was sent by the Superintendent Judicial for Secretary to Government, Punjab, Home Department (Annexure "L") informing the petitioners that their representation addressed to the Chief Minister has been considered by the Government who saw no justification to interfere in the matter. A copy of this reply was also endorsed to the District Magistrate (respondent 3). It was, however, only on September 16, 1969 (Annexure N) that Respondent 3 informed the petitioner (Dr. R. K. Mehra) that his application for restoration of possession had been rejected.

6. On July 13, 1966, respondent 3 issued another notice (Annexure P) under sub-section (1) of Section 3 of the Punjab Act, calling upon Smt. Pushpa Wati, Petitioner No. 7, "occupier of the property", to show cause within 15 days of the date of the service of that instrument as to why the aforesaid property of the petitioners be not requisitioned "for public purpose, viz., office/resident of a Government officer/official, being a purpose of the State" and the schedule of the description of the property was given as under:--

"Building in Cooper Road, near Bhandari Bridge Amritsar owned by Misses Jai Gopal and other (Ground floor and 3 room in the 2nd storey) now in occupation of the General Manager, the Amritsar Central Co-Operative Consumers Store Ltd., Amritsar."

Copy of this notice purports to have been endorsed to Smt. Pushpa Wati, Petitioner No. 7. On July 28, 1966, all the petitioners made an application

(Annexure "Q") through Shri N. N. Bhatia Advocate, to respondent 3, in response to that notice wherein they objected to the further requisitioning of the property under the Punjab Act. They prayed for release of the property and restoration of its possession to the petitioners. On the same date, the petitioners prove Shri N. N. Bhatia, Advocate, made another application to respondent 3 under Sections 30 and 35 of the Central Act praying that as the period for which the property had been requisitioned had expired, its possession be restored to the petitioners and further that the matter of payment of fair compensation for the period of requisition be referred to arbitration. According to the return filed by the respondents, the representation of the petitioners was rejected by the State by an order, dated August 21, 1966. No copy of that order has, however, been annexed to the return, nor is there anything on the record to show that it was communicated to the petitioners.

7. The petitioners allege that respondent 3 did not pass any order on their application of July 28, 1966, till July, 1969, when he passed an order directing, inter alia, to refer the matter of fixing of fair compensation to the arbitration by Executive Engineer or Superintending Engineer of P. W. D. It is averred that though the said order is already made on the file, the same was communicated to petitioner No. 1 only orally on September 16, 1969. The said order for reference to arbitration according to the allegations in the petition inter alia states:--

"Instead of S. S. J., we may have it by X. En. or S. E., P. W. D., who usually deals with such matters."

In pursuance of the said order, a letter, dated August 25, 1969, was addressed by respondent 3 to the Tehsildar of Amritsar, requiring the latter to assess and certify the value of the land of the said requisitioned premises to enable the X. En. P. W. D. to base his award of fair compensation thereon. By a letter, dated September 16, 1969, (Annexure N) respondent 3 referring to the petitioner's application, dated 9th September 1969, declined to restore possession of the requisitioned premises to the petitioners. In pursuance of the notice (Annexure P) of July 13, 1966, respondent 3 on August 29, 1966, passed another requisition order (Annexure R) under the Punjab Act by which Smt. Pushpa Wati, petitioner 7, was ordered to hand over/deliver possession of the requisitioned property (ground floor and a part of first floor of Bungalow No. 24) to respondent No. 4.

7a. On July 2, 1969, petitioner No. 1 made an application as attorney on behalf of all the petitioners to respondent 3, and in continuation of their application of July 28, 1966, and subsequent reminder ending with May 16, 1968, requesting that the matter of fixing of fair compensation of the requisitioned premises be referred to the arbitration of Senior Sub-Judge, Amritsar.

8. On September 27, 1969, the petitioners moved the Supreme Court by means of Civil Writ No. 112 of 1970 for impugning these requisition proceedings. On

August 10, 1970, they withdrew that petition with permission to move the High Court. On January 27, 1971, these two Civil Writ Petitions were instituted in this Court. Chronologically, Civil Writ No. 352 comes first. It primarily relates to the requisition proceedings purportedly taken under the Defence Act and the rules framed thereunder. Several reliefs have been prayed for in that petition, of which the following have been pressed at the time of arguments-

That this Court should declare that-

(a) the order dated September 14, 1965 (Annexure H) of the 3rd respondent, (fixing part compensation) is null and void;

(b) quash the impugned order of July, 1969 passed by respondent 3, (whereby the dispute about compensation has been referred to the arbitration of X. En.)

(c) quash the impugned order, dated September 16, 1969, (Annexure N) of Respondent 3.

(d) issue a writ of mandamus and/or any other appropriate writ, order or direction under Article 226 of the Constitution ordering respondents 1-4 to give effect to the provisions of Sections 29(3), 30 and 35 of the Defence of India Act, 1962, read with S. 6 of the Requisitioning and Acquisition of Immovable Property Act, 1952 and to refer the fixation of compensation to an Arbitrator eligible as such under the law and to restore the possession of the requisitioned premises to the petitioners and also to fix compensation in respect of the portion of the premises covered by requisition order of May 25, 1963.

9. In Civil Writ No. 351 of 1971, the petitioners pray that this Court should:--

"(a) declare that any requisition order, dated August 29, 1966, Annexure "R" is ultra vires of the Defence Act and the Punjab Act and the Constitution.

(b) quash the impugned order of July, 1969, passed by respondent 2. (District Magistrate/Competent Authority)

(c) quash the impugned order dated September 16, 1969, passed by respondent 2.

(d) issue a writ of mandamus and/or any other appropriate writ, order or direction under Article 226 of the Constitution directing or ordering respondents 1 and 2 to give effect to the provisions of Sections 5 and 6 of the Punjab Act and to restore possession of the requisitioned premises to the petitioners.

(e) issue a writ of mandamus and/or any other appropriate writ, order or direction under Article 226 of the Constitution directing or ordering respondents 1 and 2 to give effect to the provisions of Section 8 of the Punjab Act to refer fixation of compensation to an Arbitrator eligible to become a Judge of the High Court."

10. Before starting the discussion, it is necessary to notice here the relevant statutory provisions of the Defence of India Act, 1962:--

"29 (1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the Defence of India, civil defence, public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning:

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

"30. Whenever in pursuance of S. 29 the Central Government or the State Government, as the case may be, requisitions any immovable property, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:--

(i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality;

(ii) if in consequence of the requisition of the property the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

(iii) such sum or sums, if any, as may be found necessary to compensate the person interested for damage caused to the property on entry after requisition or during the period of requisition, other than normal wear and tear;

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator. Explanation.....

"35. (1) Where any property requisitioned u/s 29 is to be released from such requisition, the Government by which or under whose authority the property was requisitioned, or any person generally or specially authorized by it in this behalf may, after such inquiry, if any, as it or he may in any case, consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person who appears to the Government or, as the case may be, the person authorized as aforesaid, to be entitled to the possession of the property at the time such order is made.

(2) The delivery of possession of the property to the person specified in the order under sub-section (1) shall be a full discharge of the Government from all liabilities in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is delivered."

The relevant rules made by the appropriate Government u/s 38 of the Defence of India Act, 1962, are:--

"8. The competent authority shall, as soon as may be after the property has been requisitioned, released from requisition or acquired, as the case may be determine the compensation payable u/s 30 or Section 37 of the Act and shall also apportion it where necessary among the persons known or believed to be interested in the property of whom or of whose claim to compensation he has information. Such determination shall be communicated by the competent authority to the person or persons in whose favour the determination has been made.

"9. (1) A person aggrieved by the amount of compensation determined by the competent authority shall, within thirty days of the receipt of the communication of such determination, make an application in writing to the competent authority for referring the matter to an arbitrator stating therein the reasons for his being aggrieved by the amount of compensation so determined.

(2) When no such application is made within the period of thirty days aforesaid and the amount of compensation as determined by the competent authority has not been accepted by the person or persons in whose favour the determination has been made, or where there is dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, the competent authority may deposit the amount with the court.

"10. (1) On receipt of the application for reference to arbitration or where there is a dispute as to the title to receive the compensation or as to the apportionment of the amount thereof, the competent authority shall appoint as arbitrator a person who is qualified under clause (2) of Article 217 of the Constitution for appointment as a Judge of a High Court. (2) Any such arbitrator shall complete the arbitration proceedings and give his award within four months:

Provided that the Central Government may, if it thinks fit, enlarge the period for making the award whether the time for making the award has expired or not."

11. On behalf of the Respondents, three preliminary objections have been pressed into argument:

(1) That C. W. 352 of 1971 is liable to be dismissed on the ground of laches. It is Stressed that this petition has been instituted not only after the expiry of the requisition period fixed under the orders of April and May 1963, but also after the Defence Act and the Rules thereunder had ceased to be operative.

(2) That the main reliefs sought in C. W. 352 of 1971 are barred by limitation in as much as not only the application, dated July 28, 1966 (Annexure I) for having the determination of compensation referred to arbitration, was made long after the expiry of 30 days limitation prescribed by Rule 9, but the writ petition also was filed at a time when the petitioners' claim to compensation would be time-barred under Article 113, Limitation Act, 1963. It is argued that the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution cannot be invoked to get over the bar of limitation. Reference in this behalf has been made to a Full Bench decision of this Court in Jagdish Mitter v. Union of India, ILR (1969) 2 Punj & Har 96=(AIR 1969 Punj & Har 441)(FB); and to State of Madhya Pradesh Vs. Bhailal Bhai and Others, .

(3) That no application was made by the petitioners under Sections 6A and 6B of the Central Act of 1952 for release of the property after the expiry of two years from the date of its requisitioning. If such an application had been dismissed, they could file an appeal u/s 10A of the Act. Thus, the petitioners had not exhausted the remedies provided by the Act.

12. It appears to me that none of these objections can prevail. As regard objection (1), it is to be noted that the requisition proceedings in respect of which the Respondents acts of omission and commission are being impugned have not ceased. The petitioners' property still continues to be under requisition. The petitioners' case is that this continuous deprivation of the use of their property, under the cloak of one law on the other, amounts to a continuing wrong. The petitioners have throughout been complaining and urging for redress of their grievances. They made repeated representations--the first of which--as is apparent from the Note appended to Annexure "G"--was made near-about 26th March, 1965. Another was made on October 31, 1965, vide copy R2 annexed to the written statement. Compensation (rent) with regard to the property covered by the requisition order of April 26, 1963 was fixed as late as September 14, 1965. Then followed a spate of representations / applications / reminders, commencing with application, dated July 28, 1966 (Annexure I) in which the petitioners prayed not only for reference for the determination of compensation to an arbitrator, but also for release and de-requisitioning of the property. Some of such representations addressed to Respondents 2 and 3 are Annexures K-1 dated October 31, 1965, K-2 dated January 19, 1966, K-3 dated March 2, 1966,

K-4 dated June 18, 1966, K-5 dated August 2, 1966, K-6 dated December 26, 1966, M dated July 28, 1966, O-1 dated August 1, 1969, O-2 dated September 9, 1969. It was only in September 1969 that Respondent 3 first informed Dr. R. K. Mehra petitioner (vide Annexure N dated September 16, 1969) that their application, dated September 9, 1969, for restoration of possession had been rejected. It was September 27, 1969, that the petitioners had moved the Supreme Court by a writ petition which was withdrawn on August 10, 1970 with permission to move the High Court. Then, on January 27, 1971, these writ petitions were instituted in this Court.

13. As will be discussed later in this judgment, the expiry of the Defence of India Act itself, neither debars the petitioners from pursuing the legal remedies and enforcing the rights that had accrued to them as a result of the requisition made under that Act, nor absolves Respondents 2 and 3 of the obligations and duties imposed by that Act qua the rights of the petitioners.

14. From what has been said above it is manifest that the petitioners were persistently and diligently exploring all avenues for redress of their grievances. It is, therefore, not a case where the petitioners had slumbered over their rights or acquiesced in the supposed wrong done to them. The delay stands explained and is not such as would disentitle them to invoke the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution. I, therefore, overrule the first objection.

15. In connection with objection (2), it is noteworthy that in Para 3 (ix) of the petition (No. 352 of 1971) it was specifically alleged that "no order whatsoever has at any time been made by Respondent No. 3 in respect of the portion of requisitioned premises covered by Requisition Order, dated 25th May, 1963." This averment has not been specifically and clearly denied in the written statement filed by Shri K. S. Bains, District Magistrate, on behalf of Respondents 2 to 4. In that written statement, the Respondents have jumbled up the reply to this sub-para with that of the preceding sub-para (viii). All that is said on this point in the Return is, that "the fixation of compensation of Rs.260/- P.M. for the building requisitioned is not fair (unfair?) in the circumstances".

16. It appears to me that what has been averred by the petitioners in para 3 (ix) of the petition is correct. This is clearly borne out by the language of the order, dated September 14, 1965 (Annexure H) which expressly refers to the "portion" of the house requisitioned under order dated April 26, 1963, only. It reads:

"The monthly rent of requisitioned "portion" of House No. 24, Cooper Road, Amritsar, which was requisitioned vide my predecessor's order No. RC/461 dated April 26, 1963 under the Defence of India Act, 1962..... is hereby fixed at Rs.250/- per month."

The crucial word is portion, that has been underlined. The conclusion is thus inescapable that no compensation was ever determined with regard to the second storey of the house covered by the Requisition Order, dated 25th May,

1963. Could a request for reference to arbitration for determination of compensation with regard to that portion of the building be time-barred on July 28, 1966 when the application (Annexure I) was made? Answer to this question, in my judgment, must be in the negative. The reason is that the starting point of limitation as prescribed in Rule 9 is the date "of the communication of determination" of compensation by the competent Authority to the person in whose favour it has been made. Consequently, if no such determination or order fixing the compensation is made under Rule 8 and communicated to the person concerned, there is no start of limitation, at all. Rule 8 per-emptorily requires the Authority to determine compensation, as soon as may be, after the property has been requisitioned, acquired or released. This means the Authority in the matter of determining compensation does not become functus officio even after the release of the property; and a fortiori, so long as the requisition continues, it is neither too late for the authority to determine the compensation, nor for this Court to compel it by a writ of mandamus to perform that statutory duty.

17. It is to be noted further that the petitioner's application, dated July 28, 1966, in so far as the relief for reference to arbitration is concerned, still remains un-disposed of, much less has it been rejected as time-barred. It will bear repetition that in para 3 (xiv) of Writ Petition No. 352 it is worn "that on 16th September, 1969, Respondent 3 orally communicated to petitioner No. 1 that the matter of fixing compensation had been referred (in July 1969) to the arbitration of X-En, and in pursuance of that order a letter, dated 25th August, 1969, has been addressed to the Tehsildar of Amritsar requiring the latter to assess and certify the value of the land of the "said Requisitioned Premises" to enable X-En., P. W. D., to base his award of fair compensation thereon". In reply to this para 3 (xiv), Respondents 2 to 4 have pleaded: "It is correct to the extent that on 28th July, 1966, an application was received signed by Mr. N. N. Bhatia, Advocate on behalf of the petitioners under the Defence of India Act and did not relate to the compensation which had to be fixed under the Punjab Act..... It is also correct that in August, 1969, the answering Respondent was anxious to fix the compensation as was desired in the application, dated 2nd July, 1969, and in pursuance thereof, enquiry was being made from the Executive Engineer or the Superintending Engineer, P.W. D. but no final order had yet been passed..... It may also be stated that no compensation for the period for which the property remained requisitioned under the Defence of India Act could be called into question or arbitrator appointed since the period of 30 days had already expired from the date when the order of compensation, dated 14th September, 1965, was communicated to one of the petitioners. The name of any other petitioner was not available and it cannot be said that the petitioners did not know the same since July 1966....."(Note: The application dated 2nd July, 1969, Annexure "J" is only a sort of remainder or an ancillary application in continuation of the application, dated July 28, 1966).

18. It will be seen from the pleadings quoted above, that the application, dated July 28, 1966, made by the petitioners for reference to arbitration, has not been

decided upon this day. No order, whatever, has been passed by the Authority on that application. This belated attempt to justify that lapse on the plea that it was time-barred, is utterly unsustainable. Determination of the question as to whether or not the application was time-barred, was a judicial function. The Authority could throw out the application as time-barred, only after recording a finding of fact (to be arrived at judicially) that the order determining the compensation had been duly communicated to all the petitioners more than 30 days, before the making of the application (Annexure I). For this purpose, it was incumbent on the authority to record speaking order containing an adjudication on all the relevant points. Since it failed to do so, the application will be deemed to be still pending; and if it could not be rejected as time-barred, it would be obligatory for the Authority under Rule 10 to appoint an eligible person as arbitrator. This failure, procrastination and laxity on the part of the Authority in doing its duty cannot be visited upon the petitioners.

19. It is true that the Defence Act expired in the middle of 1968, i.e., six months after the lifting on the Emergency by the President. But that will not affect either the petitioners' rights or the Respondents' obligations with regard to the requisitioning made under that Act. This is clear from sub-section (3) of Section 1 of the Defence Act, which reads:

"(3) It (Act) shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October, 1962, and for a period of six months thereafter but its expiry under the operation of this sub-section shall not affect-

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or (b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or

(c).....

(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceedings or remedy may be instituted, continued or enforced..... as if this Act had not expired."

20. To put the matter beyond all doubt, Parliament by Act No. 31 of 1968 amended the Central Act 1952 and added Section 25 (hereinafter called the "Deeming Clause") which reads-

"Section 25 (1)-Notwithstanding anything contained in this Act, any immovable property requisitioned by the Central Government or by any officer or authority to whom powers in this behalf have been delegated by that Government, under the Defence of India Act, 1962, and the Rules made thereunder (including any immovable property deemed to have been requisitioned under the said Act) which has not been released from such requisition before the 10th January,

1968, shall, as from that date be deemed to have been requisitioned by the competent authority under the provisions of this Act for the purpose for which such property was held immediately before the said date and all the provisions of this Act shall apply accordingly.

Provided that-

(a) all determinations, agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the said date and in force immediately before the said date, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition as from the said date;

(b) anything done or any action taken (including any order, notifications or rules made or issued) by the Central Government or by any officer or authority to whom powers in this behalf have been delegated by that Government, in exercise of the powers conferred by or under Chapter VI of the Defence of India Act, 1962, shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this section was in force on the date on which such thing was done or action was taken;

(2) Save as otherwise provided in sub-section (1), provisions of the Defence of India Act, 1962, and the rules made thereunder, in so far as those provisions relate to the requisitioning of any such immovable property as is referred to in sub-section (1), shall as from the 10th January, 1968, cease to operate except as respect things done or omitted to be done before such ceaser and Section 6 of the General Clauses Act, 1897, shall apply upon such ceaser of operation as if such ceaser were a repeal of an enactment by a Central Act.

The crucial words are those that have been underlined. It will be seen that this "Deeming Clause" was inserted in 1968 in the Central Act 1952 as a matter of abundant caution because a similar provision already existed in Section 1(3) of the Defence Act, noticed above. It is thus no defence for respondent 3 to say that he is now not bound to determine compensation for that portion of the house which was requisitioned under order, dated 25th May, 1963, or, to dispose of the petitioners' application, dated July 28, 1966 (Annexure I) because the Defence Act and the Rules thereunder was no longer in force. The Authority can be compelled even now by a writ of mandamus to perform the duty or discharge the obligation that had been imposed on it by the expired statute, and which has been kept alive by the Deeming clause of the Central Act.

21. In reaching the above conclusion, I am not oblivious of the rule laid down by the Full Bench in Jagdish Mitter Vs. Union of India and Another, viz., that the High Court in the exercise of its jurisdiction under Article 226 should not ordinarily lend its aid to a party by the extraordinary remedy of mandamus when the relief prayed for raises a triable issue of limitation. The general rule, however, is not replicable to the exceptional circumstances of the instant case wherein the

authorities concerned, have despite persistent demands, studiously neglected to discharge the obligations and duties imposed on them by the statute. The facts in Jagdish Mitter Vs. Union of India and Another, and State of Madhya Pradesh Vs. Bhailal Bhai and Others, were entirely different. The former involved a claim for arrears of salary and the latter a claim for refund of sales-tax paid by mistake. To deny relief to the petitioners on the ground that the Authority has not performed its duty so long, would be to allow it to take advantage of its own wrong. No question of limitation is involved if Respondent 3 is directed to dispose of the petitioners pending application, dated July 28, 1966, in accordance with law.

22. This takes me to objection (3). Both the Requisition Orders of April and May 1963 were made under the Defence Act and the Defence Rules which contained no provision analogous to Sections 6A, 6-B and 10-A of the Central Act, 1952. Thus, no alternative remedy was available to the petitioners. Assuming they had such a remedy, then also, it could not, in view of the special features of the instant case, be as efficacious as the one available in the proceedings under Article 226 of the Constitution. Thus, objection (3) also stands negated.

23. On merits, it has been vehemently contended by Dr. R. K. Mehra that after the expiry of the three years period specified in the Requisition Orders of April and May, 1963, and the cessation of the original purpose of the requisition, which was contemporaneous with that period, the District Magistrate (Respondent 3) was bound to de-requisition the property and restore its possession to the petitioners. In support of this argument, Dr. Mehra referred to Sections 29(1) and 35(1) of the Defence Act and Section The Union of India (UOI) Vs. Ram Kanwar and Others, and Dhoni Gopal Mukherjee and Others Vs. The Secretary, Land and Land Revenue Dept., Govt. of West Bengal, .

24. I find a good deal of force in this contention.

25. Their Lordships of the Supreme Court (in The Union of India (UOI) Vs. Ram Kanwar and Others,) were interpreting Rule 75-A of the Rules framed under the Defence of India Act, 1939, Section 6(1) of which is in pari materia with Section 6(1) of the Central Act of 1952, and reads as follows:

6 (1) The Central Government may at any time release from requisition any property requisitioned under this Act and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the change caused by reasonable wear and tear and irresistible force;

Provided that where the purpose for which any requisitioned property was being ceased to exist, the Central Government shall, unless the property is acquired u/s 7, release that property, as soon as may be, from requisition."

It was observed:--

"Under Rule 75A of the said Rules, the power to requisition a property was

conditioned by the purposes for which it could be so requisitioned; though it was left to the subjective satisfaction of the Government to decide whether it was necessary or expedient to do so. After requisition the Central Government was authorized to deal with the property in such manner as might appear it to be expedient. The expediency in the context can only mean expediency in relation to the purposes for which the property was requisitioned. The wide import of the word "expedient" in sub-section (2) must necessarily be limited to the purposes under sub-section (1) as otherwise we would be attributing to the Legislature an intention to confer a power on the Government to requisition a property on false pretences.....

"In the present case, on the facts it is manifest that the flat was not used for any of the purposes for which it was requisitioned for a number of years; and indeed, when the Act came into force, it was used only for locating the Triveni Kala Sangam, which is clearly not one of the purposes for which the flat was requisitioned. If so, it must be held that the purpose for which the property was requisitioned ceased to exist and the respondents have acquired a right to be put in possession thereof under the said proviso."

26. A comparative study of the Defence of India Acts of 1939 and 1962 would show that though in the later Act, the proviso to Section 6 (1) of the Act of 1939 (or that of Section 6(1) of the Central Act, 1952) has not been incorporated in identical terms, yet, in substance, sub-section (3) of Section 29 of the Act of 1962, conveys, in other words, the same thing. That is to say, sub-section (3) of Section 29 also contains a clear mandate that "whenever any property is requisitioned under sub-section (1) of that section, the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section."

26A. The question, therefore, that falls to be considered is: Was the property after the expiry of the three years" period specified in the Requisition Orders of April and May, 1963, no longer required for the same purpose for which it was originally requisitioned? In other words: Had the original purpose for which the premises been requisitioned in 1963, ceased to exist after the expiry of three years in 1966? The answer to this question in the circumstances of the present case, must be in the affirmative. It is significant to note that whereas in the original orders of requisition made under the Defence Act, it was stated that the requisition was being made "for securing maintenance of supplies and services essential to the life of the community", in the notice of July 13, 1966, issued u/s 3 of the Punjab Act, the purpose of the (second) requisition, as mentioned, was that the property was "required for public purpose, viz., office/residence of a Government officer/official being a purpose of the State." It was in pursuance of this notice that the order, dated August 19, 1966, further requisitioning the property was passed. These purposes mentioned in the requisition orders/notices of 1963 and 1966 have to be strictly construed in favour of the citizens. Thus construed, they show that the purpose for which the property has been

requisitioned again under the Punjab Act is professedly different from the original emergent purpose for which it was requisitioned u/s 29 of the Defence Act. Thus, according to the Authority's own showing the purpose for which the property was originally requisitioned, had ceased to exist in July/August, 1966. The ratio of the Supreme Court case, *The Union of India (UOI) Vs. Ram Kanwar and Others*, will, therefore, fully apply to the facts of the instant case.

27. Learned counsel for the Respondents referred to Section 35(1) of the Defence Act which bears the heading "Release from requisition" and "emphasized that the words "to be released" and "may" used in that sub-section indicate that the provision is discretionary, and on the expiry of the term of the requisition, it is not obligatory for the Authority to de-requisition the property. Even if the original purpose of the requisition is not there proceeds the argument the Authority may, instead of releasing it further requisition it for another public purpose.

28. the contention appears to be misconceived. The substantive provision containing the mandate that the property in to be de-requisitioned when the purpose or the specific requirement ceases, is in Section 29 (3), while Section 35(1) deals only with release as an incident of de-requisition. The two provisions have to be read together. Once the mandate in Section 29(3) becomes operative owing to the cessation of the purpose of the requisition, the expression "to be released" in Section 35(1) will have to be understood in a mandatory sense. This flexible expression has been advisedly used because "release" may be the result of either mandatory de-requisition such as done in compliance with Section 29(3), or, of discretionary de-requisition made even before the cessation of the purpose of the requisition. In either case, the word "may" occurring in the first place, in sub-section (3) of Section 29 as it appears from the context has to be read as "shall".

29. *The Union of India (UOI) Vs. Ram Kanwar and Others*, was followed by the Calcutta High Court in *Dhone Gopal Mukherjee and Others Vs. The Secretary, Land and Land Revenue Dept., Govt. of West Bengal*, . There, certain lands were requisitioned in May, 1944, under Rule 75-A framed under the Defence of India Act, 1939, for providing accommodation to Mill workers who were dislodged by Military personnel. Instead of de-requisitioning the land on the termination of World War II, the State Government passed an order under the West Bengal Land Development and Planning Act (21 of 1948) acquiring it for settlement of displaced persons. The landowners moved the High Court by a petition under Article 226. It was contended on their behalf that the original purpose for which the land had been requisitioned, namely, housing of Mill workers, whose Bastis had been occupied by Military personnel, had ceased to exist with the termination of the war. This contention was accepted by Mr. Justice D. Basu with these observations:--

"Once it is held that Respondent No. 5 was under a legal duty to release the property from requisition and to restore it to the petitioners at any point of time

earlier than the application of West Bengal Act to that property, Respondent No. 5 cannot be heard to say that he did not comply with his legal duty under one statute because there was another statutory power, provided for by another legislature and for another purpose, which could be used in respect of the same property. There is no doubt, in view of the decision of the Supreme Court in *The Union of India (UOI) Vs. Ram Kanwar and Others*, that it was the mandatory duty of respondent No. 5 to make an order of release u/s 6 of the Act of 1952 and that he had no discretion in the matter, as soon as the purpose for which the lands had been requisitioned had ceased to exist. The pleas that are available to a public officer when mandamus is sought for in cases like this are well settled. I do not find any authority for the proposition that a public officer would be exonerated from performing his legal duties enjoined by one statute simply because another statute may be applied against the same object, whether by that authority or any other. Even though the order under the former statute may be nullified by an act done under another statute a moment later, there is no excuse for non-compliance with the previous statute, before proceeding under the latter".

30. I am in respectful agreement with the reasoning and the principle enunciated in *Dhone Gopal Mukherjee and Others Vs. The Secretary, Land and Land Revenue Dept., Govt. of West Bengal*, . Following the same, I would hold that the failure of the Respondent-State or its delegate to de-requisition the property and restore its possession to the petitioners on the expiry of the three years period specified in the Requisition Orders of 1963, amounted to an illegality which had vitiated the subsequent requisition proceedings, also, purportedly taken under the Punjab Act in July/August, 1966.

31. Dr. Mehra next contended that in any case, after passing the requisition order of August, 1966 under the Punjab Act, the Authority (District Magistrate) was bound to refer suo motu the determination of compensation for arbitration, to a person qualified to be appointed as a Judge of the High Court. It is emphasized that unlike the Defence Act and the Rules framed thereunder, the Punjab Act does not require either the fixation of compensation by the Competent Authority or the making of an application by the aggrieved owner, as a condition precedent for reference of the dispute to an arbitrator. It is urged that under the Punjab Act, as soon as no agreement with regard to compensation can be reached, it is mandatory for the State Government or its delegate to refer the determination of compensation to an eligible arbitrator. The failure of Respondent 3-proceeds the argument-to refer the determination of compensation to an eligible arbitrator regarding the requisition under the Punjab Act, amounted to another breach of statutory duty in respect of which a mandamus should issue.

32. It appears to me that this contention, also, must prevail. The material part of Section 8 of the Punjab Act reads:

"8 (1) Where any property is requisitioned or acquired under this Act, there shall be given compensation which shall be determined in the manner and in

accordance with the principles hereinafter set out, that is to say:-

(a) Where the compensation can be fixed by agreement, it shall be given in accordance with such agreement;

(b) Where no such agreement can be reached, the State Government shall appoint as arbitrator a person, who is, or has been, or is qualified for appointment as a Judge of a High Court;

(c) the State Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;

(d) at the commencement of the proceedings before the arbitrator, the State Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable;

(f) where there is any dispute as to the repression or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation he shall apportion the amount thereof amongst such persons;

(g) nothing in the Arbitration Act, 1940, shall apply to arbitrations under this section.

(2)

Even before the passing of the impugned order of requisition under the Punjab Act, the petitioners have been expressing their disagreement and dissatisfaction with the compensation/rent, and it was manifest that compensation could not be fixed by agreement. It was, therefore, incumbent on the State Government/Competent Authority to appoint a duly qualified person as arbitrator, under clause (b) of Section 8(1). It is apparent from the material part of the pleadings (quoted in a foregoing part of this judgment) that Respondent 3, the District Magistrate, instead of getting the matter referred to the arbitration of a person eligible under the aforesaid clause, has made some sort of reference to the Executive Engineer and the Tehsildar, either for assessing the rent/compensation or for assisting him (Respondent 3) in determining it. In either case, the course adopted by him is contrary to the imperative provisions of the Punjab Act. Of course, respondent 3 (as well as the petitioners) could under clause (c) of Section 8(1) of the Punjab Act, nominate a person having expert knowledge as to the nature of the property requisitioned to assist the arbitrator (not the authority

or the Government) in determining the compensation. What is said in the affidavit of Shri. K. S. Bains shows that the Authority (Respondent 3) has taken it on himself to determine the compensation. He has, therefore, attempted to clutch jurisdiction where it is not. The petitioners are, therefore, entitled to the issue of a writ of mandamus compelling Respondent No. 3 to act in due course of law.

33. Dr. Mehra further contended that the entire requisition proceedings commencing from 1963 were mala fide and constituted a fraud on the statute because they were, in reality, not undertaken for any Public or State purpose but, as a colorable exercise of emergency power, for benefiting a private limited concern(a Co-operative Society). Counsel further severely criticized the conduct of Respondent No. 3 in, what he says, actively backing the attempts made to coerce the petitioners to grant a direct tenancy in favour of Respondent 4, on promise of getting the requisition done away with. He has on this point referred to Annexures "D", "E", "F and "G". Counsel maintains that it is a case of gross misuse of the statutory powers by the authorities.

34. Since my findings on the other points are sufficient for the disposal of these petitions, I do not feel it necessary to decide this last contention of Dr. Mehra.

35. For all the reasons aforesaid, I allow both the writ petitions, quash the reference made by the Respondent (Competent Authority/District Magistrate) to the X-En/S.E. and Tehsildar, in July, 1969, for assessing the compensation and also his order of September 16, 1969, declining to release the property; and further direct that a writ of mandamus shall issue requiring the Respondent (Competent Authority)-

(i) to determine the compensation in respect of the portion of the house/premises requisitioned under the Requisition Order, dated 25th May, 1963 up to the period ending 29th August, 1966, giving effect to Section 30 of the Defence of India Act, 1962;

(ii) to dispose of the application, dated July 28, 1966, of the petitioners in accordance with law keeping in mind the observations made in this judgment;

(iii) to de-requisition the property and restore its possession to the petitioners within two months from today giving effect to the provisions of Section 29(3) and 35(1) of the Defence of India Act, 1962; and

(iv) to refer forthwith u/s 8(1) of the Punjab Act XI of 1953, the determination of compensation (for the period commencing from 29th August, 1966) and other dispute, if any, to its entitlement or apportionment, with regard to the purported requisitioning of the property under the said Act of 1953 to the arbitration of a person who is, or has been, qualified for appointment as a Judge of a High Court.

The petitioners shall be entitled to their costs in both these petitions, which shall be paid by Respondent No. 4. Counsel's fee in each case Rs.250/-.

36. Petitions allowed.