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**(1986) 11 CAL CK 0014**  
**In the Calcutta High Court**  
**Case No : Matter No. 655 of 1986**

Ramanand Shaw and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision : 26-11-1986**

**Acts Referred:**

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 3, 6  
West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —  
Section 3(1)

**Citation : AIR 1988 Cal 331**

**Hon'ble Judges : Ajit Kumar Sengupta, J**

**Bench : Single Bench**

**Final Decision : Allowed**

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## Judgement

Ajit Kumar Sengupta, J.—In this application the grievance of the petitioners is that a Flat situate at 128 A, Dharamtalla Street, Calcutta was requisitioned on 6th May, 1957. Since then the requisition has been continuing. The petitioners have also contended that requisition cannot continue for ever and it was not made for any public purpose. An affidavit-in-opposition has been filed on behalf of the respondents. In para 6 of the said affidavit it has been stated as follows :

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"Save what are matters of record and save what would appear therefrom, each and every allegation made in paras 3 to 15 of the said petition are denied. I state that the premises No. 128A Dharamtala Street, Calcutta (the flat on the Western portion of Ground floor) was reqd. under Requisition Order No. 45/57 -- Reqn. dt 6-7-57 issued in exercise of power conferred by Sub-section (1) of Section 3 of the West Bengal Premises Requisition & Control (Temporary Provisions) Act, 1947 (West Bengal Act, V of 1947) for public purpose. Copy of the said requisition order under this office No. 1860-6Ldt. 7-5-57 was served upon the then owners Shri Jitendranath Mallick and Ors. Service of the Requisition order was accepted by the then owners by putting signature on the office copy of the Reqn. order.

Possession of the premises concerned by Reqn. order was taken and made over to the Govt. allottee on 21-5-57. Thereafter the said flat was allotted to Shri Sukumar Moitra on 31-1-59. The said flat was again allotted to Smt. Arati Halder.

Kitchen (separate from Main Building) of (he flat on the Western portion of the Ground floor of the said premises was restored to its owner on 27-9-79 on de-requisition.

Payment of rent compensation was made to the owner up to Feb. 1985. The Reqn. Order was made for a bona fide public purpose and the purpose still exists for the public interest."

2. It has not been stated what is the public purpose and who is Shri Sukumar Moitra" to whom the flat was allotted on 31-1-59. Thereafter the flat was again allotted to Smt. Arati Halder. Her status is not known. It would also appear from the affidavit that the kitchen (separate from the Main-Building) was restored on 27-9-79 on de-requisition.

3. My attention has been drawn to a judgment of the Supreme Court in the case of H.D. Vora Vs. State of Maharashtra and Others, where Supreme Court has observed that it is not necessary that the order of requisition must explicitly set out the public purpose for which it is made. The only requirement of the law is that the requisition must be made for a public purpose and so long as there is a public purpose for which an order of requisition is made, it would be valid, irrespective of whether such public purpose is recited in the order of requisition or not. The Supreme Court has further held that although the order of requisition need not set out the public purpose for which it was made, the State Government would have to show that the order of requisition was made for a public purpose and the necessary facts showing the public purpose for which the order of requisition was made would have to be established by the State Government to the satisfaction of court.

4. In this case no material is placed before me to show what was the public purpose for which the order of requisition was made. The requisitioned premises was allotted to a person whose status is not known. No particulars about his status have given in the affidavit. Other contention which also has substance, is the question of keeping the premises indefinitely under requisition. No requisition ought to continue for 30 years.

5. The Supreme Court had also considered this aspect of the matter in the judgment in H.D. Vora Vs. State of Maharashtra and Others, at page 869.

"We do not think that the government can under the guise of requisition continue for an indefinite period of time, insubstance acquire" the property, because that would be a fraud on the power conferred on the Government. If the government wants to take over the property for an indefinite period of time, the government must acquire the property but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the government only for a

public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never, be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely. Here in the present case the order of requisition was made as far back as 9th April 1951 and even if it was made for housing a homeless person and the appellant at that time fell within the category of homeless person, it cannot be allowed to continue for such an inordinate long period as thirty years. We must therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a reasonable period of time. It is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because ultimately the answer to this question must depend on the facts and circumstances of each case but there can be no doubt that whatever be the public purpose for which an order of requisition is made, the period of time for which the order of requisition may be continued cannot be an unreasonably long period such as thirty years. The High Court was, therefore, in any view of the matter, right in holding that in the circumstances the order of requisition could not survive any longer and the State Government was bound to revoke the order of requisition and derequisition the flat and to take steps to evict the appellant from the flat and to hand over vacant possession of it to the 3rd respondent."

6. The present order of requisition was made in 1957 without mentioning the public purpose or without disclosing the materials justifying such requisition for any public purpose. In view of the principles laid down by the Supreme Court in the aforesaid decision, it must be held that the requisition has ceased to be valid after the lapse of about 30 years. In my view, thirty years must be treated as more than reasonable time after which the order of requisition should have been discontinued.

7. In that view, this application succeeds. The respondents are directed to forthwith de-requisition the premises in question and hand over the possession to the petitioners. Such de-requisition shall be made within two months from the date of communication of this order.

8. If there is any allottee in the said premises, the petitioners shall give him at least two months" time to vacate the premises.

9. The petitioner's claim that they are the present owners of the premises and in support of their claim have produced before this Court", Xerox copies of several documents. In that view, the property shall be handed over to the writ petitioners, who are the owners of the property, within two months from the date of service of the copy of the dictated order upon the respondents.

10-11. There will be no order as to costs.

12. All parties to act on a signed copy of the operative part of the judgment and order upon the undertaking of the Advocate-on-Record for the petitioners to apply for and to obtain a certified copy of the judgment and order made herein.