

(1969) 05 DEL CK 0021

In the Delhi High Court

Case No : Civil Writ Petition No. 560 of 1967

S. Harnam Singh and Others

APPELLANT

Vs

Lieutenant Governor, Delhi and Another

RESPONDENT

Date of Decision : 29-05-1969

Acts Referred:

Citation : AIR 1970 Delhi 66

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Advocate : Shiv Charan Singh, for the Appellant; Brji Bansh Kishore, for the Respondent

Judgement

1. This writ petition has been filed by S. Harnam Singh and his four sons, namely, Nirmal Singh, Ishar Singh, Harminder Singh and Jagjit Singh (petitioners 1 to 5), against the Lt. Governor, Delhi (respondent No. 1) and Shri B. N. Tandon, Collector, Delhi (respondent No. 2) praying for the issuance of a writ of certiorari quashing an order of respondent No. 1, dated 12-5-1967, and an order of respondent No. 2, dated 13-9-1966.

2. The petitioners constitute a Joint Hindu Family, and Harnam Singh (petitioner No. 1) is the "Karta" of the said joint family. The petitioners are the owners of house property No. 9760/XVI/IC/36, Rohtak Road, New Delhi. On 15-7-1966, the petitioners Nos. 2, 4 and 5 were served with a notice (Annexure 1) by respondent No. 2 u/s 3 of the Requisitioning and Acquisition of Immovable Property Act (No. 30 of 1952) requiring them to show cause why a portion of the said property described in the schedule to the notice should not be requisitioned for the public purpose, namely, of accommodating Government servants. The portion of the property sought to be requisitioned was described in the schedule to the notice as under:-

"Two flats (two rooms each) on the ground floor, two mianis, one garage and a "miani" above it, and one room on the first floor."

3. On 25-7-1966, the petitioners sent a reply stating that they were the owners in occupation of the portion of the property sought to be requisitioned, while the other portions of the property were in the occupation of tenants. The petitioners appeared before respondent No. 2 and submitted certain documentary evidence in support of their contention. According to the petitioners, they brought to the notice of the respondent No. 2 that one garage, a mian above it, and one room on the first floor of the house in question formed a workshop, store and office respectively of Messrs. Hindustan Electric and Manufacturing Company of which the petitioner No. 1 was the sole proprietor. They produced certain documents to show the existence and the functioning of the workshop, and contended that portion which was wholly used for a commercial purpose could not be requisitioned for residential purpose. As for the other portion of the premises sought to be requisitioned, the petitioners stated in the writ petition that they brought to the notice of respondent No. 2 that they were occupying the same as residence for themselves and the members of their family, and that they had no other residential accommodation at Delhi. According to them, they produced documentary evidence before the Collector in support of their contention.

4. Respondent No. 2 passed an order (Annexure II), dated 13-9-1966, rejecting the contentions of the petitioners, and directing that the aforesaid portion of the premises be requisitioned. Annexure "A" filed by respondent No. 2 along with his written statement in opposition to the present writ petition contains the reasons for which the Collector passed the order (Annexure II), dated 13-9-1966, requisitioning the portion of the premises in question. It was stated therein that information was received from the Director of Public Relations, Delhi Administration, Delhi, that the portion of the premises in question owned by the petitioners was lying vacant and was considered suitable for providing residential accommodation to the officers of the Administration, that as the said portion of the premises was required for a public purpose being the purpose of the Union, a notice u/s 3(1) of the Act 30 of 1952 was issued and served on the owners of the premises on 15-7-1966, that a telephonic message was received from some one who did not like to disclose his identity to the effect that after the receipt of the requisitioning notice the landlords (petitioners herein) had started moving into the house, that thereupon the Sub-Divisional Magistrate of the Ilaqa was deputed to inspect the spot on the same evening, that after inspection, the Sub-Divisional Magistrate had reported that he saw four bullock carts standing outside the house unloading household articles, that some of the packages were lying in the varandah and inside the rooms still unpacked, and that a few neighbours who were questioned by the Magistrate informed him that the ground floor had been lying unoccupied till then, that the landlords, through their counsel, in reply to the notice of requisition, objected to the proposed requisition on the ground that the premises were under their bona fide use, that the landlords were given a personal hearing by the Collector on 18-8-1966, that the landlords (petitioners herein) pleaded that the premises were in their bona fide personal use and submitted a ration card, milk card and electricity bills, etc., that the Collector did

not find any substance in their statements or in the documents filed by them, and was satisfied that the portion of the premises in question was actually lying vacant and was occupied only after the issue of the requisitioning notice with a view to defeat the requisitioning proceedings, and that, Therefore, he passed the impugned order requisitioning the portion of the premises in question.

5. Shri Shiv Charan Singh stated that on the date on which the Collector passed the order, the documents filed before him by the petitioners were returned to the petitioners.

6. Against that order, the petitioners filed an appeal before respondent No. 1 u/s 10 of the Requisitioning and Acquisition of Immovable Property Act (30 of 1952). In that appeal, they contended before respondent No. 1 that the portion of the premises used for commercial purpose could not be requisitioned for accommodating Government servants, that the other portion of the house could not be requisitioned as it was being used by them as their residence, and that in any event the property should not be requisitioned and they should not be dispossessed without providing them with an alternative accommodation. They also contended that the report of the Sub-Divisional Magistrate could not be taken into consideration against the petitioners. When the appeal came up before the Lt. Governor, the petitioners filed the documents which they had filed before the Collector and which were returned to them on the date on which the order of the Collector was passed. By an order (Annexure III), dated 12-5-1967, respondent No. 1 dismissed the appeal.

7. In his order (Annexure III), dated 12-5-1967, the Lt. Governor stated that the petitioners herein produced before him a ration card, milk-card, telephone bills, Air tickets, and a pass book of a Bank in support of their contention that they were in actual possession of the portion of the premises in question on 15-7-1966. On an examination of the said documents, the Lt. Governor came to the conclusion that the said documents did not show that the portion of the premises in question was in the occupation of the petitioners when it was requisitioned. He accordingly held that the petitioners were unable to substantiate their contention that the portion of the premises in question was in their occupation at the time when it was requisitioned on 15-7-1966. He also noted that it appeared to him that an attempt was made by the petitioners to occupy the house after the requisition proceedings had started. In that view, the Lt. Governor dismissed the appeal.

8. The petitioners, thereupon filed the present writ petition praying that the appellate order (Annexure III), dated 12-5-1967, and the order of the Collector (Annexure II), dated 13-9-1966, may be quashed.

9. Shri Shiv Charan Singh, the learned counsel for the petitioners, contended that the orders of the Lt. Governor and the Collector were quite contrary to the documentary evidence produced by the petitioners to show that they were in occupation of a portion of the premises sought to be requisitioned, that the two

orders were vitiated by errors apparent on the face of the record, and that they were, Therefore, liable to be quashed.

10. Before dealing with the said contention, it is necessary to refer to the provisions in Section 3 of the Requisitioning and Acquisition of Immovable Property Act (No. 30 of 1952), which runs as under:

"3. Power to requisition Immovable property-

(1) Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned, the competent authority,-

(a) shall call upon the owner or any other person who may be in possession of the property by notice in writing (specifying therein the purpose of the requisition) to show cause, within fifteen days of the date of the service of such notice on him, why the property should not be requisitioned; and

(b) may, by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority, dispose of, or structurally alter, the property or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order.

(2) If, after considering the cause, if any, shown by any person interested in the property or in possession thereof, the competent authority is satisfied that it is necessary or expedient so to do, it may, by order in writing, requisition the property and may make such orders as appear to it to be necessary or expedient in connection with the requisitioning;

Provided that no property or part thereof-

(a) which is bona fide used by the owner thereof as the residence of himself or his family, or

(b) which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purpose or accommodation of persons connected with the management of such place or worship or such school, hospital, library or orphanage, shall be requisitioned:

Provided further that where the requisitioned property consists of premises which are being used as a residence by a tenant for no less than two months immediately preceding the date of the service of notice under sub-section (1), the competent authority shall provide such tenant with alternative accommodation which, in its opinion, is suitable."

11. Sub-section (11) of Section 3 empowers the competent authority to call upon the owner or any other person who may be in possession of the property to show cause why the property should not be requisitioned. Sub-section (2) provides that the competent authority, after considering the cause, if any, shown by any person interested in the property or in possession thereof may, if it is satisfied

that it is necessary or expedient to requisition the property, requisition the property by an order in writing. The first proviso to sub-section (2), however, provides, inter alia, that no property or part thereof which is bona fide used by the owner thereof as the residence of himself or his family shall be requisitioned. The second proviso to sub-section (2) provides that where the requisitioned property consists of premises which are being used as a residence by a tenant, the competent authority should provide such tenant with suitable alternative accommodation. We are concerned in this writ petition only with clause (a) of the first proviso. According to this clause, if the premises sought to be requisitioned is bona fide used by the owner thereof as the residence of himself or his family, it cannot be requisitioned. Therefore, the question for consideration before the Collector was as to whether the petitioners were bona fide using the portion of the premises sought to be requisitioned as the residence of when the notice under S. 3 of the Act was served upon them.

12. In support of his contention that the two impugned orders are liable to be quashed. Shri Shiv Charan Singh submitted firstly that the notice of requisition was itself illegal for the reasons:-

(a) that the portion of the premises which was being used for commercial purpose could not be requisitioned for residential purpose; and

(b) that the other portion of the premises sought to be requisitioned was in the use of the owners (Petitioners) as the residence of themselves and their families, and was, Therefore, excepted from the provisions in Section 3(1) of the Act by virtue of the provision in Cl (a) of the first proviso to sub-section (2) of S. 3 of the Act.

The first reason mentioned above is obviously incorrect. Under sub-section (1) of Section 3 the competent authority can requisition "any property", and clause (a) of the 1st proviso to sub-section (2) excepts property used bona fide by its owner or his family only "as residence". Property used by the owner for commercial purpose is not excepted under the provisos to sub-section (2).

13. The second reason mentioned above would be correct if, in fact, the petitioners were bona fide using the portion of the premises as residence for themselves and their families on 15-7-1966, the date on which the notice u/s 3 was served on the petitioners. As the provision in Cl (a) of the 1st proviso to sub-section (2) is an exception to the general provision in sub-section (1) of S. 3, the burden of proving the requirements of Cl (a) rests on the owner of the property who claims the benefit of the exception provided by the clause. It is, Therefore, for the petitioners to establish that the portion of the premises which is claimed by them to fall within the exception was being bona fide used by them and their families on 15-7-1966. The petitioners sought to prove the same by producing certain documents before the Collector and the Lt. Governor. The said documents were considered by the Collector and the Lt. Governor who, however, held that the said documents did not establish the claim of the petitioners. The main

documents were:-

- (1) Ration Card;
- (2) Milk Card;
- (3) Telephone bills;
- (4) Electricity and water bills; and
- (5) Pass book of a bank.

14. Shri Shiv Charan Singh argued that the Collector did not refer to and consider the said documents in detail, and that his order was, Therefore, vitiated. It is true that the Collector did not separately refer to and deal with each of the documents. However, he did refer to them all together and expressed his view that he did not find any substance in the contention of the petitioners based on the said documents. He did take them into consideration in coming to a conclusion and passing the order, dated 6-9-1966. The Lt. Governor, however, dealt with each of the documents and stated how they did not support the contention of the petitioners. As regards the ration card, the Lt. Governor observed that it did not bear any date of issue. Shri Shiv Charan Singh pointed out that the ration card did bear the date of issue, namely, 20-12-1965. It is true that the observation of the Lt. Governor was not correct. But, the said error does not really help the petitioners. The date of issue of the ration card was 20-12-1965 and the duration of the ration card was for 52 weeks, i.e. one year from the date of issue. The various columns on the ration card for the 52 weeks were crossed in ink and Shri Shiv Charan Singh argued that the ration card shows that it was utilised by the family of the petitioners for one year from 20-12-1965 to 20-12-1965, and that, Therefore, they should be held to have been residing in the premises in question during the said period. The argument is no doubt attractive. But, the mere fact that rations were drawn on the card does not necessarily establish by itself that the petitioners were actually residing in the premises during that period. The ration card cannot, Therefore, be regarded as evidence which shows the occupation of the premises in question by the petitioners on 15-7-1966.

15. As regards the milk card, the Lt. Governor pointed out that it was for the year 1966, but it did not show any issue of milk on the basis of that card. The comment of the Lt. Governor is quite justified as the card produced by the petitioners does not show any issue of milk on the basis of the card.

16. As regards the telephone bills which were marked as Exhibits D-1, D-2 and D-3 before the Lt. Governor, the Lt. Governor commented that they pertained to the years 1962 and 1966. Exhibit D-1, is a telephone trunk call bill for a call made on 21-10-1962. Exhibit D-2 is a similar bill for two trunk calls made on 1-11-1966 and 15-11-1966. Exhibit D-3 is also a similar bill for about 5 calls made in October, 1966. Thus, the said telephone bills also cannot be regarded as evidence which shows the occupation of the Premises in question by the

petitioners on or about 15-7-1966. The electricity bills relied upon by the petitioners were marked as exhibits D-4 and D-5 in the appeal before the Lt. Governor. They pertain to July, 1961 and April 1967. The said bills again do not establish that the petitioners were in occupation of the premises in question when the notice of requisition was issued.

17. The Pass Book of the bank relied upon by the petitioners was one issued by the New Bank of India Limited, Delhi, in the name of M/s. Hindustan Electric Manufacturing Company, and as pointed out by the Lt. Governor, it shows that there were no transactions after August, 1961. Thus, the Pass Book also is not of any assistance to the petitioners.

18. On an examination of the above documents, the Lt. Governor held that the petitioners were unable to substantiate their contention that the premises was within their occupation as residence at the time when it was requisitioned. The documents bear out the conclusion of the Lt. Governor. If really the petitioners were in occupation of the portion of the premises in question on 15-7-1966 as their residence, they could have easily produced reliable documentary evidence such as electricity and water bills for the periods immediately before and after 15-7-1966 and also oral evidence of their neighbours. In the circumstances it cannot be said that the Collector and the Lt. Governor were not justified in coming to the conclusion which they did.

19. As held by the Supreme Court in Kaushalya Devi and Others Vs. Bachittar Singh and Others, , a finding based on no evidence is an error of law apparent on the record, but errors in appreciation of documentary evidence or errors in drawing inferences cannot be said to be errors of law, and can be corrected only by a Court sitting as a Court of appeal and not under Art. 226 of the Constitution. It follows from the above discussion that there is no valid ground for interference with the findings of the Collector and the Lt. Governor under Art. 226 of the Constitution.

20. It appears from the record that -

(1) Two air tickets from Bombay to Delhi in the names of N. S. Chawla and I.S. Chawla (Nirmal Singh and Ishar Singh);

(2) Municipal Corporation license No. 6767, dated 22-11-1962, regarding IC/36, Rohtak Road;

(3) Import license from April to September, 1961;

(4) Certification of registration valid with effect from 26-12-1960 for local sales tax regarding

IC/36, Rohtak Road;

(5) Certificate of registration for Central Sales tax Re; IC/36, Rohtak Road; and

(6) Electoral Roll, 1965 for Karol Bagh Parliamentary Constituency,

were also produced before the Lt. Governor. They were not referred to by the Lt. Governor presumably because they were not relied upon by the petitioners. Shri Shiv Charan Singh frankly stated, and in my opinion rightly, that they all do not directly show that the petitioners were in occupation of the portion of premises in question as their residence on or about 15-7-1966.

21. Shri Shiv Charan Singh advanced another argument that the Collector relied upon the report of the Sub-Divisional Magistrate which the petitioners were not shown or given an opportunity to explain or adduce evidence in rebuttal thereof. It is true that the report of the Sub-Divisional Magistrate as to what he observed on 15-7-1966 was referred to in the order of the Collector and also in the order of the Lt. Governor. But a reading of the said orders shows that they referred to the same not as a piece of evidence against the petitioners, but only as one of the facts in the case. In any case, the Collector and the Lt. Governor considered the documents relied upon by the petitioners in support of their main contention that they were using the portion of the premises sought to be requisitioned as a residence of themselves and their families, and came to a conclusion against the petitioners. In the circumstances, the orders of the Collector and the Lt. Governor cannot be regarded to have been vitiated by their reference to the report made by the Sub-Divisional Magistrate.

22. For the foregoing reasons. I hold that no valid ground has been made out for interference with the impugned orders of the Collector and the Lt. Governor, under Art. 226 of the Constitution. The writ petition, Therefore, fails and is dismissed. In the circumstances, I make no order as to costs.

23. Petition dismissed.