

(1990) 04 DEL CK 0033
In the Delhi High Court
Case No : C.W. 445 OF 1988

S. Rajdeo Singh and others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-04-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Constitution of India, 1950 — Article 226, 227, 300A
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 9(2)
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 17, 2, 3, 6(2)
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1991 Delhi 1 : (1990) ILR Delhi 220

Hon'ble Judges : Rabindranath Pyne, C.J.;P.N. Nag, J

Bench : Division Bench

Advocate : Mukul Rohatgi, A.S. Gambhir and Ravi Gupta, for the Appellant;
Ashok Bhasin, Harish Patni, M.S. Dutta, S.N. Marwaha and A.K. Marwaha, for the Respondent

Judgement

P. N. Nag, J.—In this writ petition, the petitioners have prayed for a writ of ,mandamus directing the respondents to deliver the possession of Flat No. G-2, Connaught Circus, New Delhi, presently in occupation of respondent No. 6, to them and also for quashing the proceedings pending before the Estate Officer, Shri B. Chakravarty, respondent No. 5, and the appeal pending before Shri S. M. Aggarwal, Additional District Judge, Delhi, respondent No. 7.

2. The facts, in brief, are that the Flat No- G-2 (now Flat No. G-73), Connaught Circus, New Delhi consisting of four rooms, one kitchen, one bath-room, verandah and court-yard on the first floor, which are stated to belong to the petitioners, was requisitioned "by the Collector in 1948 when it was in possession of Sangeet Bharati Authority. It was further requisitioned by the Government under the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as "the 1952 Act) vide order of the Deputy

Commissioner/ Collector dated 16th April, 1960 for carrying on the activities of Natya Ballent Centre (Bhartiya Natya Singh). The possession thereof was ordered to be delivered to the said Centre with effect from 9th April, 1960. Natya Ballent Centre also vacated the said flat and it was allotted to Shri Vidya Dharam and then to Shri K. P. Khanna, Magistrate First Class. Due to his transfer from Delhi Admn., the said flat was then allotted to Shri P. P. Sharma, the then Judicial Magistrate First Class, Parliament Street, New Delhi vide allotment letter dated 11th June, 1972 (Ann. P-2 to the writ petition) as a licensee and license fee, if any, was to be charged from him under the normal rules. It is further alleged that the physical possession of the, said flat was taken over by the Requisitioning Authority (for short R. A.) 6, 17 from one Shri J. N. Sapru, who was at that time the tenant of the petitioner No. 1, and as such, he should be deemed to be in constructive possession of the property and is entitled to be restored the possession at the time of requisitioning. The period for which the premises could be kept under requisition under the 1952 Act (as amended by Amendment Act No. I of 1970 w.e.f. 11-3-1970) expired and came to an end on 10th March, 1987. By the Amendment Act of 1985, the words "15 years" were substituted for "17 years" in S. 6 of the Act. This period accordingly expired on 10th March, 1987. Shri G. S. Chima, Collector of Delhi, vide order dated 6th March, 1987 de-requisitioned the said flat and ordered to hand" over vacant possession to the landlord/ lady after vacation by the present allottee, i.e., respondent No. 6. A copy of this order was sent to respondent No. 6 with a direction to hand over vacant possession of the flat to the office of the Collector immediately. The allotment of the residential accommodation in respect of the flat No. 2-G, Connaught Place, New Delhi in favor of Shri P. P. Sharma, respondent No. 6, was cancelled by the Asstt. Housing Commissioner (PWD) vide letter No. P.6/ 12/ 86-PWD dated 4th March, 1967 and he was provided alternative accommodation in Mayur Vihar vide order dated 4th March, 1987 (Ann. P-4 to the writ petition). Smt. Saraswati Sharma, wife of respondent No. 6, filed Suit No. 40/ 87 against petitioner No. 1 for permanent injunction restraining him from dispossessing her and her family members from the flat in question. On the ground that she had been living in the flat which was allotted to her husband and that taking advantages of the alleged serious condition of her husband in the hospital, petitioner No. 1 tried to dispossess her and her family members from the said flat. Status quo granted vide order dated 11th March, 1987 was vacated vide order dated 25th March, 1987 (Ann. P-5 to the writ petition). Vide order dated 15th April, 1987, the Officer-in-charge (Requisition) directed the S.H.O., Connaught Place to help the bailiff to get the premises vacated from respondent No. 6 so that the same could be restored to the landlord. On 3rd April, 1987 the wife of respondent No. 6, Saraswati Sharma, withdrew the suit No. 40/ 87 and the same was dismissed as withdrawn by the Court. In spite of the dismissal of the suit, respondent No. 6 did not vacate the premises. Thereafter, it appears, instead of invoking the provisions of S. 6(2) of the 1952 Act for delivery of possession to the petitioners, the proceedings were initiated under S. 4(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "P.P.

Act) before the Estate Officer, Delhi. It appears that the Estate Officer passed an order on 26th October, 1987 under S. 9(2) of the P.P. Act against which respondent No. 6 preferred an appeal before Shri S. N. Aggarwal, Additional District Judge, respondent No. 7, who stayed the proceedings before the Estate Officer. The petitioners have been driven to go from pillar to post but have not been able to get the possession of the flat in question and now they have filed the present writ petition on various grounds. The substance of the writ petition, however, is that under the 1952 Act, particularly S. 6 thereof, consequent on de-requisitioning of the flat, it becomes the duty of the Competent Authority to restore and hand over the possession of the flat to the petitioners and that respondent No. 6 was only a licensee in the premises which license already stands cancelled and that he was allotted alternative accommodation in Mayur Vihar. Respondent No. 6 was allotted the flat in Connaught Circus as a member of Delhi Judicial Service and as a Registrar of this Court from which post he stands dismissed. Therefore, he has no right to continue in possession of the said flat. The proceedings before the Estate Officer and the Additional District Judge are wholly misconceived as once the property stands derequisitioned it is the Competent Authority under the Act who has to deliver the possession of the premises to the persons who are entitled to it under S. 6(2) of the 1952 Act.

3. Shri Preeti Madan, Officer-in-charge (Regn.) has filed a counter affidavit dated 8th August, 1988 on behalf of Delhi Administration wherein it has been admitted that the premises in dispute were requisitioned by the Collector in 1948 for public purposes, and thereafter the flat was further requisitioned by the Collector's order dated 16th April 1960 which was thereafter vacated by Sangeet Bharati Authority, Natya Ballent Centre and afterwards it was allotted to different allottees. On de-requisitioning of the property the petitioners were entitled to get back the possession of the property but due to frivolous litigation enunciated by respondent No. 6, possession could not be restored back to the landlords. It has been denied that the proceedings before the Estate Officer were initiated by the respondent to harass the petitioners but those proceedings could not be helped because respondent No. 6 did "not hand over the premises to the petitioners.

4. Respondent No. 6 has also filed his counter affidavit dated 20th July, 1988 and raised various preliminary objections to the maintainability of the writ petition and also various objections on merits of the case as well. It has been stated that the petitioners have not only suppressed the most material facts but in fact have sworn a false affidavit inasmuch as in the writ petition it has been stated that at the time of requisitioning one Shri J. N. Sapun was a tenant of petitioner No. I who handed over the possession to the R.A. and petitioner No. I should be deemed to be in constructive possession of the flat in question through the tenant and, Therefore, the Requisitioning Authority should hand over the possession to the landlords. On the other hand, it has been stated that at the time of requisitioning in 1948, Sangeet Bharati -Authority was in possession of flat. Both the facts simultaneously cannot be true. As a matter of fact the lawful tenant in actual physical possession in 1948 was "Sangeet Bharati" alias "School

of Hindustani Dance and Music" and the possession was handed over to the Deputy Commissioner by its Honorary Manager Shri G. R. Gupta son of late Shri Ram Sarup R/o Tansen Marg, New Delhi who is still alive and available to ascertain the truth. The petitioners have not exhausted alternative remedy inasmuch as they have never moved any representation before the concerned appropriate authorities to address their grievances and that further certain questions of law were formulated by the Estate Officer in Case No. 140/ RVC/ 87R which have not been adjudicated until now nor the proceedings before the Additional District Judge have been finalized and the writ petition is pre-mature. Furthermore the writ petition involves disputed question of fact which cannot be gone into and resolved by way of writ petition under Arts. 226 and 221 "of the Constitution of India. It is also not clear as to when the premises were requisitioned whether in 1948 or 1960 or 1980. It is also not clear as to from when the actual physical possession was taken by the R.A. when the property was requisitioned. The proper remedy for the petitioners is to file a civil suit or take other legal proceedings in accordance with law. Further more, the writ petition is not maintainable as under S. 6(2) of the 1952 Act the possession has to be delivered to that person only from whom the possession has been taken by the R.A. Admittedly, as already referred to, the possession has not been taken from the petitioners by the R. A. The petitioners and respondents 1 to 4 are working in collusion in order to deprive the respondent No. 6 of the allotment of this premises without recourse to law. Again, it has been stated that the writ petition is not maintainable as no writ can be issued against him who is a private person whereas it can be issued only against the State or Instrumentality of the State. The writ petition is again bad for non-joinder of necessary parties, namely, Shri J. N. Sapru and Sangeet Bharati Authority or other persons from whom the possession might have been taken. S. 4 of the 1952 Act specifically lays down the procedure for taking possession of buildings requisitioned under S. 3 but there is no such provision for obtaining possession after derequisition under S. 6 of the aforesaid Act. The only course through which possession can be taken from respondent No. 6 is to take other legal proceedings in accordance with law, like a civil suit etc. and the 1952 Act cannot help the petitioners. Further, it has been stated that the flat when it was last requisitioned in the year 1980, at that time respondent No. 6 was in possession of the flat. The flat after being requisitioned in 1948 or 1960 was again de-requisitioned in 1979 and re-requisitioned in the year 1980 The present requisitioning pertains to the year 1980 and admittedly the petitioners were not in possession of the same and consequently by derequisitioning the respondents are not entitled to take possession by virtue of S. 6(2) of the 1952 Act. On merits, the averments of the petitioners have been denied and same objections have been repeated time and again. Respondent No. 6 has also filed an additional affidavit dated 30th August, 1988 in which he has repeated the same objections what he has raised in his earlier counter affidavit dated 20th July, 1988. While denying all the allegations of the petitioners, he has again repeated that under the 1952 Act the petitioners as landlords have no right to take possession from the Competent Authority and

the Competent Authority can deliver possession only to a person from whom the actual physical possession was taken by the R.A. at the time of requisition and that he cannot be evicted from the flat without due process of law to which he is entitled to by constitutional guarantee under Art. 300A of the Constitution of India.

5. It appears that respondent No. 6, after having inspected the relevant records and documents in possession of respondents I to 5, which were made available to him, filed another counter affidavit dated 14th August, 1989 wherein again he has alleged that respondents I to 5 have been in league with the petitioners and as such the whole record has not been made available to him to enable him to raise an effective defense although they are in possession of all the records. Vide applications dated 9th August, 1989 and 15th December, 1989 under O. 6, R. 17 read with S. 151 of the Civil P.C., respondent No. 6 sought for the amendment of his counter affidavit dated 20th July, 1988 and the additional counter affidavit dated 30th August, 1988, which were allowed. In these amendments substantially the same objections aforementioned have been repeated.

6. Mr. Marwaha, learned counsel for respondent No. 6, very vehemently contended time and again and respectively in one form or -another that there has not been any violation of any legal right of the petitioners and there is no *provision in the 1952 Act entitling the petitioners to possession of the flat consequent on the de-requisition of the property. S. 6(2) of the 1952 Act refers to handing over of the possession of the premises in question, on de-requisitioning, only to a person who was in actual physical possession of the property at the time of requisitioning. As per own showing of the petitioners that in 1948 when the property was first requisitioned, it was in possession of Sangeet Bharati Authority. Thereafter the property was again requisitioned vide order dated 16th April, 1960. At the time of requisitioning the premises were in occupation of Shri J.N. Sapru who was a tenant of petitioner No. 1, and as such the petitioner No. I should be deemed to be in constructive possession of the flat and, Therefore, should be entitled to possession under the Act. In such a situation, admittedly, it cannot be said that the petitioners were in actual physical possession of the premises at the time of requisition of the flat and, Therefore, they are not entitled to the delivery of possession of the property under S. 6(2) of the 1952 Act and no right vests in them to take such delivery of the property. With reference to various authorities of the Supreme Court, it was stressed that a writ of mandamus is not maintainable as the petitioners do not have any enforceable legal right. It is not necessary to refer to various authorities cited by the. learned counsel as the principle is well settled and elementary that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something. This contention has been carefully considered by us but we do not find any force in such a contention. It

has not been disputed by respondent No. 6's counsel -during the course of hearing that the petitioners are the landlords of the premises, although in written arguments filed at various stages, a faint attempt has been made to dispute the ownership of the petitioners as well. Annexure P/ I bearing No. L&DO/ S.P. Cell/ S/ 1842 dated 3rd April, 1981 regarding "Mutation in respect of Block G(I), Connaught Circus, New Delhi" clearly shows that the petitioners are the landlords. The order passed by the Collector for de-requisitioning and handing over possession to the landlords (Ann. P/3) also goes to show that Shri Rajdev Singh , petitioner No. 1, is one of the landlords of the premises. The Collector vide his order dated 6th March, 1987 (Ann. P/3) has ordered the handing over possession to the landlord after vacation by the allottee and a copy thereof was also sent to Shri Rajdev Singh, petitioner No. 1, as also to Shri P. P. Sharma, the allottee. This order has been passed by the Collector in favor of petitioner No. 1. It becomes unconceivable why no right has vested in petitioner No. 1 as landlord and in whose favor such an order has been passed. It cannot be disputed that the land lord had an interest in the property and, Therefore, has every right and locus standi to file the writ petition. Under S. 6(2) of the 1952 Act, the Competent Authority has to deliver possession as far as practicable to a person from whom the possession was taken by the R.A. at the time of requisitioning or the successor-in-interest of such person. Assuming that a person from whom the possession was taken at the time of requisitioning of his success or-in interest is not found out or available, in that case the successor-in-interest is naturally the landlords. In other words, the landlord has got a necessary interest and reasonable chance to receive possession under S. 6(2) of the 1952 Act and correspondingly it definitely vests a right in him to take such possession. Under S. 105 of the Transfer of Property Act, a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions, to the transfer by the transferee, who accepts the transfer on such terms. Therefore, the landlord certainly would come amongst the persons "successors-in-interest " as used in S. 6(2) of the 1952 Act for taking delivery of possession of the property in case no tenant or other success or-in-interest is available. In this connection, reference may also be made to a case reported as Mushtaq Ahmed Vs. Union of India and Others, where in para 16, this Court has taken a similar view with which we respectfully agree:

"The expression "successor-in-interest " of the tenant from whom possession was taken for the purpose of sub-sec. (2) of S. 6, in a case where the tenant or his success or-in-interest was not found would be the landlord of such a tenant. This is because according to S. 105 of the T.P. Act, a lease of immovable property was a transfer of a right in the Property by the landlord in favor of the tenant to enjoy the possession of the demised property. The reversion of this transfer always vested in the landlord. That being the position, in case the Competent Authority

was unable to find the tenant from whom possession was taken or his successor-in-interest in that line the landlord would be the rightful person entitled to receive possession under this provision."

7. It goes without saying that under S. 6(2) of the 1952 Act the Competent Authority is under statutory obligation, consequent on de-requisition of the property, to hold an enquiry into the matter and to deliver the physical possession of the property to a person from whom the possession was taken by the R. A. at the time of requisitioning or his successor-in-interest, which includes landlords as well. Since the petitioners have an enforceable right in their favor and the Competent Authority under S. 6(2) is under legal obligation to deliver the possession to a person from whom the possession was taken at the time of requisitioning or his successor-in-interest which includes landlords also, a writ of mandamus certainly can issue commanding the Competent Authority to deliver such possession to a person who are entitled, to such possession under S. 6(2) after the enquiry in the matter. Therefore, such a contention must fail.

8. Needless to say that since the petitioners are the landlords they have interest in the property and an order of delivery of possession has also been passed in his favor, the petitioners not only have a legal right but also every locus standi to maintain this writ, petition. The contention raised by the learned counsel for respondent No. 6 that the petitioners have no locus standi to file this petition must also fail.

9. It was next contended that the Competent Authority as envisaged under S. 6(2) of the 1952 Act is the Central Government and not the Collector as S. 6 itself refers to the exercise of power by the Central Government. Therefore, the order of derequisitioning by the Collector No. F.2 (19)77/Regn. dated 6th March, 1987 (Annexure P/3) is without jurisdiction and deserves to be ignored being void ab initio. This contention of the learned counsel for respondent No. 6 is also devoid of any force. Under S. 17 of 1952 Act the Central Government by notification in the Official Gazette, may direct that the powers exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercisable also by an officer subordinate either to that Government or by the State Government or by an officer subordinate the State Government. By S.R.O. 152 dated 28th January, 1952 the Central Government has authorised the Collector of Delhi to exercise the powers of Competent Authority under Cl. (b) of S. 2 of the 1952 Act, which position has not been disputed. However, what has been seriously disputed is that under S. 6, the Central Government has not delegated the power to the Competent Authority. In this connection, it may be stated that vide S.R.O. 888 the Central Government has further directed that the powers exercisable by it by or under S. 6 of the 1952 Act shall be exercisable also by the Competent Authority being an officer subordinate either to that Government or to the State Government, within the local limits of whose jurisdiction the property in respect of which the aforesaid powers are exercisable, is situated. Relevant part of S.R.O. 888 is

reproduced below:

"S.R.O. 888 - In exercise of powers conferred by S. 17 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (XXX of 1952), the Central Government hereby directs that the powers exercisable by it by or under S. 6 of the said Act shall be exercisable also by the competent authority being an officer subordinate either to that Government or to the State Government, within the local limits of whose jurisdiction the property in respect of which the aforesaid powers are exercisable is situated."

Therefore, the power of the Central Government under S. 6 has been delegated to the Competent Authority. The Collector has correctly and rightly exercised by passing the order of de-requisitioning which was completely within his power delegated by the Central Government.

10. It was again contended that a writ of mandamus is not maintainable as writ of mandamus cannot be issued against a private individual. In this writ petition, in substance, what is being asked by the petitioners is that respondent No. 6 should be asked to vacate the property and hand over the possession to them. In support of this reference has been made to a case reported as Sohanlal Vs. The Union of India (UOI), . In that case this Court also observed that the eviction of Savannah (displaced person) was in contravention of the express provisions of S. 3 of the Public Premises (Eviction) Act. His eviction, Therefore, was illegal. He was entitled to be evicted in due course of law and a writ of mandamus could issue to or an order in the nature of mandamus could be made against the Union of India to restore possession of the property to Savannah from which he had been evicted if the property was still in possession of the Union of India. There cannot be any dispute about the principle laid down by the highest Court that normally a writ of mandamus does not lie against private individuals but this authority is distinguishable. In this case what is ought by the petitioners is not a writ of mandamus or direction against respondents 1 to 4 to discharge the statutory obligation under of the 1952 Act of handing over the possession to the person or his successor-in-interest from whom the possession was taken by the R. A. at the time of requisitioning. In this process respondent No. 6 might be incidentally affected but no question of issuing of a writ against respondent No. 6 arises and as such this contention is wholly misconceived and deserves to be rejected outright.

11. It was next contended that the writ petition involves highly disputed and complicated questions of fact which cannot be resolved in the writ petition and the proper remedy to take possession of the premises for the petitioners is to file a civil suit etc. According to respondent No. 6 a serious dispute about the title of possession is involved as according to own showing of the petitioners, as already referred to, at the time of requisitioning by the R. A. in 1948, Sangeet Bharat Authority was in possession of the premises. The property was again requisitioned in 1960. The petitioners further have stated that the possession was taken from one tenant, Shri J. N. Sapru, and, Therefore, by virtue of being

in constructive possession through the tenant, petitioner No. I was entitled to take possession on de-requisitioning of the property. The title of the property also has been disputed in written arguments although it was not disputed during the course of arguments. Further, it is not clear whether the property was requisitioned in 1948 or 1960 or 1980 or whether the same was de-requisitioned in 1979 and re-requisitioned in 1980 and whether a period of 17 years has elapsed during which the property can be kept under S. 6(2) of the 1952 Act. We have carefully considered the contention of learned counsel for respondent No. 6 but we are unable to accept the same. In the facts which have emerged from the pleadings there is no manner of doubt that (1) the property was under requisition; (2) the property has been de-requisitioned vide Ann. P-3 dated 6th March, 1987; and (3) that the vacant possession has yet to be handed over to the person from whom the possession was taken by the R.A. at the time of requisitioning or his successor-in-interest. A copy of Ann. P-3 was sent to petitioner No. 1 and respondent No. 6 as well. Respondent -No. 6 was directed to hand over the vacant possession of the flat immediately to petitioner No. 1. It is not material whether the period of 17 years under requisition has elapsed or not, as contended by respondent No. 6. From the material on record, except a bare assertion of respondent No. 6, there is nothing to show that the property was de-requisitioned in 1979 and again re-requisitioned in 1980. Once the order of de-requisitioning has been passed by the Collector which can be passed by him at any time if the property is not needed or likely to be needed for public purposes, the possession has necessarily to be handed over under S. 6(2) of the 1952 Act. During the course of hearing, Mr. Marwaha, learned counsel for respondent No. 6 did not dispute the ownership of petitioner No. I as landlord. However, in the written argument a faint attempt has been made to raise a dispute 0 the petitioner. However, from a perusal of the contents of Ann. P- I regarding "Mutation in respect of Block G-1, Connaught Circus, New Delhi" it leaves no manner of doubt in our mind that petitioner No. I along with other petitioners in whose favor the mutation has also been effected are the landlords of the premises and the Collector's order itself also goes to show that petitioner No.1is one of the owners. Once the property stands de-requisitioned vide Ann. P-3, the Competent Authority under S. 6(2) of the 1952 Act after holding an enquiry into the matter is statutorily and legally bound to hand over the vacant possession as far as possible to a person from whom the possession was taken by the R.A. at the time of requisitioning or his successor-in-interest. In this case, no doubt, the possession has been ordered to be handed over to the landlord, petitioner No. 1, after vacation by the present allottee, respondent No. 6, but this part of the order of de-requisitioning with regard to the handing over of the possession to the landlords, in our view, cannot be implemented as from the pleadings of the parties it is not clear as from whom the possession was taken at the time of requisitioning the property in 1948, whether physical possession was to be delivered to Sangeet Bharati Authority or to one Shri J. N. Sapru or their successor-in-interest or other persons under S. 6(2) of the 1952 Act.

12. In CM3628/89 under O.6, R. 17 for amendment of the counter affidavit dated 20th July, 1988 and additional counter affidavit dated 30th August, 1989, which has been allowed to be placed on record, the stand taken by respondent No. 6 is that no enquiry by the Collector was held in order to ascertain as to whom the possession has to be delivered under S. 6(2) of the 1952 Act by the Competent Authority. In the absence of an enquiry by the Competent Authority and in the face of the dispute questions of facts the Collector could not have ordered for handing over the possession to petitioner No. 1, landlord. From the perusal of the file it does not appear that the enquiry was held and the petitioner was found to be in possession at the time of requisitioning of the property and the possession was taken from him. However, on this count, this petition cannot be thrown out. The Competent Authority under S. 6(2) of the 1952 Act owes a statutory duty to hand over the possession to the person from whom the possession was taken at the time of requisitioning or his successor-in-interest after holding the necessary enquiry into the matter, which statutory duty the Collector has failed to discharge and, Therefore, a writ of mandamus can be issued to him to hold a proper enquiry under S. 6(2) of the 1952 Act and to deliver the possession as far as practicable to a person from whom the possession was taken by the R. A. at the time of requisitioning or his successor-in-interest. Mr. Marwaha for respondent No. 6 argued that respondent No. 6 has been admittedly in possession for 17 years and that the premises were de-requisitioned in 1979 and again de-requisitioned in March, 1980 and at that in 1980 he was in possession of the premises and, Therefore, on de-requisitioning of the property, the premises should be handed over to him only. As already stated, there is no material on record to show that the premises were de-requisitioned in 1979 and again requisitioned in 1980. Admittedly, the respondent No. 6 is still in possession and continued in possession since his allotment and no possession was taken by the R. A. at any stage and as such the question of handing over of possession to respondent No. 6 does not arise at all. As already stated, the Competent Authority has necessarily to hold an enquiry as to when actually the property, which has been de-requisitioned, was requisitioned and from whom the actual physical possession was taken and after holding such an enquiry, on de-requisition, the possession has to be handed over to a person from whom the possession was taken by the R.A. at the time of requisitioning or his successor-in-interest.

13. It was next contended that nobody can be dispossessed except in accordance with the procedure established by law. In support of this submission various authorities have been cited which need not be recorded here as there cannot be any dispute to this well settled principle of law. In this connection, it may be re-stated at the cost of re-petition that (1) the allotment to respondent No. 6 was made vide Ann. P-2 as a license ;(2) it was cancelled vide order No. F.6/ 12/ 86-PWD/ 5239 dated 4th March, 1987 Ann. P-4 and respondent No. 6 was allotted alternative accommodation in 45-B, Mayur Vihar and he was asked to vacate the premises; (3) it is further not disputed that this accommodation was allotted to

him as a member of Judicial Service and as Registrar of this Court from which post he was dismissed and is no longer in service; (4) furthermore, the premises in dispute were requisition which stands de-requisitioned by Ann -3. Therefore, respondent No. 6 is not entitled to keep possession of the flat and withholding of the possession by him is unauthorised, unlawful and, Therefore, respondent No. 6 has no right to retain such premises any more. As a matter of fact, respondent No. 6 was only a licensee and his license has been revoked by cancellation of his allotment vide letter No. F.6/12/86 PWD/5239 dated 4th March, 1987 and as such the Competent Authority was fully within his competence to ask respondent No.6 to hand over the possession. It goes without saying that in case the possession is delivered by respondent No. 6 to the Competent Authority, in that eventuality the possession can be delivered to the rightful person or successor-in-interest otherwise it would not be possible for him to do so." In these circumstances and situation it would be not only proper but expedient in the interest of justice to direct respondent No. 4 to take over the possession of the premises from respondent No. 6 and hand over the possession of such premises to the persons who-soever is found entitled to take after holding enquiry into the matter under S. 6(2) of the Act. In this connection it may be relevant to refer to a decision of a Division Bench of this Court in Civil Writ Petition No. 1577 of 1986, B. Rajdev Singh v. Union of India (decided on December 14, 1989) (reported in AIR 1989 Delhi 238) where in similar circumstances the occupiers of the premises were found not entitled to the possession of the disputed property and were asked to hand over the vacant possession of the, property to the Competent Authority and a direction was given to the Competent Authority to hand over the possession to the petitioner from whom the possession was taken. We were informed by counsel that a petition for Special Leave was filed against this judgment in the Supreme Court which was also dismissed. Even assuming where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. Thus, it has been stated, "An express statutory grant of power of the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power of the performance of the duty". Therefore, in view of the fact that possession of respondent No. 6 has become unlawful and there appears to be no limitation under the law to dispossess the petitioner (sic), the Competent Authority was perfectly justified in passing the impugned order directing respondent No. 6 to hand over the possession to him under the law and also consequently take possession from respondent No. 6 for handing over the possession under S. 6(2) of the 1952 Act. Respondent No. 6 can, Therefore, be dispossessed by the Competent Authority in accordance with the provisions of law. Therefore, this contention is also wholly untenable and rejected.

14. It was next urged by counsel for respondent No. 6 that according to own showing of the petitioners the possession was taken by the Requisitioning

Authority from Sangeet Bharati Authority or a tenant Mr.J.N. Sapru at the time of requisitioning and as such they are necessary parties to this writ petition. Since they have not been impleaded as parties in this writ petition, in their absence no writ is maintainable. In this connection, it may be pointed out that what we propose to do direct the Competent to hold a proper enquiry into the matter and deliver the possession as per the provisions in S. 6(2) of the 1952 Act. So, at this stage, no party is going to be directly affected nor any prejudice is to be caused to anybody and as such neither they are necessary nor proper parties.

15. Lastly, it was urged that the proceedings have already been initiated against Respondent No.6 under the P.P. Act and certain questions of law, referred to in para 20 of the writ petition, have been formulated by the Estate Officer for determination and the appeal has been filed by respondent No. 6 there against before the learned Additional District Judge. This writ petition is not maintainable being premature as the alternative remedies are being pursued. This contention is also devoid of force. Firstly, the petitioners have not initiated such proceedings but have been initiated by the Competent Authority. Further, it is settled principle of law that alternative remedy is not an absolute bar for maintaining the writ petition as the exhaustion of alternative remedies is a rule of convenience and discretion rather than a rule of law and at any rate it does not oust the jurisdiction of the Court.

16. A faint attempt was also made that the petitioners have suppressed material facts and, Therefore, are disentitled to relief as they have not come with clean hands inasmuch as they have stated that the possession was taken from Sangeet Bharati Authority and at later stage they have stated that the possession was taken from one tenant, Mr. J.N. Sapru. He has tried to substantiate with the help of certain facts that the petitioners have not come with clean hands. We have carefully considered the matter and do not find any suppression of material facts which might have material bearing on the decision of this case. This contention is, Therefore, rejected.

17. From the perusal of S. 6 of the 1952 Act we find that a legal duty is imposed on the Central Government to restore possession of the premises, on de-requisition, to a person from whom the possession was taken or his successor-in-interest. In other words, the Central Government shall be discharged from all liabilities in respect of the requisitioned property only after the possession is delivered to a person from whom the possession was taken by the R. A. at the time of requisitioning or successor-in-interest. The extent of jurisdiction of the competent court acting under S. 6(2) of the 1952 Act has been explained by this Court in *Mushtaq Ahmed Vs. Union of India and Others*, as under (at pp. 26 and 27):

"A perusal of these provisions show, as stated earlier, that sub-section (2) enjoins a duty on the Competent Authority to deliver possession of the de-requisitioned property as far as practicable to the person from whom the same was taken at the time of requisition or to the successor-in-interest of "such

person". It is admitted between the parties, and rightly, that the possession envisaged in this clause is physical possession. The intention of these provisions is that on de-requisition the status quo ante as it existed on the date of requisition should be restored and if the tenant was in possession, the possession should be restored and delivered back to him or to his successor-in-interest.

Where the tenant or his successor-in-interest to whom possession is enjoined to be delivered by sub-section (2) is not found and has no agent or other person empowered to accept delivery on his behalf the Competent Authority has no alternative but to act under sub-section (4) of the section. The concluding words "such person" used in sub-section (2) of S. 6 are significant. They refer to successor-in-interest of the person from whom possession was taken. All that the Competent Authority Therefore is empowered to do in the inquiry under this sub-section is to ascertain the person from whom possession was taken at the time of requisition, or his successor-in-interest. It cannot go beyond this. It has no jurisdiction to adjudicate on the rights of any person claiming against the tenant or his successor-in-interest. The later part of subsection (3) providing that the decision of the Competent Authority shall not prejudice the rights of any third person in respect of the property further supports this conclusion. This conclusion is also borne out by the provisions made in sub-section (4) and subsection (5) of this section where the Legislature provided that in case the person to whom possession is enjoined to be delivered under sub-section (2) or his successor-in-interest was not found and he had no agent or owner person authorised to accept delivery on his behalf, the Competent Authority "shall" issue a notice in terms of sub-section (4)."

In the present case, however, as explained earlier, it is not clear as from whom the actual physical possession of the property was taken at the time of requisitioning of the property by the R.A. and no enquiry to this effect was made by the Competent Authority. It would, Therefore, be appropriate to direct that the Competent Authority should hold an enquiry under S. 6(2) of the 1952 Act and hand over the possession to the person from whom the R.A. took the actual physical possession at the time of requisitioning or his successor-in-interest. It is settled principle of law that the Court in the interest of justice can always mould the relief asked for in the petition. It will not be necessary, however, to set aside the proceedings before the Estate Officer or the learned Additional District Judge, as asked for. If the possession is delivered to the rightful person in accordance with the directions proposed to be given by us, the proceedings before the Estate Officer or the Additional District Judge shall become infructuous. In our view the appropriate relief that can be granted in the present writ petition, in the facts and circumstances of this case, would be to direct respondent No. 4, the Collector (Requisition), to hold an enquiry into the matter under S. 6(2) and hand over the possession of the property to the person who is ultimately found to be entitled to under the provisions of the 1952 Act. The Competent Authority, no doubt, will be entitled to take possession from respondent No. 6 of the premises and respondent No. 6 shall be bound to deliver such possession to the

Competent Authority, Respondent No. 4.

18. We cannot help in observing that the writ petition was taken up for final hearing on 17th October, 1989 and arguments were heard :Off 23rd to 25th. October, 1989. Sa arguments were being repeated by counsel for respondent No. 6 time and again. Lest the time of the court should be further wasted, respondent No. 6 was allowed to file written arguments, which he filed by way of CMP 4749/ 89. This application was ordered to be considered along with the main writ petition vide order dated 2nd November, 1989 Again, the matter was taken up for hearing on 20th November, 1989. The hearing continued to 21st November, 1989 when the matter was reserved for judgment. On 21st November, 1989, when the matter was reserved, respondent No. 6 filed CMP 5007 / 89 seeking directions for the production of relevant files in passing Ann. P / 3. Vide order dated 23rd November, 1989, Mr. Ashok Bhasin, counsel for Delhi Administration, was directed to produce the file. The relevant record appears to have been inspected by respondent No. 6 in the chamber of Mr. Bhasin, Advocate, and later it was produced before the Court on 5th February, 1990. On 15th December, 1989 respondent No. 6 filed CMP 5418/ 89 which, after notice, was allowed on 5-2-1990 and CMP 5418/ 89 was treated as an additional affidavit on behalf of respondent No. 6 and he was also allowed to file written submissions, if any, within seven days there from. This C.M,P. 5418/89 was under O. 6, R. 17 read with S. 151 for amendment of the counter-affidavit and additional counter affidavit dated 20th July, 1988 and 30th August, 1988, respectively. The thrust of the amendment sought for was that no enquiry was held by the Collector to ascertain as to from whom the possession was taken by the R.A. at the time of requisitioning. Again, vide order dated 5th February, 1990 in CMP 5418/19, respondent No. 6 was allowed time to file written submissions and the matter was treated as reserved for judgment. Instead of filing written submissions, respondent No. 6 filed CMP 749/90 seeking directions for an opportunity to advance further oral arguments in case the Hon"ble Court is not inclined to accept any of his arguments and contentions. Although there was no justification for filing written submissions, vide order dated 15th February, 1990 in this court granted him further opportunity to file written arguments by 19th February" 1990. Again, respondent No. 6 filed CMP 854/90 in which he attempted to incorporate the additional arguments and also prayed for an opportunity to address oral arguments. Vide order dated 23rd February, 1990 in CMP 854/90, respondent No. 6 was allowed further one week's time to file written arguments. On 17th February, 1990, respondent No. 6, again, filed CM P 1063 / 90 wherein he prayed for allowing inspection of the court file, directions for delivery of certified copies of the documents asked for by him and extension of time to file written arguments. Vide order dated 8th March, 1990 in CMP 1063 / 90 only one week's time was granted to file written arguments. Ultimately, respondent No. 6 filed CMP 1296/90 incorporating therein the written arguments and submissions which was taken on record vide order 16th March, 1990.

19. A perusal of various applications, counter-affidavit and additional counter-affidavit as well as amended counter-affidavit and amended additional counter-affidavits, various written submissions filed from time to time by respondent No. 6 show that same arguments are being repeated in one form or the other which in fact were addressed orally by counsel for respondent No. 6, Mr. Marwaha. All the record was available with him and since these applications were being filed unnecessary without any justifiable cause, there was no point in allowing inspection of the court's file and supply of copies to him. The impression which the court initially gathered, during the course of -arguments, that by repetition of arguments respondent No. 6 only wanted to prolong the proceedings, his conduct stands subsequently confirmed by the filing of subsequent various applications, referred to above. In such circumstances and situation, Therefore, the court was left with no option but to disallow the further oral arguments, inspection of court file and supply of certified copies of the documents, once the arguments of counsel concluded. However, the additional arguments which repeat the same story in one consideration while deciding this matter.

20. In the light of the above discussion we accordingly direct the respondents I to 4: particularly respondent No. 4, to hold an enquiry into the matter under S. 6(2) of the 1952 act within two months from today and hand over the possession of the flat in question to the person who will be ultimately found to be entitled to under the provisions of the 1952 Act. The petitioners shall also be entitled to costs in this writ petition from Respondent No. 6. Counsel's fee Rs. 1,500/-.

Order accordingly.