

(1990) 08 CAL CK 0051
In the Calcutta High Court
Case No : C.O. No. 4470 (W) of 1984

Sambu Nath Ghosh and others

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 01-08-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 4
West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3(2), 3(3), 4(1)

Citation : AIR 1991 Cal 19 : (1993) 1 ILR (Cal) 77

Hon'ble Judges : B.P. Banerjee, J

Bench : Single Bench

Advocate : J. Bhattacharyya, for the Appellant; P. Dutta, Prasanta Mukherjee, Spl. Officer, for the Respondent

Judgement

1. The petitioners in this case challenged the validity of the order of requisition No. 34/83 dated 17-8-83 and notice No. 413 dated 1-9-83 in respect of premises No. 44, Bhupen Bose Avenue Calcutta as also memo No. 33-83 Reqn. dated 17-8-83 and notice No. 421 dated 1-9-83 in respect of premises No. 12, Sachin Mitra Lane, Calcutta. By the requisition order dated 17-8-83 both the premises were requisitioned under sub-sec. (1) of S. 3 of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 alleging that the said premises were not for public purpose. The said order of requisition was related with two premises, namely 44, Bhupen Bose Avenue, Calcutta and 12, Sachin Mitra Lane, Calcutta.

2. The petitioners are the joint owners of premises Nos. 42 and 44, Bhupen Bose Avenue, Calcutta and 12, Sachin Mitra Lane, Calcutta. It is stated that the premises Nos. 42 and 44, Bhupen Bose Avenue, Calcutta and 12, Sachin Mitra Lane, Calcutta were in the possession of the petitioners who are the owners thereof. It is stated that the petitioners used to let out the said premises regularly for the purpose of holding marriage, religious and other functions at different dates and regularly such functions held there and against that the

petitioners get amounts thereof. It is stated that the said premises is regularly letting out for holding various ceremonies and for that purpose the petitioners engaged a durwan who is engaged for the possession of the same and various materials and including other materials for electrical fittings, fixtures, fans and lights and also the materials of the caterers and decorators who were M/s. N. C. Das & Co. 82A, Shyambazar Street, Venus Decorators and Caterers, 11, Amritalal Bose Street and M/s. Mitra Decorators, 4, Raja Naba Krishna Street, Calcutta. It is stated that the premises No. 44, Bhupen Bose Avenue, Calcutta is already under order of acquisition for the purpose of Metro Railways Authorities through the Land Acquisition Collector and that the possession whereof had not been taken by the Land Acquisition Collector for the Metro Railway and the petitioners stated that they are in possession of 44, Bhupen Bose Avenue, Calcutta. The case of the petitioner is that on 3rd September, 1983 at about 10.30 a.m. the officer from the office of the Land Acquisition Collector came to the premises No. 44, Bhupen Bose Avenue and 12, Sachin Mitra Lane, Calcutta with requisition notices and possession notices being No. 34/83 Reqn. dated 17th August, 1983 issued by the First Land Acquisition Collector on 1st September, 1983. Functions were going on at that premises. When the functions were going on the said premises, the said officers left the premises leaving the notices and without obtaining any signature from the petitioners. On the same date the officers of the Land Acquisition Collector went to the premises No. 12, Sachin Mitra Lane, Calcutta along with notice of requisition where also similar function was going on that date and the said officers left the place leaving the order of requisition without obtaining any signature from the petitioners. From the said notice it appears that the said notices have been issued in the name of Chandi Charan Ghose and Chandra Nath Ghose who were long dead and their heirs namely the petitioners are the owners of the premises in question as heirs and legal representatives of those deceased persons. It is stated that the said order of requisition and the notices were bad and the respondents failed to give mandatory notice of 10 clear days to the owners and occupiers as required under S. 4(1) of the said Act for vacating the said premises. The said notices of requisition were stated to be illegal on the ground that the same had left on the said premises on 3rd September, 1983 when the staff of the Land Acquisition Collector came to take possession and went back without taking any possession. There had been no service of the said notices at all to the owners and occupiers of the said premises. It is further stated that since the premises No. 44, Bhupen Bose Avenue was under order of requisition for the Metro Railway Authorities, as such the same cannot be requisitioned for any other purposes. Thereafter the petitioners made representation before the Minister-in-charge, Land and Land Revenue Department but no possession has been taken on the basis of the said representation. The petitioners stated that the names of the contractors whose goods are lying in the said premises, are in para 15 of the petition.

3. The learned Advocate appearing for the petitioners submitted that the said order of requisition was illegal and bad in law relying upon the decision of the

Supreme Court in the case of *Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others*, wherein Supreme Court held that where the property is required for a permanent purposes, the State cannot be requisitioned under the provision of West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 (referred to as the said Act). In that case it was held that --"The State has the power both of requisition as well as acquisition subject to one condition, i.e. the property acquired or requisitioned must be for public purpose. The two concepts are different, in one title passes to the acquiring authority, in the other title remains with the owner, the possession goes to the requisitioning authority. Normally, the expression "requisition" is taking possession of the property for a limited period in contradistinction to "acquisition".

4. The Additional Land Acquisition Collector affirmed an affidavit. In the said affidavit-in-opposition it was stated that at the time of inspection and at the time of taking possession of premises No. 44, Bhupen Bose Avenue and premises No. 12, Sachin Mitra Lane, the said premises were found vacant and no body was found in physical possession nor any body objected to the taking of delivery of possession. It was further stated that "Land and Land Reforms department under West Bengal Act V of 1967 requisitioning the entire premises No. 44, Bhupen Bose Avenue excepting the ground floor shop for the purpose of office accommodation of food and supply department Government of West Bengal and in the circumstances the date 3rd September, 1983 at 11 a.m. was fixed for taking over the possession of the said premises. It was subsequently found that the said premises is under acquisition for M.T.P. and a Notification under S. 4 of the Land Acquisition Act was published in Calcutta Gazette dated the 30th July, 1974 for acquisition of the said premises. As such the possession of the said premises was not taken nor the notice for requisition of the premises was given effect to. It was stated that the notice of requisition was served on 3rd September, 1983 but no attempt for possession was taken. It was stated that in view of acquisition for the Metro Railway, the order of requisition was not valid. It was further stated that on 3rd September, 1983 notices were refused and as such the same were served by affixation. The order of requisition and notices for delivery of possession issued on 7-4-84 in respect of premises No. 12, Sachin Mitra Lane and 42, Bhupen Bose Avenue were served on 10-4-84. The said notices were in the name of the present owners. The notices were duly served by affixation as the said owners refused to accept the same. It was stated that the possession has been taken by the Rationing Officer Maniktalla II when none were found in the premises and that the movable of the premises were listed and the same were kept in the custody of food and supply department. In support of this statement that notices were served by affixation on premises No. 12, Sachin Mitra Lane and 42, Bhupen Bose Avenue, Calcutta. Xerox copy of the possession certificate and statement has been annexed in which it was stated that on 10-4-84 the petitioners went to the premises No. 53A, Bhupen Bose Avenue and met Sambhu Nath Ghosh who refused to accept the notice and under such

circumstances notice was served by affixation on the premises in question. From this it appears that the affixation was made on premises No.53A Bhupen Bose Avenue in respect of both the requisition one relates to premises No. 42, Bhupen Bose Avenue and other relates to premises No. 12, Sachin Mitra Lane.

5. With regard to the notices against the dead persons is concerned, it is stated that there was no personal knowledge whether persons were dead and that thereafter the notices were served upon the reported owners in their names. In respect of the requisition for premises No. 12, Sachin Mitra Lane, it was sent in the name of Smt. Anjan Bala Ghose, Tapan Kumar Ghose and others including Sambhu Nath Ghose.

6. The West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (referred to as the said Act) provides that it confers power upon the State Government for requisition of a premises which is needed and likely to be needed for any public purpose either with or without any furniture if any in such premises. S. 3(2) of the said Act provides an order under sub-sec. (1) shall be served in such manner as may be prescribed on the landlord, and where it relates to premises let out to a tenant, also on such tenant. S. 3(3) of the said Act provides that the State Government may, with a view to requisitioning any premises under sub-sec. (1) by order -- (a) require any person to furnish to such authority as may be specified in the order, such information in his possession relating to the premises as may be so specified;

(b) direct that until the expiry of such period not exceeding three months as may be specified in the order, the landlord, the tenant or any other person in occupation of the premises shall not let out the premises without the permission of the State Government. S. 4(1) of the said Act provides that -- Where any premises are requisitioned under this Act the Collector may by notice in writing-

(a) order the person in occupation of the premises, if any, to vacate the premises within a period of ten days from the service of the notice;

(aa) order the landlord or the tenant, as the case may be, to remove the articles belonging to him, if any, and, where the premises are requisitioned without any furniture therein, such furniture, within a period of fifteen days from the service of the notice.

The Collector has been conferred power to extend time in this behalf.

7. In the instant case, admittedly no time was given to the landlord to vacate the premises as mandatorily required under S. 4(1)(a) of the said Act. Further it appears that the requisition of the premises was made without any furniture but the time to remove furniture as required under S. 4(1)(aa) of the said Act, namely 15 days time from the service of notice had not been admittedly given.

8. In my view, the respondents have admitted that they had taken possession of both the premises on the same date when the notice was served by affixation. From the notice it appears that no time was given to the landlord to vacate the

premises. In my view, the provisions of S. 4 are mandatory in nature and word "may" in S. 4 of the said Act means must, inasmuch under the scheme of the Act by passing an order under S. 3(1) of the said Act and by serving order upon the respondents, the order of requisition is made finally effective. No notification is required to be published in the official gazette and there is no form of publication of the notice. When a citizen will be deprived of its property by simply serving a notice in my view, the provisions for service of the notice and giving of time to vacate the premises and to remove the furniture are mandatory in nature. It is not the intention of the legislature that where there are furniture in the premises, landlord had to make other possession very moment when the notice was served. It is an impossibility. The provisions of S. 4 cannot be meant that time to vacate the premises and to remove furniture are merely directory in nature, that would result in an unworkable and impracticable result which the legislature had never intended. It is a cardinal principle of interpretation that "The Court seeks to avoid construction that causes unjustifiable inconvenience to persons who are subject to the enactment, since this is unlikely to have been intended by Parliament." It has to be remembered that under the scheme of the Act there is no scope for giving any hearing before or after the order of requisition is made under S. 3 of the said Act. The notice is the only thing by which the owners concerned are I deprived of their possession. In case the property is requisitioned with furniture, in that event, there is no question for giving any time to remove furniture but the owners and occupiers must be given a reasonable time to vacate the premises. In the instant case, the properties are let out on the occasion of marriage and other social and religious ceremonies and for that purpose large number of articles belonging to various caterers and decorators are situated in the premises and that in usual course the persons must have taken a house and have paid advances for the charges for that purpose. In such a case some time have to be given to the owners and occupiers to arrange their many affairs. Enabling Acts sometimes has con-trued as compulsory whenever an object of the power is to effectuate a legal right. In Craies on Statute Law, 6th edition page 286 it was observed that-

"When said the Court, a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorised to exercise the authority, when the case arises and its exercise is duly applied for by a party interested, and having the right to make the application. For these reasons we are of opinion that the word "may" is not used to give a discretion, but to confer a power upon the Court and judge, and that the exercise of such power depends, not upon the discretion of the Court or judges, but upon the proof of the particular case out of which such power arises."

There is another aspect of the matter whenever the word "may" in S. 4 is held to be directory, in that event, it would confer power upon the Collector to give power in respect of one and in respect of other he may not give any time and the Collector would be at liberty to make discretion. When a citizen is going to be deprived of lawful possession of the property that particular person must be

given time to vacate the premises and also to remove furniture. Accordingly, I am of the view that the word "may" in S. 4 is mandatory in nature and the respondents had acted illegally and without jurisdiction in not giving time to vacate the premises and to remove the furniture from the premises in question in view of the provision of S. 4(1)(aa) of the said Act.

9. With regard to the purpose disclosed in the affidavit-in-opposition it appears that the property has been requisitioned for a permanent purpose. In this connection Supreme Court in the case of *Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others*, held that (Paras 16,22 and 23):--

"Thus, normally the expression "requisition" is taking possession of the property for a limited period in contradistinction to "acquisition". This popular meaning has to be kept in mind in judging whether in a particular case, there has been in fact any abuse of the power.".....

"In view of the decision in the case of *H.D. Vora Vs. State of Maharashtra and Others*, in the light of the decision of this Court rendered by a Bench of three Judges in *Collector of Akola and Others Vs. Ramchandra and Others*, and bearing in mind the distinction between "requisition" and "acquisition" as also the provisions of West Bengal amended S. 49(1), the correct position in law would be that it will not be correct to say that in no case can an order of requisition for permanent purpose of requisitioning the property is of a permanent character and where the Government has also the power and the opportunity to acquire the property or a part thereof especially upon the fulfilment of the conditions of S. 49(1) of the Land Acquisition Act (as amended by the West Bengal Act) to the extent applicable, if the Government chooses not to exercise that power nor attempt to exercise that power to achieve its purpose, then that will be bad not because the Government would be acting without power of requisition but the Government might be acting in bad faith. In other words, if there is power to acquire as also the power to requisition and the purpose is of permanent nature by having the property or a part thereof for the Government then in such case to keep the property under requisition permanently might be an abuse of the power and a colourable exercise of the power not because the Government lacks the power of requisition but because the Government does not use the other power of acquisition which will protect the rights and interests of the parties better."

"Where one is repository of two powers that is power of requisition as well as power of acquisition qua the same, property and if the purpose can equally be served by one which causes lesser inconvenience and damage to the citizen concerned unless the repository of both the powers suffers from any insurmountable disability, user of one which is disadvantageous to the citizen without exploring the use of the other would be bad not on the ground that the Government has no power but on the ground that it will be a misuse of the power in law."

10. In the instant case, the petitioner moved this Court immediately and

obtained an interim order by which the property in question was directed to be under the custody and possessions of the Special Officer appointed by this Court who was authorised to let it out for marriage and other ceremonial occasions and who was directed to keep the money in deposit for expenditure in that behalf and that the Special Officer had in fact let out the premises for several occasions. In view of the decision of the Supreme Court mentioned above, the property could not be requisitioned for this purpose under the provisions of the said Act but this is a purpose for which the respondents could only invoke the provisions of Land Acquisition Act.

11. In the result, the writ petition succeeds. The impugned order of the requisition and the notices are cancelled. The respondents are restrained from giving effect or further effect to the order of requisition. This order is passed without prejudice to the rights of the respondents to acquire the property under the provisions of the Land Acquisition Act, if they are so advised. The Special Officer is directed to hand over possession to the petitioner. It appears that the Special Officer by the previous order of the Court was paid an honararium of Rs. 4,030/-. Considering the facts and circumstances of the case, the Special Officer will get a round figure of Rs. 18,000/- which will be deducted from the money which is lying with him.

12. The writ petition is allowed.

13. There will be, however, no order as to costs.

14. Let similar order be passed in other writ application, that is, C.O. 2507(W) of 1986 (Sambhu Nath Ghosh v. State of West Bengal and others) as both cases were directed to be heard together and let both the writ applications be disposed of on the above terms.

15. Petition allowed.