

**(1988) 04 CAL CK 0038**  
**In the Calcutta High Court**  
**Case No : C.R. No. 1130 (W) of 1978**

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|---------------------------------|----|------------|
| Sankar Lal Shaw and Another     | Vs | APPELLANT  |
| State of West Bengal and Others |    | RESPONDENT |

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**Date of Decision :** 25-04-1988

**Acts Referred:**

Constitution of India, 1950 — Article 226  
West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —  
Section 3(1)

**Citation :** (1988) 2 CALLT 228

**Hon'ble Judges :** Paritosh Kumar Mukherjee, J

**Bench :** Single Bench

**Advocate :** S.C. Bose, Lakshmi Kumar Gupta and Shefali Sarkar, for the Appellant; Ramdulal Manna, for the Respondent

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## Judgement

Paritosh Kumar Mukherjee, J.—The present writ petition was moved on February 24, 1978, challenging, inter alia, an order of requisition, dated August 7, 1976, of the premises No. 17, Girish Avenue, Calcutta, passed u/s 3 of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 (Act V of 1947) (hereinafter referred to as the 1947 Act), whereupon this Court issued a Rule and granted injunction in terms of prayer (f) for a limited period. An application for vacating interim order being filed on behalf of the State, considering the fact that the possession of the premises having already been taken by the State Government, this court passed no order on the said application, but fixed early hearing of the Rule by Order, dated June 29, 1978.

2. Unfortunately, although the hearing has been fixed by Amiya Kumar Mukherji, J, by His Lordship's Order, dated June 29, 1978, the hearing of the writ petition could not be commenced till this matter was mentioned before me in December 1987, and the matter was heard-in-part by me on February 16, 1988, February 18, 1988 and March 22, 1988, when the hearing was concluded and the judgment was reserved.

3. During the pendency of the writ petition in this court for a decade, two applications for amendment of the writ petition were filed, one on August 25, 1978 whereby paragraphs 22A, 22B, 22C and corresponding grounds (j), (k), (1) and (m) were taken and the said application was allowed by B.C. Ray, J, by His Lordship's Order, dated August 13, 1981. The second amendment, which has been necessitated because of the pendency of the writ petition for years in this court, and because of recent Supreme Court judgment in the case of H.D. Vora Vs. State of Maharashtra and Others, and Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, , whereby paragraphs 22D, 22E and 22F and corresponding grounds Nos. (n), (o) and (p) were taken and additional prayers (e), (f) and (g) were taken and allowed on the basis of the Supreme Court judgments reported in H.D. Vora Vs. State of Maharashtra and Others, and Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, .

4. The facts stated in the writ petition are as follows :

The petitioner Nos. 1 and 2 are engineers and both obtained foreign degrees from foreign University and are at present staying in U.S.A. For the purpose of residence and office/shops, the petitioners purchased a land measuring about 2 cottahs 15 chittaks and 21 square feet being Plot No. 14 in C.I.T. Scheme No. LV1II now known as 17, Girish Avenue, Calcutta, by a registered deed of conveyance, dated June 20, 1958, for a sum of Rs. 45,358. After the purchase, the petitioners obtained the plan sanctioned from the Corporation of Calcutta for construction of a two storeyed building on the said plot and the said plan was sanctioned in the year 1965, and the plan was renewed in the year 1970, after the lapse of a period of first five years for a further period of 5 years. The construction of the said building was started by the petitioners while the petitioners were staying in Calcutta in 1972, and when the petitioners left for U.S.A. in 1974 (October), the said construction was partly made and the petitioners entrusted their father to complete the construction in accordance with the said sanctioned plan.

5. Before the construction could be completed, a purported order of requisition passed under sub-section (1) of Section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, being Order No. 20 of 1976, dated August 7, 1976, was issued in the name of the petitioners. In the said order, the petitioners' names were described as "owners" and the petitioners were directed to place the above property at the disposal of the First Land Acquisition Collector, Calcutta, on August 11, 1976. The impugned Order of requisition has been annexed as Annexure "A" to the writ petition.

6. On August 11, 1976, the Officers of the Land Acquisition Department along with a large number of police officers. including the Rationing Officers of Maniktala and Shyampukur came over to the premises No. 17, Girish Avenue, Calcutta, and took possession of the "incomplete" and "unfinished constructions" in respect of the Ground Floor and First Floor of the premises after taking inventory and the same was signed by the parties and Officers of the Land

Acquisition Department took possession after making over the purported Order of possession certificate in favour of the petitioners' father.

7. Immediately after the requisition Order was made, petitioners' father made representation on November 24, 1976, before the First Land Acquisition Collector, Calcutta, stating inter alia, that the petitioners' father had no authority to give up possession of the premises, which is an "unfinished structure", on behalf of the petitioners.

8. At the final hearing of the writ petition, Mr. Lakshmi Kumar Gupta, learned Advocate followed by Mr. S. C. Bose, learned Senior Advocate submitted that in any event, an "incomplete constructions" could not be requisitioned, under the provisions of the said Act, as the said Act contemplates requisition of "premises" for the purpose of use and occupation, but at the relevant point of time, premises No. 17, Girish Avenue, was not in a state of being used or capable of being used and/or occupied by any person or authority and that the said Act did not provide any order of requisition of such an incomplete premises and to make investment from public exchequers and to complete the construction to suit the purpose of the requiring body at their sweet will and in violation of the sanctioned plan.

9. In elaborating this branch of submission, Mr. Gupta has drawn my attention to the definition of the word "premises" in Section 2(e) of the said Act, which means any building or part of a building or any hut or part of a hut and includes the garden, grounds and out-houses (if any) appertaining to such building or part of a building or hut or part of a hut and also includes a room or rooms in an hotel, boarding house or lodging house, but no-, where "premises" included an incomplete structure and as such, the Order of requisition was passed without due formation of opinion, by the authorities.

10. Specific grounds have been taken in support of this submission by way of filing the first amendment incorporating paragraphs thereby 22A to 22C, wherein it was alleged that the purported order of requisition was illegal, as there was no "public purpose" for the same, in view of the fact that the property of the petitioner was an "unfinished structure", which would necessitate spending of large sum of money from the Government exchequers in order to complete the construction thereof for shifting of the rationing offices. It was further alleged that there was no requisite formation of opinion by the State Government that the unfinished property of the petitioners was needed for public purpose, and there was no material before the appropriate authority for arriving at such satisfaction.

11. During the hearing of the writ petition before me, second application for amendment was filed in view of the recent Supreme Court judgments referred to above and certain paragraphs being paragraphs 22D, 22E and 22F were incorporated with corresponding additional grounds Nos. (n), (o) and (p), wherein the petitioners have stated that the rationing offices of Jorasanko and

Shyampukur are presently accommodated at premises requisitioned by the Government of West Bengal and the requisition of the said premises was made in or about 1965/66. The said order of requisition relating to the premises belonging to the petitioners was passed on August 7, 1976, for shifting of the said rationing offices. Since then more than 11 years have passed, but the rationing offices of Jorasanko and Shyampukur are still continuing in the same premises in which they were located when the order of requisition was passed.

12. Accordingly, the need for a premises for the purpose of rationing offices of Jorasanko and Shyampukur is of a permanent or perennial nature and character" and such need cannot be fulfilled by taking recourse to the "order of requisition", passed under the provisions of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947, and the respondents in fact have committed fraud upon the statute by passing the order of requisition, and on this ground alone, the writ, petition is entitled to succeed, and necessary directions may be passed by this Court, in the light of the Supreme Court judgments.

13. Further, it was submitted in the said additional averments that even if the order of requisition is to be treated as valid, then by efflux of time by continuation of the illegal order of requisition, by which the petitioners have been unlawfully deprived of compensation resulting from acquisition of the said property, the respondents are under the legal obligation to derequisition the premises No. 17, Girish Avenue, Calcutta, or in the alternative to acquire the same by passing notification under the provisions of the Land Acquisition Act, 1894 (Act I of 1894) and consequently prayer was added, whereby prayer was made for commanding the respondents authorities to release the premises No. 17, Girish Avenue, Calcutta-3 from requisition and/or to determine and pay appropriate compensation thereof alternatively.

14. During the hearing of the writ petition, both parties were directed to file their written submissions and it was contended on behalf of the petitioners explaining the point of delay in moving the writ petition, that the present writ petition was moved after 19 months of passing of the order of requisition and during these 19 months, the Government did not shift the rationing offices to the premises of the writ petitioners and the petitioners were reasonably expecting that the representations of the writ petitioners will be considered favourably and the premises will be released from the purview of requisition order. The rationing offices of Jorasanko and Shyampukur area were/are located at a nearby premises which was also requisitioned by the Government for the aforesaid purpose and after the order of status quo obtained in the present writ petition, the rationing offices of Jorasanko and Shyampukur are still continuing to remain in the then existing requisitioned premises.

15. After this Rule was issued, more than 11 years have passed, but the Government did not feel it necessary to have the premises of the petitioners acquired permanently as is evident from the fact that except making an application for vacating interim order in or about 1978, which proved to be

abortive one, no other steps were taken for early disposal of the matter. According to the petitioners, the Government also did not take any steps for requisition of any other premises, nearby. This clearly shows that the premises in question where the said two rationing offices are at present located, is sufficiently spacious and suitable.

16. So far as the additional grounds taken in support of the second amendment petition, (which has been taken by filing an application for amendment for the second time), the petitioners have specifically urged that the rationing offices of Jorasanko and Shyampukur are existing for more than 2 decades, in another requisitioned building and for the said rationing offices, the premises of the petitioners was purported to be requisitioned in 1976. The purpose for the premises of the petitioners, even if existed, is of "permanent" and "perennial" in nature.

17. Thus, according to the writ petitioners, no order of requisition under Act. V of 1947 could be invoked by the State Government, as the writ petitioners are being deprived of the possessory right of their property for indefinite period, as it has been held in the case of H.D. Vora Vs. State of Maharashtra and Others, . In paragraph 5 of the said judgment, P. N. Bhagwati, J. (as His Lordship then was) speaking for the court, observed as follows :

"The two concepts, one of requisition and the other of acquisition are totally distinct and independent. Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. Vide : Observations of Mukherjee, J. in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of "domain or control over property without acquiring rights of ownership and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the Government can under the guise of requisition continued for an indefinite period of time, in substance 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."

"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."

18. In this connection, reference may be made to affidavit- in-opposition affirmed on behalf of respondents Nos. 1 to 3 on July 22, 1976, wherefrom it will appear that the Rationing Officer of Jorabagan wrote a letter to the Deputy Secretary of Land and Land Revenue (Requisition Department) with a copy, inter alia, to the First Land Acquisition Collector, Calcutta, specifying six premises suitable for accommodation of the two rationing offices, including the premises of the petitioners.

19. After more than 2 years, the order of requisition was passed, which has been impugned in the instant writ petition by the writ petitioners by moving the instant writ petition after 1 1/2 years. It was also contended on behalf of the petitioners that the Government did not have any immediate necessity for the premises of the petitioners. Although for passing an order of requisition under Act V of 1947, the Government has no duty to comply with the principles of natural justice which may frustrate the very object of speedy requisition, but in the instant case when the respondents had no immediate necessity for the premises, it was obligatory on the part of the Government to comply with the

principles of natural justice and give an opportunity of hearing, as it has been held in the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, .

20. On behalf of the respondents, Mr. Manna after referring to the definition "premises" in Section 2(e) of the said Act, submitted, that even in respect of incomplete construction of a premises, order of requisition could be passed and such formation of opinion by the State Government and sufficiency of material available before the State Government, in any event, is not justiciable.

21. In fact, the respondents came forward with a case that the existing space for Jorabagan and Shyarnpukur Rationing Offices became inadequate with the increase of works and staff and there was no scope for extension of the said premises. So, the Rationing Officer, Jorabagan, by his letter, dated July 27, 1974, informed the Deputy Secretary to find a suitable accommodation. In the said letter, the Rationing Officer had recommended for requisition of one of the 7 premises mentioned therein and the disputed premises has been described as item No. 1 out of the said premises and the State Government after due application of mind, passed the order of requisition of the said premises on August 8, 1976, in terms of Section 3(1) of Act V of 1947. Thereafter, on August 10, 1976, the First Land Acquisition Collector, Calcutta, caused service of the said notice on the petitioners, being the owners of the disputed premises.

22. In opposing the grounds, Mr. Manna has relied on the provision of Section 3(1) of Act V of 1947, which runs as follows :

"3(1). Whenever it appears to the State Government that any premises in any locality are needed or are likely to be needed for any public purpose-, it may, by Order in writing, requisition such premises either with or without any or all of the furniture, if any, in such premises."

23. After referring to the aforesaid provision, he submitted that the Government has power to requisition for immediate necessity and for public purpose. Further, Mr. Manna submitted that unfinished building can be requisitioned, as it has been reported in the case of *A.C. Mohamed and Another Vs. Sailendra Nath Mitra*, .

24. After hearing both parties at length and after considering the submissions including the written arguments submitted by both sides, I am of the view that the impugned order of requisition and its continuance any further in respect of the premises in question cannot be sustained in law, as admittedly it appears from the pleadings filed by the respective parties that the aforesaid premises, being No, 17, Girish Avenue, was required by the State Government "permanently" for "accommodating the rationing offices of Jorasanko" and Shyampukur."

25. In my view, the present writ petitioners are entitled to obtain relief on the basis of *Vora's* case (supra) and *Jiwani Kumar's* case (supra) referred to above, as it appears to me that the State Government intends to have the possession of the property permanently which cannot be taken recourse to by the impugned

Act V of 1947.

26. In Jiwani Kumar's case, the Supreme Court observed that it would not be correct to say that in no case an order of requisition for permanent purpose be made but in a situation where the 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 Section 49(1) of the Land Acquisition Act (as amended by the West Bengal Act 32 of 1955) to the extent applicable, if the Government chooses not to exercise that power nor attempts to exercise that power to achieve its purpose, then that would 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 other power of acquisition which would protect the right and interests of the parties better.

27. In the result, the writ petition is entitled to succeed.

28. Let a Writ in the nature of Mandamus issue upon the respondents commanding them either to release the premises No. 17, Girish Avenue, Calcutta-3, from the requisition forthwith and/or acquire the premises permanently and pay appropriate marketable compensation to the writ petitioners, on the basis of the present market value, within a period of two months from the date of communication of this order.

29. The respondents are further commanded to determine and pay rent and/or damages within a period of 2 months for the requisitioned period, namely, from taking over possession of the premises, after making adjustment towards cost of construction and repairs made by them, to the petitioners in accordance with law.

30. The Rule is made absolute to the extent as above. There will be no order as to cost.