

(1961) 12 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 152-D of 1961

Satbir Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-12-1961

Acts Referred:

Guardians and Wards Act, 1890 — Section 27, 28, 29, 30, 31
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 3

Citation : AIR 1962 P&H 387 : (1962) 64 PLR 379

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Judgement

(1) The three minor petitioners Maharaja Satbir Singh of Jind and his two brothers Maharajkumar Gajbir Singh and Maharajkumar Ravi Inder Bir Singh, have brought this petition for a writ of certiorari under Articles 226 and 227 of the Constitution of India through their guardian Shri B. S. Grewal, Financial Commissioner, Punjab, to impugn the requisition proceedings in respect of the bungalow "Shanti Niketan" at 1. Sikandra Road, New Delhi initiated at the instance of the Collector, Delhi, by his notice of 9th of January, 1961. The notice to show cause was considered by the Collector in the detailed order passed by him on 10th of March, 1961, in which the objections of the petitioners were dismissed and the order of requisition was made under sub-section (2) of section Immovable Property Act 1952. An appeal was preferred to the Chief Commissioner, Delhi, and it was dismissed by him on 17th of April, 1961.

(2) The petitioners have now invoked the extraordinary jurisdiction of this Court for the purpose of setting aside the requisition which has been confirmed by order of the Chief Commissioner. The house was at first requisitioned in the year 1941 and was released to the owners in two different stages in 1957 and 1958. Thereafter, Maharaja Rajbir Singh of Jind along with his wife Maharani Prithvi Bir Kaur who is the step-mother of the petitioners, resided in the house. The Maharaja died in this house on 7th of September, 1959.

(3) u/s 3 of the Requisitioning and Acquisition of Immovable property Act, 1952, a competent authority may call upon the owner to show cause within fifteen days why the property should not be requisitioned, and the purpose of the requisition has to be specified in such notice. No property or a portion thereof can be requisitioned if "it is bona fide used by the owner thereof as the residence of himself or his family". It has been the case of the petitioners both before the Collector and the Chief Commissioner who is the appellate authority that the house, which had been requisitioned, had been in their bona fide use as owners and, therefore, the requisitioning is contrary to the provisions of law.

(4) Mr. Gurbachan Singh, the learned counsel for the petitioners, has also contended that the requisitioning proceedings are invalid, founded as they are on a notice in which the purpose of the requisitioning was not specified. Lastly, Mr. Gurbachan Singh submits that the property being under the Court guardian, cannot be requisitioned in view of section 29, 31 and 32 of the Guardians and Wards Act.

(5) So far as the plea of bona fide user of property is concerned, both the Collector and the appellate authority have dealt with this question of length. The three petitioners though they have been living in the house on different institutions out of Delhi and their step-mother has a house in Friends Colony. According to the concurrent finding of fact of the Collector and the Chief Commissioner, none of the three petitioners was actually residing in the bungalow at the time when the notice for requisition was issued on 9th of January, 1961. Later, the eldest son, who was studying in the University at Ohio rushed back to Delhi and has been in occupation of the house. Out of the other two petitioners, one has finished his education in Doon School and the other is still there. In the view of the Chief Commissioner, the three petitioners started "gravitating" towards the bungalow only after the issue of the show cause notice.

(6) Though some inadmissible evidence was taken into consideration by the Collector, the Chief Commissioner was careful enough to give his finding only on basis of evidence to which no exception could or has been taken. The undeniable fact which weighed with the requisitioning authorities was that Shri Grewal as guardian of the minors was negotiating both with the German Embassy and Hindustan Chemical and Fertilizer Corporation for a lease of this very property. That the premises were not required for the bona fide user of the owners, when the question of lease was under active consideration, is a conclusion which cannot be regarded as perverse or unreasonable. The evidence of these negotiations has not been and indeed could not be controverted.

The learned counsel for the petitioners has, however, made two submissions on this aspect of the case. It has been urged, in the first instance, that Shri Grewal was motivated by considerations of economy in dealing with the estate of the minors which had heavy liabilities to meet in the shape of taxes and estate duty. It was considered advisable to give the property on lease and start construction on a portion of it.

Now in the correspondence, which has been placed on record, it is nowhere stated that a portion and a portion only of the premises would be utilized for construction of flats to be given on rent. It was contemplated to lease out the entire property and the negotiations with the Embassy of the Federal Republic of Germany terminated on 25th of January 1961 because the intention of the Government to requisition the property had become known. There was also some correspondence between the Fertilizer Corporation of India which through their Secretary requested the Deputy Commissioner on 13th of January 1961 to desist from requisitioning the house as their negotiations for a lease were nearly complete. Faced with this ineradicable fact, it has been contended by the learned counsel that the acts of Shri Grewal cannot be binding on the minors. This argument loses sight of the fact that Mahajan J. himself as the Court guardian had approved the proposal of leasing the house to the Government.

(7) Mr. Gurbachan Singh's contention on the main question is that the petitioners should not be expected to reside with their step-mother in the house in Friends Colony. This is an entirely irrelevant consideration in determining the question whether the premises are being used bona fide by the owners. The unequivocal intention to lease the premises militates (sic) the case set up by the petitioners that they have been using or intend to use the premises for their own use. Nor do I see any force in the second objection with regard to the notice. In the notice for requisition it was stated that the house was required for public purpose namely accommodation for public offices. The petitioners were latter informed that the house was actually required for the office of the Housing Commissioner of the Delhi Administration. The purpose stated is in compliance with the legal requirements and to prejudice could conceivably be caused when instead of mentioning the office of the Housing Commissioner, it was stated that the premises were required for accommodation of public offices.

In *The State of Bombay Vs. Bhanji Munji and Another*, the purpose of requisitioning was not stated in the first instance and it was only after proceedings had been filed by way of writs that a subsequent notification mentioned that the premises were requisitioned for "a public purpose, namely housing a person having no housing accommodation on the date of the said order cited above." The Supreme Court held that it is not necessary to set out the purpose of the requisition in the order when the desirability of such a course is obvious as it would afford a proof of the purpose for which it has been done.

The third objection that the house could not be requisitioned under the provisions of the Guardians and Wards Act seems to be without substance. Sections 27 to 29 relate to the duties and powers of testamentary guardian and S. 30 states that no immovable property could be disposed of by a guardian in contravention of the provisions contained in Sections 27, 28 and 29. I do not see how the power of requisitioning a property by the Government is affected by these provisions. It is not the guardian who is transferring immovable property but the Government under its powers of "eminent domain" is requisitioning the

property. It may be mentioned once again that Mahajan J. acting as a guardian Judge himself gave directions to the guardian to offer the house to the Government by negotiation and agreement.

(8) It is well to point out that the jurisdiction of this Court can be invoked only in grave cases where subordinate tribunals act without jurisdiction or in excess of it or in violation of the principles of natural justice and where such an error has resulted in manifest injustice: Veerappa Pillai Vs. Raman and Raman Ltd. and Others, It cannot be said that in the present instance there has been any abuse in the exercise of jurisdiction. The Collector and the Chief Commissioner had undoubted authority to decide and even a wrong view on a question of fact cannot constitute an error which would justify interference by this Court in writ proceedings.

As pointed out by their Lordships of the Supreme Court in T.C. Basappa Vs. T. Nagappa and Another,

"the supervision of the superior court exercised through writs of certiorari goes on two points. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise".

These two heads normally cover all the grounds on which a writ of certiorari could be demanded. As already pointed out, the tribunals have acted within the bounds of their jurisdiction and without doing any violence with the principles of justice. There is no manifest error which might call for correction.

In Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, it was held that errors of fact even though apparent on the face of the record could not furnish a ground for interference by a High Court in the exercise of its writ jurisdiction. whether the premises were required for bona fide personal use is a question purely of fact and even an erroneous finding cannot provide a foothold to this Court for interference.

(9) In the light of the aforesaid discussion, I would accordingly hold that there is no ground for interference in writ proceeding. The petition fails and is dismissed with costs.

Petition dismissed.