
(1974) 01 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 253 of 1973

Shivram Bakshi

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-01-1974

Acts Referred:

Madhya Pradesh Accommodation (Requisition) Act, 1948 — Section 4(2A), 5, 5(1)

Citation : AIR 1974 MP 120 : (1975) ILR (MP) 307 : (1974) JLJ 215 : (1974) 19 MPLJ 319 : (1974) MPLJ 319

Hon'ble Judges : P.K. Tare, C.J;G.P. Singh, J

Bench : Division Bench

Advocate : K.L. Verma, for the Appellant; T.C. Naik, (for No. 4) and K.K. Adhikari, Deputy Govt. Advocate (for Nos. 1 and 3), for the Respondent

Final Decision : Allowed

Judgement

Singh, J.

This is a petition under Articles 226 and 227 of the Constitution for issuance of a writ in the nature of mandamus commanding the respondents 1 to 3 to put the petitioner in vacant possession of House No. 287, Napier Town, Jabalpur.

The facts are that the petitioner Shivram Bakshi was the tenant of House No. 287 and Smt. Chhabrani Bahu and Smt. Chandrani Bahu were the owners of the house in 1969 when it was requisitioned u/s 5 of the Madhya Pradesh Accommodation (Requisition) Act, 1948. The order of requisition which was passed on 11th June, 1969 (Annexure P-1) directed Chhabrani Bahu and Chandrani Bahu, the owners, and Shivram Bakshi, the occupant, to deliver possession of the house to the Rent Controlling Authority. The house was taken possession of by this order of requisition. On 15th March, 1972 the Government decided to de-requisition the house and to requisition another house bearing No. 315. It appears that House No. 315 belongs to the petitioner Bakshi and he applied to the Government that his house may be requisitioned and House No.

287 be derequisitioned. By the order dated 15th March, 1972, it seems, this proposal of Bakshi was accepted by the Government and the Collector was directed to take necessary action. As the Collector did not put Bakshi in possession of House No. 287, this writ petition was filed for commanding the State Government, the Collector and the Rent Controlling Authority to put the petitioner in possession of the said house. Smt. Prem Kaur, who is impleaded as respondent No. 4, appears to be the successor-in-interest of the original owners, namely, Chhabrani Bahu and Chandrani Bahu. The stand taken by Prem Kaur in her return is that the petitioner's tenancy came to an end on requisition, but it is not disputed that he was the tenant at the time when the house was requisitioned. In the return filed on behalf of the State Government and the Collector it is contended that the petitioner's tenancy came to an end because of the requisition as he was paid compensation under the Act and possession of the house cannot be given to him. It is also contended that possession can be delivered to such person as may be found entitled after enquiry, but in no case can a tenant be placed in possession on derequisition.

The stand taken by the respondents that on requisition of the house the tenancy of the occupant is brought to an end is entirely erroneous. The word "requisition" is very often used in contradistinction to acquisition of property by which interest in the property gets transferred from the individual to the State. In case of requisition, no interest in the property is acquired by the State and the property is merely taken out of the control of the persons who have interest in the property. By a requisition order, therefore, the State merely takes possession of the property and does not deprive the owner or tenant of the interest held by them in the property; (AIR 1955 153 (Nagpur)). The compensation that is payable to an owner or a tenant under the Requisition Act is paid for temporary deprivation of the enjoyment of the property requisitioned. The compensation is not paid for the transfer of the rights of ownership or of the lease-hold rights, because these rights are not taken over by the State. A look at Section 4(2-A) of the Act will show that compensation payable to a tenant is merely nominal. A monthly tenant is paid only one month's rent as compensation. If the tenancy is from year to year or for a fixed term not exceeding one year, the tenant is paid only two months' rent as compensation. Again, where the tenancy is for a term exceeding one year, the compensation payable is only three months' rent. Thus, even if the tenant has a 99 years lease or a perpetual lease, he would be paid only three months' rent as compensation for the requisition. The nominal amount of compensation provided in the Act itself shows that the requisition order does not terminate the lease and the leasehold rights are not taken over by the State; the tenant is compensated only for disturbance of possession or temporary deprivation of possession.

It has been held in a number of English cases that where the Government in pursuance of statutory powers compels a lessee temporarily to give up possession of premises for an indeterminate time there is no eviction of the tenant by title paramount and no frustration of the contract of lease and the

liability of the lessee to pay rent to the lessor under the lease is not thereby suspended; (Wood-fall, Landlord and Tenant, 27th Edition, Vol. I, p. 331). In *Comms. of Crown Lands v. Page* (1960) 2 All ER 726, the Commissioners of Crown Lands in 1937 granted a lease for a term of 25 years. The premises were requisitioned in 1945 by the Ministry of Works on behalf of the Crown in exercise of the powers conferred by the Defence (General) Regulations, 1939, and were retained in requisition until 1955. It was held that during all this period the tenant remained liable to pay rent to the Commissioners and the rent could not be suspended during the period of requisition. Even in the case of a periodic tenancy the tenancy does not terminate on requisition of the premises; (See the *Minister of State for the Army v. Dalziel* 68 CLR 261. An Indian authority directly in point is the case of *Tarabai Jivanlal Parekh Vs. Lala Padamchand*, . In this case a flat which was in occupation of a monthly tenant was requisitioned in 1944 under Rule 75 (a) of the Defence of India Rules, 1939. The Government de-requisitioned the flat in 1947. The question then arose whether the monthly tenant who was in possession at the time of requisition was entitled to get back the possession on de-requisition. It was contended by the owner-landlord that the monthly tenancy came to an end because of the requisition. This contention was negatived and it was held that the requisitioning of the flat did not affect the relationship of landlord and tenant and the monthly tenancy continued to be operative. We are in respectful agreement with the view taken in this case.

We are, therefore, of opinion that the stand taken by the respondents that the act of requisition extinguishes or terminates the tenancy of the tenant in occupation is entirely erroneous and cannot be accepted.

The order of the State Government passed on 15th March, 1972, which has been placed before us, is an order made u/s 5 (1) of the Act releasing House No. 287 from requisition in favour of the petitioner. The order further directs that House No. 315 be requisitioned. After this order of the Government the petitioner should have been placed in possession of House No. 287. The respondents do not contend that the petitioner's tenancy was for a fixed term which has come to an end or that the tenancy has been terminated by a quit notice. Their stand merely is that the tenancy came to an end on requisition of the house. This stand, as we have already indicated, is entirely misconceived. The petitioner's tenancy, therefore, continues and he must be placed in possession, as an order u/s 5 (1) has been passed in his favour.

The petition is allowed. The respondents 1 and 2 are directed to put the petitioner in possession of House No. 287, Napier Town, Jabalpur. There will be no order as to costs of this petition. The amount of the security deposit shall be refunded to the petitioner.