
(1990) 01 CAL CK 0040
In the Calcutta High Court
Case No : C.O. No. 8661 (W) of 1984

Smt. Purnima Mukherjee and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3(1)

Citation : (1990) 1 CALLT 324

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : M. Gautam Chakraborty and Arunava Ghosh, for the Appellant; Amal Baran Chatterjee and Anadi Banerjee for Respondent No. 1 and Somnath Chatterjee, Tarun Chatterjee and Bijon Majumder, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The present writ petition has been filed by Smt. Purnima Mukherjee, Smt. Jyotsna Mukherjee and Smt. Ayesha Banerjee of 35, Shakespeare Sarani, Calcutta praying inter alia for an appropriate Writ of Mandamus commanding the respondents to rescind, revoke, cancel and/or set aside the impugned notices dated, June 11, 1984 and June 14, 1984 and not to disturb the right, title, and interest and possession of the petitioners in respect of the premises No. 35, Shakespeare Sarani, Calcutta and for other consequential reliefs on the grounds that the impugned order and/or notice dated June 11, 1984 does not mention the particular public purpose for which the said premises is sought to have been requisitioned, and the order dated June 11, 1984 as well as order dated June 14, 1984 for placing the property in question at the disposal and control of the First Land Acquisition Collector, Calcutta, were served only on June 15, 1954 by practising fraud on statute.

2. It is stated in details that the petitioners are absolute owners of the entire premises No. 35, Shakespeare Sarani, Calcutta, and in fact, Late Kamala Charan

Mukherjee, the predecessor-in-title of the petitioners instituted a suit for eviction against the respondent No. 4 (The Institute of Historical Studies) on the ground of default in making payment of rent and also on the ground of reasonable requirement. It is further stated that the respondent No. 4 was a monthly tenant at a rental of Rs. 1,800/- per month according to English Calendar in respect of a portion of premises No. 35, Shakespeare Sarani, Calcutta and the said suit was numbered as Ejectment Suit No. 407 of 1974 in the City Civil Court at Calcutta. In the said suit an application was filed u/s 17(3) of the West Bengal Premises Tenancy Act for striking out the defence of the tenant against delivery of possession as there was failure to comply with the provision of Section 17(1) and/or Section 17(2) of the West Bengal Premises Tenancy Act. Upon contested hearing, the application filed by the landlord was allowed and the respondent No. 4 moved a civil revision application in the Hon'ble Court and in terms of the order of the Hon'ble Court, the case sent back on remand for adjudication. The said suit is still pending and ready for final hearing. In the meantime, the notices bearing No. 4/84 reqn. dated, June 11, 1984 and No. 895 dated June, 14, 1984 issued under the signature of Deputy Secretary, Government of West Bengal, Land and Land Revenue Department, Requisition Branch was received by the petitioners on June 15, 1984 being a Friday at about 7.30 P.M. whereby the premises in occupation by the respondent No. 4 was sought to be requisitioned under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 on the alleged ground that the said premises is "needed for a public purpose". It is further stated in the notice dated, June 14, 1984 that the petitioners will have to place the property at the disposal of the First Land Acquisition Collector on June 16, 1984 at 11.30 A.M.

3. The petitioners have made specific allegations that the order dated, June 11, 1984 which is a Monday and is signed by the Deputy Secretary, Government of West Bengal, and no step was taken to serve the order either on June 12, 1984 or on 13th and/or on June 14, 1984. The pretended order dated, June 11, 1984 and June 14, 1984 were sought to be served in the late evening i.e. at about 7.30 P.M. on June 15, 1984 (Friday) with the whole intention and motive of the respondents particularly the respondent Nos. 1, 2 and 3 to practise fraud on statute and to make procedure of giving notice nugatory as the respondents knew very well that had it been served earlier the petitioners could have taken steps to move the Hon'ble Court to seek the reliefs in accordance with law. There is further allegations that Section 3(2) of West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 envisages service of the notice on the occupier and the petitioners were surprised to find that when the officers of the respondent No. 2 came to take possession on June 16, 1984 they were found to be seated in the office room of the respondent No. 4 and there was a collusion and connivance of the respondents with each other.

4. It appears further from the record that the matter was moved on 16.6.84 and an interim order was passed restraining the respondents from taking any step or further step in pursuance of the notice No. A/54 dated 11th June, 1984 and No.

895 dated, 14th June, 1984 until 7th of July, 1984 and subsequently the interim order was allowed to continue with further direction to maintain status quo as regards possession. Thereafter the matter was heard by His Lordship the Hon''ble Mr. Justice B. P. Banerjee. By order dated, 15th July, 1987 the Part Heard was cancelled and the matter appeared before the Bench for final hearing.

5. The writ petition is strongly passed by the contesting respondents by filing affidavits. It is stated on behalf of the respondent Nos. 1 to 3 that the premises No. 35, Shakespeare Sarani, Calcutta (South eastern portion of ground floor consisting of seven rooms, one covered Verandah, three baths and privies, alongwith south-eastern open space and eastern gate and passage) was requisitioned under sub-section (1) of Section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 vide Requisition Order being No. 4/84-Reqn. dated, 11.6.84 for a public purpose i.e. to allow the Institute of Historical Studies for functioning the institute thereof. It is also placed on record that the activities of the Institute have the promotion of historical knowledge and research and it comes under the purview of the Education Department. Considering all the aspects, the Authorities applied their mind for requisition of the said premises in favour of the said Institute which is a bona fide public purpose, The copy of the said requisition order was served on the petitioners on 15.6.84 directing them to place the requisition premises on 16.6.84 at 11.30 A.M. Service of the said requisition order was accepted by one Shambhu Nath Banerjee on behalf of the petitioners and the possession of the premises covered by the said requisition order was taken on 16th of June, 1984 at 11.30 A.M. and simultaneously handed over to the Education Department on the said date. It is claimed that it appeared to the State Government, that the purpose of the aforesaid requisition of the premises for the said institute was a public purpose indeed. Proper steps were taken in accordance with law and the possession of the premises was taken pursuant to the impugned requisition. Other allegations of the petitioners have been denied.

6. It is stated on behalf of the respondent No. 4 that the Institute of Historical Studies serves the academic pursuit of many scholars of history and its membership is open to all persons interested in history throughout India. It is also claimed that the Institute of Historical Studies, Calcutta founded by Late Prof. S. P. Sen in 1961 and its aims and objects are to

- (i) collect, disseminate and publish information on historical subjects,
- (ii) facilitate exchange of ideas amongst scholars, both Indian and Foreign,
- (iii) Organise Research Projects and publication of journals and books,
- (iv) hold discussion meetings, seminars and conferences and (v) to serve as an all India body with contacts in all States and Union Territories for the purpose of promotion of knowledge and research in history. It is, however, asserted in the affidavit that before moving the writ application and the passing of the impugned order, the respondents have taken over possession of the disputed premises from

Sri N. P. Roy on 16th June, 1984 at 11.30 A.M. by one Mukti Sadhan Chakraborty, Surveyor and Valuer attached to First Land Acquisition Collector, Calcutta.

7. The petitioners, however, filed affidavit-in-reply controverting the allegations of the respondents and reiterating the points taken in the main writ petition. It has been disclosed in details that on Friday at about 7.30 P.M. the notices were served to indicate the possession will be taken on 16th June at 11.00 A.M. The petitioners were able to move before A. K. Sengupta J. and obtained the interim order at 11.00 A.M. at the residence staying the operation of the impugned notice of requisition and by restraining the respondents from taking any step and/or any further step in pursuance of the order dated June 11, 1984. The order was communicated to Mr. Nishit Ranjan Roy at about 11.00 A.M. in presence of Sri M. Roy, Surveyor and Valuer of the First Land Acquisition Collector, Calcutta, There is specific denial of taking over possession was at about 11.30 on 16.6.84 in the manner as stated by the respondents.

8. Mr. Gautam Chakraborty, the Learned Counsel appearing for the petitioners has mainly argued that the entire procedure has been followed with an oblique motive and not in accordance with law. He has strongly canvassed that there was collusion and conspiracy between the respondents in the matter of issuance of the impugned notices and the impugned orders have been passed with an ulterior motives defeat the ejectment suit filed by the landlords and there was no public purpose and the entire step is mala fide. In support of his contention he has drawn the attention of this Court to a number of reported decisions by referring the case of *Amiya Prova Das Gupta Vs. First Land Acquisition Collector and Others*, He has submitted that the expression "public purpose" includes purposes for advancement of public prosperity, public welfare and public convenience. The word "public" connotes the general public as well as a section of the public and the purpose may be a public purpose and even though the purpose does not benefit all the members of the public but only a section of it. In the matter of acquisition or requisition for a; private individual or- a private body, there may be a public purpose involved provided the acquisition or requisition ultimately serves a public purpose. But it must always be borne in mind that whatever public purpose may mean, it must involve a purpose which aims at serving the general interest of the community or a section thereof as opposed to an interest of an individual or a private body. A requisition of premises for a private dancing and music school may be a public purpose, if it subserves a public interest, but because the institution is a dancing and music school, a requisition for its purpose need not necessarily be a public purpose. If the institution is a private profit-making institution, a requisition of premises for its private purposes should not be made under the Act, for the simple reason that it involves no public purpose. It is well settled that the existence of a public purpose for requisition under the Act is justiciable before a court of law. If the real reason for the requisition was helping a private body in its quarrel with the landlord, the purpose of requisition cannot be said to be a public purpose.

Another case of Adarsh Properties (P) Limited and Anr. v. The First Land Acquisition Collector, Calcutta and Ors. reported in 1987(2) CC 129 was cited/ Having regard to the accepted legal principle as well as the point that the premises was not in possession and control of the writ petitioner at the relevant time, the State Government was found not competent to issue the order of requisition and the order of requisition was set aside on the same point for oblique motive and collateral purpose only to frustrate the judgment and decree passed by the competent civil Court. The attention of the Court was drawn to the decision in the case of Howrah Mill Limited v. State of West Bengal and Ors. as reported in 1988(1) CJ 455. His Lordship the Hon"ble Mr, Justice B. P. Banerjee held inter alia that it was not proper on the part of the State Government to invoke the provisions of Section 3 of the said Act when the suit was pending and the circumstances suggest that the action taken in this behalf was not bona fide. It was further found that when the powers are circumscribed under Statute, the power has to be exercised for the purpose for which Statute was passed. All powers have got their limits. When the Legislature thought it fit that the power of requisition could only exercise in some limited cases, the power has to be exercised to fulfil purpose for which it was enacted. When the property is under occupation of one, it cannot be requisitioned for his benefit. The expression "requisition" is for seizure of property by Government for the public purpose. The attention of the Court has also been drawn to the case Elgin Properties and Another Vs. State of West Bengal and Others, . The Division Bench found in the case of Elgin"s Properties that there must be formation of opinion of the State Government. If there is no such formation of opinion in the record, requisition is invalid. Another decision reported in 1980(1) CHN 56 (Pulin Krishna Roy Estate v. State of West Bengal and Ors.) was referred. It has been observed in this cass that in order to make the order of requisition valid and binding on the parties, it is not only necessary that it should be for a public purpose but such purpose must be stated in the order itself. It is open to the parties aggrieved to challenge before a Court of law as to the nature of the purpose for which particular premises has been requisitioned. Mr. Chakra- borthy has also tried to convince this Court that the steps taken by the State respondents were motivated and such steps are not bona fide at all. Every attempt has been made so that the petitioners may not come to the Hon"ble Court to challenge these steps and the possession of the respondent No. 4 whose defence once was struck out has been helped to find reliefs against the landlords seeking eviction on the ground of default and reasonable requirement.

9. Mr. Somnath Chatterjee, the Learned Counsel appearing for the res- pondent No. 4 has submitted that there is no static concept of "public purpose". He has drawn the attention of the Court in details as to the Section 3(2) and Section 4(1) (a) of the Requisition Act. He has also drawn the attention of the Court to the case reported in Chittaranjan Sen Majumdar Vs. First Land Acquisition Collector and Others, Mr. Chatterjee has laid much emphasis upon the observation of the Division Bench that the formation of opinion about the public

purpose or the existence thereof, is not would ordinarily be final and the same would depend upon the subjective satisfaction of the State Government and not justiciable except in cases where the necessary powers to form such opinion is exercised in a colourable and mala fide manner. In case such colourable and mala fide exercise of power is established in the matter of the necessary formation of opinion with regard to public purpose or the existence thereof, the Courts will not be denuded of their power to interfere. He has also tried to distinguish the decision reported in AIR 1981 Cal.161.

10. Mr. Amal Baran Chatterjee, the learned Advocate appearing for the State respondents has adopted the argument of Mr. Somnath Chatterjee and submitted that although the steps were taken hurriedly but there is nothing mala fide.

11. Having heard the Learned Counsels appearing for the respective parties at length and after going through the materials on record, this Court finds the following undisputed feature viz :-

- (1) The petitioners are admittedly the owners of the premises in question.
- (2) The respondent No. 4 is a tenant in occupation of a major portion of the property.
- (3) Admittedly a suit for eviction is pending in the City Civil Court at Calcutta and the suit is ready for final disposal.
- (4) The defence of the tenant against delivery of possession was previously struck out and the tenant is "in problem".
- (5) The suit is also on the ground of reasonable requirement.
- (6) The Institute was found in 1961 and no step was taken for requisition until the tenant is in precarious position.

12. Against the background of such undisputed facts a hurried step has been taken to requisition the premises in question by the impugned order dated, June 11, 1984 and June 14, 1984. It is not appreciated by this Court as to why steps were taken to serve the impugned orders on 15.6.84 at 7.30 P.M. to indicate the possession would be taken on 16.6.84 i.e. on Saturday while the Hon'ble Court does not sit ordinarily and to take the possession at 11.00 A.M. From the records so produced before this Court it does not appear that there is any application of mind by the appropriate Government to form any opinion that there is any public purpose to protect a tenant from being evicted while admittedly a suit for eviction is pending before the competent Civil Court. The records do not indicate that any step was taken since 1961 until a suit for eviction has been filed and the matter came to this Hon'ble High Court in revision at the instance of the tenant whose defence against delivery of possession was struck out. This Court with great anxieties has gone through the pleadings of the case and the records produced before this Court which do not inspire any confidence that there is any public purpose to requisition the premises in question and there is any

application of. mind to form the opinion. Besides the steps taken to take the possession of the property indicate the abuse of power and it exposes arrogance of power and it is a glaring example of executive fiat. It is not appreciated that with a view to protect a tenant, a democratic Government will take such a step to deny the right of the owner/and landlord of the premises to come to the appropriate forum to challenge the impugned order. Practically, the notice had been served on Friday evening with a view to take possession on the Saturday morning. It is indeed a mockery of the performance of the statutory duties. The steps taken by the State respondents to deny the right of a citizen to protect his rights are not to be appreciated as bona fide. It is nonetheless mala fide and for an oblique motive. The facts collectively seem to have convinced this Court that the impugned orders are irregular, illegal and bad in law. This Court is also convinced that no proper possession has been taken pursuant to the impugned order and there is assertion to avoid the effective adjudication of this Court to decide the case in the proper perspective. This attitude of the State respondents is also not appreciated by this Court. The State Government is not expected to protect the interest of a tenant while a suit by the landlord has been filed to seek reliefs in accordance with law, and the same is pending for a long time.

13. Looking to the principle of law and regard being had to the facts and circumstances of this case, this Court is of the view that the petitioners are entitled to reliefs as prayed for. The writ petition is allowed. There will be Writ of Mandamus commanding the respondents to revoke, cancel and/or set aside the impugned orders. The petitioners are entitled to proceed with the ejectment suit in accordance with law. There will be no separate order as to costs.