

**(1994) 09 CAL CK 0025**

**In the Calcutta High Court**

**Case No :** Appeals No"s. 718 and 719 of 1991, Matters No"s. 1281 and 1261 of 1991

State of West Bengal and others etc.

APPELLANT

Vs

Shefali Roy and others etc.

RESPONDENT

---

**Date of Decision :** 20-09-1994

**Acts Referred:**

Constitution of India, 1950 — Article 136

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 3(1), 3(2)

West Bengal Premises Tenancy Act, 1956 — Section 17(3)

**Citation :** AIR 1995 Cal 86

**Hon'ble Judges :** N.K. Bhattacharyya, J;Mukul Gopal Mukherji, J

**Bench :** Division Bench

**Advocate :** P.K. Das, A.B. Chatterjee and A. Banerjee, for the Appellant; Mrs. Mandira Lahiri, P.K. Mullick, P. Roy Chowdhury, N.L. Chatterjee and P.K. Roy, Sr. Advs., for the Respondent

---

## **Judgement**

N.K. Bhattacharyya, J.—By these two appeals the State of West Bengal has challenged the order and/or judgment dated 27th September, 1991 passed by Altamas Kabir, J. by which the learned Judge by a common judgment disposed of Matters Nos. 1261 of 1991 and 1281 of 1991 allowing the two writ applications filed by the respective writ petitioners after setting aside the impugned order of requisition, being No. 3 of 1991 dated 25th February, 1991 passed under sub-sec. (1) of S. 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (Act II of 1948) by respondent No. 2.

2. According to the learned Judge the purpose mentioned in the order is outside the scope and ambit of sub-sec. (1) of S. 3 of Act II of 1948.

3. As by a single judgment both Matters Nos. 1261 of 1991 and 1281 of 1991 have been disposed of and as the appeals have been preferred being Appeals Nos. 718 of 1991 and 719 of 1991 against the said common judgment, both the appeals were taken up for hearing together and are now disposed of by this

judgment.

4. The facts as elicited from the records are as follows:--

In Appeal No. 719 of 1991, arising out of Matter No. 1281 of 1991, the writ petitioners are the owners of premises No. 57, Jatindra Mohan Avenue.

5. The predecessors-in-interest of the writ petitioners inducted the State of West Bengal as a tenant in the building on the basis of an agreement with effect from 21st August, 1961 at a monthly rent of Rs. 7,000/- for the accommodation of Special Road Development under Development (Road) Department.

6. Sometime in 1968 a suit for partition and administration of the Estate of Rai Bahadur Ganendra Krishna Roy was filed before this Hon''ble Court.

7. In that suit by an order dated 10th June, 1968 the petitioners in Matter No. 1261 of 1991 were appointed as Joint Receivers over the said property; namely, 57, Jatindra Mohan Avenue, Calcutta-5.

8. Sometime on or about 9th July, 1984 the said Joint Receivers brought a suit for ejectment against the State of West Bengal from the suit premises as aforesaid being Suit No. 484 of 1984 in this Hon''ble Court.

9. One of the grounds for eviction was default in payment of rent.

10. The Joint Receivers in that suit made an application under S. 17(3) of the West Bengal Premises Tenancy Act, 1956 and ultimately the defence of the defendants against delivery of possession was struck out.

11. By an order of the Court dated 20th March, 1985 the suit was ultimately decreed on 19th May, 1986 directing delivery of khas possession of the suit premises to the plaintiffs. Direction was also given for payment of the arrears of Rs. 77,000/-.

12. The Joint Receivers levied that decree in execution and the execution application was allowed by this Hon''ble Court. The -matter travelled up to the Hon''ble Supreme Court at the instance of the State of West Bengal upon a SLP under Art. 136 of the Constitution of India which was rejected by the Hon''ble Supreme Court.

13. Thereafter, the State of West Bengal instituted a suit before this Hon''ble Court being Suit No. 536 of 1990 (State of West Bengal v. Dipak Basu, Advocate) wherein it has been contended that the decree passed on 19th May, 1986 is void and is a nullity. Prayer of injunction against Joint Receivers for restraining them from executing the decree was made.

14. The Hon''ble Court by its order dated 16th July, 1990 granted three months'' time to the State of West Bengal to vacate the suit property.

15. Thereafter, on 13th September, 1990, the State of West Bengal made an application in Suit No. 1393 of 1968 and the Hon''ble Justice Suhas Chandra Sen

(as His Lordship then was) by order dated 25th February, 1991 granted liberty to the State of West Bengal to requisition and acquire the said premises No. 57, Jatindra Mohan Avenue, Calcutta-5 in accordance with law.

16. On 25th February, 1991 Order No. 3 of 1991 was issued by the First Land Acquisition Collector purporting to requisition the land at the said premises.

17. On 26th February, 1991 order of requisition was served upon the Joint Receivers.

18. It is alleged that on 26th February, 1991 the State of West Bengal with police help demolished the godown inside the premises and carried away the article stored there. A complaint was made by some of the parties in the partition suit to the Joint Receivers on 27th February, 1991. Joint Receivers through their Advocate by a letter dated 1st March, 1991 demanded immediate cancellation of the order of requisition from the State of West Bengal and the Land Acquisition Collector.

19. On 7th March, 1991 Smt. Sefali Roy and others, who are parties to the partition suit, filed a writ petition challenging the order of requisition, being Order No. 3 of 1991 dated 25th February, 1991 issued by respondent No. 2, under S. 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 and obtained an order of status quo, which is Matter No. 1281 of 1991. The Joint Receivers also moved a writ petition before this Hon'ble Court on 14th March, 1991 challenging the said order of Requisition No. 3 of 1991 dated 25th February, 1991 issued by the respondent No. 2 under S. 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 and they also obtained an order to the effect that the State of West Bengal and others shall not alter or change the nature and character of the suit premises.

20. It is alleged that the aforesaid notice under sub-sec. (1) of S. 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948) has not been served upon the owners of the property, namely, 57, Jatindra Mohan Avenue, nor it was addressed in their names.

21. The said two writ applications were allowed by the learned Trial Judge by a combined judgment dated 27th September, 1991 after setting aside the impugned order of requisition as passed by the respondent No. 2.

22. Against the said judgment the present appeals have been preferred by the State of West Bengal.

23. The State of West Bengal purported to requisition the property in question for the purpose of maintaining supplies and services essential to the life of the community, namely, for providing office accommodation to different offices under Public Works (Roads) Department, Government of West Bengal. The learned Trial Judge in his judgment, inter alia, held that the order of requisition, being No. 3 of 1991 dated 25th February, 1991 has been made for a purpose which is outside the scope and ambit of S. 3 of Act II of 1948. On such finding the learned Trial

Judge allowed the writ applications of the writ petitioners, who are respondents to the present two appeals.

24. Mr. P. K. Das, learned Advocate appearing for the State, contended that the purpose as has been mentioned in the order of requisition is a public purpose and it comes within a limited purpose as contained in sub-sec. (1) of S.3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948). The purpose that has been mentioned in sub-sec. (1) of S.3 of Act II of 1948 is for maintaining supplies and services essential to the life of the community (or for increasing employment opportunities for the people by establishing commercial estates and industrial estate in different areas) or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places. In the present case the purpose that has been mentioned is for maintaining supplies and services essential to the life of the community, namely, for providing office accommodation to different offices under Public Works (Roads) Department, Government of West Bengal. According to the learned Trial Judge, the purpose that has been mentioned in the order of requisition is not a purpose within the meaning of sub-sec. (1) of S. 3 of Act II of 1948 as there was no nexus between maintaining supplies and services essential to the life of the community and providing office accommodation to different offices under the Public Works (Roads) Department, Government of West Bengal. Mr. Das contended that the purpose of requisition need not be articulated in the notice in details. The purpose of requisition substantially mentioned in the notice is sufficient. In this context he cited the authority in the case of *Mahamaya Roy Chowdhury v. L. A. Collector*, reported in (1992) 96 Cal WN 1043. In that judgment a Division Bench of this Hon'ble Court has held that the purpose of acquisition need not be articulated in the notice in details. The purpose of requisition substantially mentioned in the notice itself is sufficient. Mr. P. K. Roy, learned Advocate appearing for the respondents Joint Receivers and Mr. Prabir Roy Chowdhury, learned Advocate appearing for the respondent i.e. the owners, Smt. Sefali Roy and others, on the other hand contended that the purpose mentioned in the order of requisition is not a purpose for maintaining supplies and services essential to the life of the community and accordingly, the purpose mentioned in the order of requisition is not a purpose within the meaning of sub-sec. (1) of S.3 of Act II of 1948. We have already pointed out that the matter has been set at rest by the Division Bench Judgment in the case of *Mahamaya Roy Chowdhury* (supra).

25. Before the Trial Court both the respondents as writ petitioners, namely the Joint Receivers and the owners, inter alia, contended that the order of requisition had been made for the purpose of negating the effect of the decree for eviction of the tenant, namely, P.W.D. (Roads) from the suit premises after the matter travelled up to the Supreme Court. Mr. Das contended by referring to a Division

Bench decision in the case of *The Registrar, Jadavpur University Vs. Smt. Alka D. Hemani and others*, that in similar circumstances in that Case where a decree was passed in favour of the owner-landlord against the Jadavpur University, the Division Bench, inter alia, observed that in the circumstances requisition of the property for the Jadavpur University is permissible under the law and there would be no mala fide in the matter. He also referred to another Supreme Court decision in the case of *Madhusudan Chhotalal Patel and anr Vs. Special Land Acquisition Officer and ors*, where it has been held that failure to specify instrumentally by which public purpose is to be carried out does not invalidate the notice. Mr. Das also referred to another Division Bench decision in the case of *Dr. Nilkamal Bez Boruah and Another Vs. The State of West Bengal and Others*, where the Court has held that unless the vires of the Act has been challenged under Art. 14 of the Constitution, the order of requisition cannot be said to be mala fide nor the making of it is malice in law and the order of acquisition cannot be challenged as mala fide and amount to malice in law on the ground that even though there was no emergency provisions of the Land Acquisition Act resorted to for the purpose of acquisition, the State Government and authorities under the Act are at liberty to proceed under the provisions of the Act for requisition of the premises and that if any land is requisitioned for any of the purposes in S. 3(1) in accordance with the provisions of the Act, the order of requisition would be quite legal and valid, even though requisition has been made at the instance of a Company or a Corporation. In an welfare State it is the duty of the Government to see that the purposes stated in S.3(1) are served and carried out in the interests of the community.

26. Both Mr. Roy and Mr. Roy chowdhury contended that the order of requisition is mala fide and has been made not in good faith. But by the decision of *Dr. Nilkamal Bez Boruah and Another Vs. The State of West Bengal and Others*, the controversy has been set at rest. In the instant; case the vires of S. 3 having not been challenged by the writ petitioners, it is not competent for them to raise the question of mala fide or lack of good faith of the State of West Bengal and the Land Acquisition Collector. We, accordingly, hold that the purpose as has been mentioned in the order of requisition is a public purpose and a purpose within the scope and ambit of sub-sec. (1) of S. 3 of Act II of 1948. Though the purpose has been specified in the order of requisition, the Court will not go to enquire whether there was any nexus between maintaining supplies and services essential to the life of the community on the one hand and providing for the accommodation to different offices under Public Works (Road) Department, Government of West Bengal on the other in view of the ratio that has been laid down in the case of *Mahamaya Roy Chowdhury* ( 1992 (96) Cal WN 1043) (supra).

27. The next question that arose was whether the service of notice by affixing the same in a conspicuous part of the premises is a valid service. We need not go into that debate because in the facts and circumstances of the present case it is an admitted position that the notice of requisition was served upon the Joint

Receivers and also upon one Harihar Dey who was alleged to be the care-taker of the premises. It is also the admitted position that the order of requisition was addressed in the name of the Joint Receivers and they received it, but there was a controversy as to whether any notice was served upon Harihar Dey at the premises or it was addressed in the name of Harihar Dey. According to Mr. Roy and Mr. Roy Chowdhury, the learned counsel for the two sets of writ petitioners respondents incorporation of the name of Harihar Dey in the notice under S. 3(1) is a subsequent interpolation. Actually no notice was directed in the name of Harihar Dey. We need not enter into that controversy for the reason stated below:--

Sub-section (2) of S. 3 of the Act II of 1948 specifies that an order under sub-sec. (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation (or an occupier, not being the owner of the land) also on such occupier. In the instant case, the Joint Receivers were appointed over the property concerned and they were the officers of the Court and they are in custodia legis and for all intents and purpose they are in the management of the properties and were in possession of the property through the tenants. The said Joint Receivers were served with the notice of requisition as required under sub-sec. (2) of S. 3 of Act II of 1948. But under the said sub-sec. (2) of S. 3 of the said Act, there is another imperative, i.e., service of notice shall also be made on the owners. In case the notice is addressed in the name of the owners, in that event, the notice can be served upon the Durwan of the owners who will then act as the agent of the owners. But in case the notice is not addressed in the name of the owners and it has been served either on Durwan or Caretaker, in our opinion, that cannot be construed as service of notice upon the owners. The notice must be directed in the name on whom it is to be served. That is the view taken by the Division Bench of Gujarat High Court in the case of Gujarat Housing Board, Vijayanagar, Ahmedabad Vs. Rameshbhai T. Bhatt and Another, . That is also the view taken by the Calcutta High Court in the case of M/s. Bhinashar Finance (P) Ltd. v. State of West Bengal reported in (1992) 1 Cal LJ 222, in the case of Dipak Kumar Ghosh v. State of West Bengal reported in (1992) 1 Cal LJ 225, in the case of Dr. Nilkamal Bez Boruah and Another Vs. The State of West Bengal and Others, (Division Bench) and another single Bench judgment in the case of Tarak Nath Sen v. First Land Acquisition Collector reported in (1983) 1 Cal LJ 371 : (AIR 1979 NOC 108). In all those decisions it has been laid down that the notice may be served upon the owner as a natural corollary of the said proposition of law if the said notice is directed in the name of the owner and in that event, the agent of the owner is competent to receive the same. Durwan and Caretaker may act as the agents of the owner and the service of notice upon Durwan or Caretaker of the owner is undoubtedly a valid service of the notice, but in the absence of the notice being directed in the name of the owner, the agent cannot act on behalf of the owner and the principle of master and servant and principal and agent will be lacking in the case. In the instant case, the admitted position is that the notice as contemplated under sub-

sec. (2) of S. 3 of the Act II of 1948 has not been addressed in the name of the owners at all and as such, the notice is bad in law and; the order of requisition on the basis of the said notice, cannot be given effect.

28. In that view of the matter, we find infirmities in the order of requisition and we, accordingly, allow the appeals in part. The finding of the Trial Court that the purpose mentioned in the order of requisition is outside the scope and ambit of S. 3 of Act II of 1948 is hereby overruled and stands set aside. The appeal is dismissed so far as it relates to the question of notice upon the owners. However, this will not preclude the appellants State of West Bengal and other Government appellants from proceeding afresh against the respondents writ petitioners by way of a requisition followed by acquisition, if any, in accordance with law.

29. There will be no order as to costs.

30. Mr. P. K. Das, learned counsel appearing for the appellant prays for stay of operation of the order of this judgment. We consider the prayer. There will be an order of stay of the operation of the order of this judgment for six weeks from date.

Mukul Gopal Mukherji, J.

31. I agree.

32. Order accordingly.