
(1975) 06 CAL CK 0016
In the Calcutta High Court
Case No : Matter No. 41 of 1975

Surana Properties and Finance Pvt. Ltd. APPELLANT
Vs
First Land Acquisition Collector RESPONDENT

Date of Decision : 24-06-1975

Acts Referred:

Constitution of India, 1950 — Article 14
West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3, 4(1)

Citation : (1977) 2 ILR (Cal) 160

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—The Petitioner in this application is challenging a notice u/s 4(1)(a) of the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947. The circumstances under which the said notice was served upon the Petitioner have been explained in the affidavit of the First Land Acquisition Collector affirmed on May 15, 1975. In para. 4 of the affidavit it has been stated as follows:

The 6th floor of premises No. 4 Synagogue Street, Calcutta, was requisitioned under Order No. 35/74-Reqn. dated 19.11.74 under the West Bengal Act V, 1947, for the office accommodation of the Public Works Department of the Government of West Bengal and a copy of the order dated 19.11.74 was served upon the Respondents Nos. 3 to 11 being the owners of the said premises directing them to deliver possession on 25th November, 1974, at 10 a.m. But possession could not be obtained as the Respondents Nos. 3 to 11 refused to deliver possession. Messrs Khaitan and Company, Solicitors for the Respondents Nos. 3 to 11 in their letter dated 25th November, 1974, informed the Respondent No. 1 that their clients, that is, the owners of the property have already let out the premises to Messrs Surana Properties and Finance Private Ltd., the Petitioner

above-named. By the said letter the Respondent No. 1 was further informed that there was a Title Suit being T.S. No. 900 of 1974 between the said owners being Respondents Nos. 3 to 11 and the Petitioner company. In the said suit the owners of the said premises are restrained from entering into the premises or disturbing the possession of the tenant in any way. After being aware of the aforesaid fact a notice u/s 4(1)(a) of the West Bengal Act V of 1947 dated 27.1.75 was served on the Petitioner company being the tenant of the said premises directing the said company to vacate the said premises on 7.2.1974 at 2 p.m. when possession thereof will be taken on behalf of the State Government. I crave leave to refer to the said notice at the time of hearing of the said application. The Petitioner instead of vacating the said premises moved this Hon"ble Court and obtained the present interim order.

It was contended that in this application the question of enforcement of rights under Article 14 of the Constitution was involved. Therefore, this application should remain suspended and adjourned. It appears, however, that the plea of violation of Article 14 was made on the following ground:

For that in view of the fact that an unbridled power has been given u/s 3 to the Provincial Government for requisitioning the premises and in view of the further fact that there is no provision for appeal in the said Act, the said Section 3 is ultra vires Article 14 of the Constitution of India.

2. In my opinion, the aforesaid is not sufficient ground for challenging the Act under Article 14 of the Constitution. There is no proper pleading for the cause of action of violation of Article 14 of the Constitution. I am, further, of the opinion that no question of violation of Article 14 is involved in this application. The Act authorises requisition of premises for public purpose. The opinion of the appropriate authority regarding the need is final as to the need only, but it is not final as to the existence of public purpose. It is true that the Act does not provide for making any representation before an order is made. The Act also does not provide for preferring any appeal against the order of requisition. But as the authority to requisition is dependent upon the existence of the need for public purpose, which in appropriate cases can always be challenged in appropriate proceedings, in my opinion, it cannot be said that the Act confers unbridled power or it must be held that it is violative of principle of natural justice. In this connection reliance may be placed on the ratio of the decision of the Supreme Court in the case of AIR 1971 963 (SC) . In the aforesaid view of the matter, I am unable to accept the contention that the Act should be so read that the person concerned whose property is being requisitioned should be heard and if the Act is not so read, it is violative of principles of natural justice. Counsel for the Petitioner in this connection relied on the observations of the Supreme Court in the cases of Munshi Singh and Others Vs. Union of India (UOI), and The Government of Mysore and Others Vs. J.V. Bhat and Others, . The facts in those cases were different. The principles of natural justice must be applied in the context of the particular Act in question. In this case, as I mentioned before, the

existence of public purpose is the condition precedent for making an order of requisition. The existence of such condition precedent can be challenged in an appropriate proceeding. In this context there is no further need to hear the person concerned. The Supreme Court in the case of *S.M. Nandy v. State of West Bengal* Supra has observed that there is no bar against representation being made after an order under the Act was served. If the representation raises a point which overrides the public purpose it would be favourably considered by the appropriate authorities.

3. The next question, is, whether there was any public purpose in the instant case in making the requisition. In answer to the rule nisi it has been stated that the premises in question was requisitioned for providing office accommodation of the Public Works Department, Government of West Bengal. It is further stated that there was difficulty in providing office accommodation to the staff of the Public Works Department, Government of West Bengal and since there was no alternative suitable accommodation, the said order of requisition had to be made. The purpose indicated is undoubtedly a public purpose. Therefore, the conditions precedent for exercise of the power in this case were fulfilled. On behalf of the Petitioner it was contended that there were suitable alternative accommodations and in the affidavit-in-reply certain other places have been mentioned. But the Land Acquisition Collector has mentioned that there was no suitable accommodation available. The suitability of an accommodation is a matter on which the requiring authority and also the requisitioning authority are entitled to have their own opinions. Furthermore, if once public purpose is established, whether there are suitable alternative accommodations, cannot in my opinion be decisive in this matter. If there is suitable alternative accommodation available for the Public Works Department, Government of West Bengal, far away equally suitable alternative accommodation for the Applicant and its tenants was also available in other places. Where there is a competition between the need of the community and the need of an individual or a company, the need of the community must get preference in the choice of suitability. From that point of view the impugned order, in my opinion, cannot also be challenged as mala fide. In the aforesaid view of the matter, the challenge to the impugned requisition cannot, therefore, be accepted. Counsel drew my attention to the observations of the Division Bench of this Court in the case of *Chayarani Mukherjee Vs. Assistant Secretary to the Government of W. Bengal, Land and Land Revenue Dept. Requisition Branch and Others*, . That was, however, entirely a different case. Here that the requirement for the office of the Public Works Department, Government of West Bengal, was for a public purpose cannot, in my opinion, be questioned.

4. In the aforesaid view of the matter, this application fails and is accordingly dismissed. Rule nisi is discharged. Interim order, if any, is vacated. Having regard to the facts and circumstances of the case I direct that the Respondent authority will not take possession of the premises in question for six weeks so that the Petitioner can make alternative arrangement. There will be no order as to costs.