

(2003) 12 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : OWP 292/1998

Zamindaran Committee Kareva	Vs	APPELLANT
State of J&K & Ors.		RESPONDENT

Date of Decision : 22-12-2003

Acts Referred:

Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968
— Section 6

Citation : (2003) JKJ 251 Supp : (2005) KashLJ 299 : (2005) 1 RCR(Civil) 473 : (2004) SriLJ 514

Hon'ble Judges : Muzaffar Jan, J

Bench : Single Bench

Advocate : Z.A.Shah, Shameema Ali Mir, Advocates appearing for the Parties

Judgement

1. Writ petition has been filed praying for direction to the respondents either to acquire the land of the petitioners and pay compensation at market

value, or to vacate the occupation of the land

2. The main submission made in the petition are that 3992 Kanalsl 7. Marias of land situated at village Karawah, Damodhar, Wathoor and

Kralpora, comprising in different Survey numbers, belonging to the petitioners, was occupied by the security forces in July 1952. It is further

submitted, that prior to the occupation, the land was developed with fruit bearing trees and was yielding sufficient income to sustain the families of

hundreds of petitioners, for their livelihood. It is further submitted that although the market value of land in the adjoining area, which has been fully

developed is more than 3.00 lacs per kanal, but by the occupation and non payment of compensation, the petitioners have been deprived to utilize

the compensation amount and also the use of their land for the prolong period of

40 years. The respondents are offering meager rent for use and occupation of the land, which is neither reasonable nor acceptable to the petitioners. The respondents have constructed barracks, changed the nature of land and have caused intensive damage to the fruit bearing trees, without paying any compensation for the damages, in open violation of the fundamental rights of the petitioners guaranteed under Article 19(1) (1) of the Constitution of India.

3. The main grievance of the petitioners is that inspite of repeated requests representations and appeals, the respondents have neither agreed to pay reasonable rent, nor have initiated acquisition proceedings by fixing adequate market value of the occupied land. On these submissions, the petitioners pray that the respondents be directed either to vacate the occupation of the land and handover free and unencumbered possession of the land to the petitioners or to acquire the land and pay compensation assessed on the market value of the land.

4. While admitting that the land of the petitioners is in occupation of Indian Armed Forces since 1952, and sheds, structures and barracks have been constructed on the land, the stand and submission of the respondents is that the respondents are paying rent as per rates notified in SRO by the State Government from time to time. It is further submitted that although, on, ""no objection"", of the State Government, to acquire the land, recommendation was made by the Board for acquisition of the land, but as the Board is not a statutory body, the recommendations of the Board are not binding on the Ministry of Defence, no decision or Government order has been passed to acquire the property under occupation. It is further submitted that as the land is under requisition for defence purpose and huge expenses would be involved, if the land is acquired, and on this financial implication, the land of the petitioners cannot be acquired, but the occupation shall continue, because the Government cannot be compelled to acquire the land, which is required to be occupied, for security of the State. As no outer limit, for occupation is defined and provided under the Act, the occupation of the land for defence purpose can continue till the requirement of the defence demand. On these submissions, it is prayed that the writ petition merits to be dismissed. 5. In rejoinder affidavit, the petitioners have maintained that the petitioners have a common

cause and the writ petition filed in the representative capacity, is maintainable against the occupation of the Armed forces since more than fifty

years. The plea of financial constraints, raised by the respondents, would not defeat the fundamental rights of the petitioners to either use their

property in the manner they like or to seek adequate compensation on acquisition of the land by the respondents.

6. Heard learned counsel for the parties at length.

7. The facts which are not denied but are admitted are that the land measuring 3992 Kanals 17 Marias situated at village Karawah, Damodhar,

Wathoora and Kralpora, comprising in different Survey numbers, belonging to the petitioners have been under the occupation of the Indian Armed

Forces since 1952, i.e., for the past fifty years. It is also admitted that the occupation has been under reacquisition and rent is being paid for the

use and occupation of the land, to the petitioners.

8. Record reveals that the order of requisition for land measuring 68 Kanals 12 Marias, was passed on 08.06.1953 by the District Magistrate,

Srinagar, under Rule 59A of the Jammu and Kashmir Defense Rules, and under Emergency Provisions (Continuance) Ordinance No. III of 2003

read with Cabinet decision No. 784 C of 1951, for Indian Army for operational use with effect from 15.08.1952, for a period of six months.

Another notification dated 27.10.1961 issued Under Section 32 B of J&K Public Security Act 2003 (Svt) read with Government of J&K,

Minister of Home Affairs Notification dated 9.4.1959, was issued acquiring 1213 Kanals 15 Marias of land under various Khasra numbers

situated at Kareva, Damodhar, Tehsil Budgam, till the period of operation in Jammu and Kashmir State and six months thereafter, unless revoked

earlier. Another notification dated 21.7.1964 seems to have been passed under Sub Section (1) of Section 29 of Defence of India Act in terms of

which land measuring 419 Kanals 9 Marias situated at Karawah, Damodhar was requisitioned. By another notification dated 08.02.1967 issued

under Sub Section (1) Section 29 of the Defence of India Act, was issued requisitioning land measuring 100 Kanals 11 Marias. Thus, it appears

that under various notifications, land of the petitioners has been requisitioned and continued to be in occupation of the Defence forces. 9. Learned

counsel for the petitioners Mr. Z.A. Shah, has submitted that the land under the

occupation of the Army belongs to thousand of poor inhabitants of the adjoining villages, of the land and the claimants have been deprived of the use and occupation, of the land which was yielding considerable revenue by way of fruits and dry crops. Placing reliance on the citation of the Apex Court, reported in State of Bombay Vs. Bhanji Munji and Anr. (1955 (1) SCR 777). Collector of Akiola and Ors. V. Ramchandra & Ors (1968 (1) SCR 401). H.D. Vora Vs. State of Maharashtra (1984 (2) SCC 337), Jawani Kumar Paraki V/First Land Acquisition Collector, Calcutta & Ors. (1984 (4) SCC 612). Grahak Sanstha Manch & Ors. V. State of Maharashtra (1994 (4) SCC 192) learned counsel has submitted that occupation under acquisition proceedings cannot continue beyond a reasonable period, unless the respondents decide to acquire the land in public interest.

10. Ms. Shamima Ali, appearing for the respondents, has submitted that the petitioners do not have a right, to claim that the land .which is used for defence purpose, should be acquired, the petitioners are paid rent for use and occupation of the land, which is permissible under law, and as there is no maximum limit for retaining immovable property on requisition basis, the judgement relied upon by the learned counsel for the petitioners to advance the cause of the petitioners, are not applicable to the facts of the present case, and are not distinguishable. On these submissions, learned counsel prays that the petitioners cannot succeed in view of the settled position of law.

11. The only aspect which has to be considered is whether in the absence of any period, provided under the Act, permitting occupation under the requisition and Acquisition proceedings, would it be construed that the occupation can be for perpetuity, and not for a reasonable period.

12. Learned counsel for the petitioner has placed reliance on the judgement titled H.D. Vora V. State of Maharashtra (1984 (2) SCC 337). On perusal of the law laid down by the Apex Court in the said judgement, it is plainly clear that on the facts that the house of one Rukmani Bai was requisitioned by the State Government of Bombay under land requisition Act and after the said requisition, it was allotted to the appellant. The allottee committed several defaults in payment of rent. The appellant requested the Control of Accommodation to derequisition the flat and to allow

him to become private tenant to Rukmani Bai. The request was rejected. Subsequently, Rukmani Bai transferred the building to respondent No. 3

who requested the State Government to derequisition the flat. No decision was taken on the application of the new owner, compelling the new

owner to file the writ petition in the High Court of Bombay, challenging the validity of the order of requisition contending that it could not survive for

such a long period of time and the State Government was, therefore, bound to derequisition the flat.

13. Two issues arose for consideration before the court; (1) whether the requisition was made for public purpose and (2) whether an order of requisition can endure for an indefinite period of time ?

14. So far as the first issue is concerned, the Apex Court ruled that on the basis of the material placed before it, it was not possible to hold that the order of requisition was made for public purpose.

15. But so far as the second issue is concerned, their Lordships of the Supreme Court ruled as under, ""6. But it was contended on behalf of the

appellant that even if the order of requisition was invalid as having been made for purpose other than a public purpose, respondent 3 was not

entitled to challenge the same after a lapse of over 30 years and the writ petition should therefore have been dismissed by the High Court. Now if

the only ground on which the order of requisition was challenged in the writ petition was that it was not made for a public purpose and was

therefore void, perhaps it might have been possible to successfully repel this ground of challenge by raising on objection that the High Court should

not have entertained the writ petition challenging the order of requisition after a lapse of over 30 years. But we find that there is also another ground

of challenge urged on behalf of respondent 31 and that is a. very formidable ground to which there is no answer. The argument urged under this

ground of challenge was that an order of requisition is by itself very nature temporary in character and it cannot endure for an indefinite period of

time and the order of requisition in the present case therefore ceased to be valid and effective after the expiration of a reasonable period of time

and that it could not, under any circumstances, continue for a period of about 30 years and hence it was liable to be quashed and set aside or in

any event the State Government was bound to revoke the same and to

derequisition the flat. This contention has, in our opinion, great force and must be sustained. There is a basic and fundamental distinction recognized by law between requisition and acquisition. The Constitution itself in Entry 42 of List III of the Seventh Schedule makes a distinction between acquisition and requisitioning of property. The original Article 31 clause (2) of the Constitution also recognized the distinction between compulsory acquisition and requisitioning of property. The two concepts, one of requisition and the other of acquisition are totally distinct and independent. Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. Vide: Observation of Mukherjee, J. in Chiranjit Lal case. The concept of acquisition has an air of permanence and finally in that there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of "domain or control over property without acquiring rights of ownership" and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purpose the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the Government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the Government. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property but cannot use the power of requisition for achieving that object. The power of requisition is exercised by the Government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the

premises and in such a case the order of Government would derequisitioning the premises when really speaking they want the premises for

acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose for which the premises are

required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by

acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time,

the Government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely. Here in the

present case the order of requisition was made as far back as April 9, 1951 and even if it was made for housing a homeless person and the

appellant at that time fell within the category of homeless person, it cannot be allowed to continue for such an inordinately long period as thirty

years. We must therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a

reasonable period of time. It is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order

of requisition in a given case, because ultimately the answer to this question must be depend on the facts and circumstances of each case but there

can be no doubt that whatever be the public purpose for which an order of requisition is made, the period of time for which the order of requisition

may be continued cannot be unreasonably long period such as thirty years. The High Court was, therefore in any view of the matter, right in holding

that in the circumstances the order of requisition could not survive any longer and the State Government was bound to revoke the order of

requisition and derequisition the flat and to make steps to evict the appellant from the flat and to hand over vacant possession of it to respondent

3.

16. The view taken by the Supreme Court, in H.D.Vohra case came of for reconsideration in Grahak Sanastha Manch case. It is a constitutional

Bench decision. In para 17, with regard to H.D. Vohra case it was observed as under:

17. For the aforesaid reasons, we hold that the decision in H.D. Vora case does not require reconsideration. We, however, do not approve the

observation therein that requisition orders under the said Act cannot be made for a permanent purpose. We make it clear that the said decision

does not lay down, as has been argued, a period of 30 years as the outer limit for which a requisition order may continue. The period of 30 years

was mentioned in the decision only in the context of the date of the requisition order there concerned. An order of requisition can continue for a

reasonable period of time and it was held, as we hold, that the continuance of an order of requisition for as long as 30 years was unreasonable.

17. The Apex Court after having noticed para 6 of the judge of H.D. Vohra case, reproduced above, further proceeded to examine other cases

i.e., Bhanji Munji case, Collector of Akola case, Manji Lal Karwa Vs State of MP (AIR 1955 Nag. 153), Jeewan Kumar Parki case.

18. While discussing Bhanji Munji case the Constitutional Bench observed that in the said case validity of Bombay Requisition Act, 1948 was up

held by a Constitution Bench. Discussing the Collector of Akola case, the Apex Court held, that to read into Section 5(1) of the Act, limitation for

the purpose contemplated by it, was only temporary way, to confound temporary life of the statute with the character of the purpose for which the

power there under can be exercised. The life of the power of requisitioning and the purpose for which it was exercised were two distinct

ingredients, which were not to be confused. The words ""for any public purpose"" were wide enough to include any public purpose and did not

contain any restriction regarding the nature of that purpose. The court also observed that the land which was requisitioned could be used for a

temporary purpose or for a purpose which was not temporary and that it was for the government and those who put up the structures to

contemplate the possibility of having to return the land to the owner in its original state, but that did not mean that the power was restricted only to

a temporary purpose.

19. Reverting to H.D. Vohra and Collector of Akola cases, the court observed that there was no contradiction between the decisions in these

cases and that in Collector of Akola case no question was raised as to whether the order of requisition could continue for an indefinite duration.

The court also identified the principle projected in H.D. Vohra case and observed that although the order of requisition was good when made, it

had ceased to be valid and effective because it could not legitimately be continued for an indefinite length of time. The court also approved the

observation of the Nagpur High Court in Mangi Lal Karwa case. The court made the following observation in Grahak Sanstha Manch case :

The court observed that, normally, the expression ""requisition"" meant the taking of possession of property for a limited period in contradiction to

acquisition. This popular meaning had to be kept in mind in judging whether in a particular case there had been in fact any abuse of power. Orders

of requisition and acquisition had different consequences. The two concepts were different. In one title passed to the acquiring authority and in the

other while title remained with the owner, possession was taken over by the requisitioning authority."" 20. After considering the submission of the

learned counsel for the parties appearing in the matter, the Apex court in para 16 observed as under:

We find ourselves in agreement with the view taken in the cases of Collector of Akola and Jiwani Kumar Paraki that the purpose of requisition

order may be permanent. But that is not to say that an order of requisitioning can be continued indefinitely or for a period of time longer than that

which is, in the facts and circumstances of the particular case, reasonable. We note and approve in this regard, as did this Court in Jiwani Kumar

Paraki case, the observation of the NAGPUR High Court in the case of Mangilal Karwa V. State of M.P. which have been reproduced above.

That the concept of requisitioning is temporary is also indicated by the Law Commission in its Tenth Report and, as pointed out earlier, by the

terms of the said Act itself, as it originally stood and as amended from time to time. There is no contradiction that while a requisition order can be

issued for a permanent public purpose, it cannot be continued indefinitely. Requisitioning might have to be resorted to for a permanent public

purpose, permanent premises available for it. The concepts of acquisition and requisition are altogether different as are the consequences that flow

therefrom. A landlord cannot, in effective and substance, be deprived of his right and title to property without being paid due compensation, and

this is the effective of prolonged requisitioning. Requisitioning may be continued only for a reasonable period; what that period should be would

depend upon the facts and circumstances of each case and it would ordinarily, be for the Government to decide.

21. In view of the law laid down by the Apex Court the position which emerges is;

(a) that a requisition order can be issued for a permanent public purpose but it cannot be continued indefinitely. A landlord cannot, in effective and substance, be deprived of his rights and title to property without being paid due compensation and this is the effect of prolonged requisitioning.

(b) Requisitioning may be continued only for a reasonable period, but that period should be made dependent upon the facts and circumstances of each case and it would ordinarily, be for the government to decide.

(c) That an order of requisition can be continue for a reasonable period and that the continuance of an order of requisition for as long as 30 years was unreasonable.

22. I, therefore, hold that an order of requisition cannot continue indefinitely and the continuation of such an order for 30 years or more is unreasonable and this position holds good, irrespective of the fact whether requisitioning statute prescribes duration of requisition or not. The submission of the counsel for the respondents that the Apex Court in the aforesaid decision based its conclusion on the statutory position of Bombay Requisition Act, 1948, is not correct. The constitutional Bench of the Apex Court has in para 16 and 17 settled the legal position with regard to the duration of requisition.

23. Under J&K Requisitioning and Acquisition Act, 1968 Section 3 empowers the State Government to requisition any property needed, or likely to be needed for any public purpose. By virtue of Section 21 of the Act, the State Government is empowered to requisition any property, if required by Union Government, in connection with the purpose of the Union, in case a requisition in that behalf is received by the State Government. Section 6 deals with release of requisitioned properties. The relevant portion of Section 6 reads as under:

6. Release from requisitioning (1) subject to the approval of the Government the competent authority may at any time release from requisition any property requisitioned under this Act and shall, as far as possible restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force, provided that where the purpose for which any requisitioned property was being used ceased to exist, the property shall, unless

it is acquired under Section 7, be released, as soon as may be from requisition.

24. It is evident from the aforesaid provisions of the Act that subject to approval of the Government, the competent authority may "at any time release from requisition any property, moreso when the requisition property, has ceased to serve the purpose, or has ceased to exist, in such a situation the competent authority is bound to release the property from requisition.

25. According to the notification placed on record., the property has been requisitioned "for the Indian army for operational use. "Part of it has also been requisitioned "for efficient conduct of military operations in J&K". It is not the case of the parties that the military operations have ceased to exist. However; by now more than 50 years have passed in respect of the lands initially requisitioned and more than 30 years, in any case in respect of the lands subsequently requisitioned and the entire landed property continued to be under requisition.

26. The provisions of the Act of 1968 make no provision with regard to the duration of requisition. Section 6(1) leaves it to the discretion of the government/competent authority to derequisition the property. But in the instant case, the property has been requisitioned at the instance of the Central Government and, therefore the request for derequisition has to be only by the said Government. In my opinion, in the facts and circumstances of the case, the state Government/competent authority can take no action under Section 6 of the Act unless Union of India under Section 21 of the Act makes a request for derequisition of the property.

27. The learned counsel for the respondents during the course of the submissions stated that Government of India has decided not to "acquire" the property in question and they wants to retain it on requisition basis only for further period. Whether the property should or should not acquired is a matter entirely for the Central Government to decide but to say that the Central Government even after expiry of more then reasonable period intends to retain the property of the petitioners on requisition basis, is a plea clearly unsustainable in view of the law declared by the Apex Court in the judgement referred to hereinabove. It is settled law that requisitioning can be continued only for a reasonable period and that such a period will

dependent upon the facts and circumstances of each case. In the instant case, till date, the Central Government has decided to retain the property on requisition basis. Can it be said that the reasonable period of duration of requisition has not expired? The answer, in my opinion, is that it has expired. Period of 30 years may not be the outer limit but in the contest of the date of requisition (according to respondent 1952) the period of requisition in the instant case has far exceeded the period recognized by the Apex Court to be the reasonable period of requisition. In light of the aforesaid decisions, I hold that the respondents having retained the property of the claimants on requisition basis, for a period of exceeding 30 years, have clearly acted unreasonably.

28. I accordingly dispose of this writ petition by providing as follows:

a) That the respondents shall within three months from today derequisition the property in question, which is under requisition, and proceed

thereafter in accordance with Section 6 of the J&K Requisitioning and Acquisition of Immovable Property Act, 1968.

b) That it shall be entirely for the respondents to reconsider their decision relating to acquisition of property in question and should the Central

Government within the said period of 3 months take any such decision and notify it to the State Government and the claimants, the directions

contained at (a) above shall not be carried out and the provisions of Section 7 of the Act of 1968 shall accordingly be followed..

c) There shall be no order as to costs.