

PATNA HIGH COURT

Speedcrafts Pvt. Ltd

Vs

Dist. Magistrate

Civil Writ Jurisdiction Case No. 2171 of 1975

(S. Sarwar Ali and Nagendra Prasad Singh, JJ.)

18.11.1975

JUDGMENT

S. Sarwar Ali, J.

1. In this writ application the petitioner prays for quashing of Annexure - 1 as also for issue of a writ of mandamus requiring the respondents to forbear from taking possession of the property of the petitioner in pursuance of the notice Annexure - 1. This notice requires the Managing Director of the petitioner Company to hand over possession of the land mentioned in notice within three days of the service thereof. It purports to have been issued in exercise of power under Section 23 (1) of the Defense of India Act, 1971 (hereinafter referred to as the 'Act') read with Rule 3 of the Defense of India (Requisitioning and Acquisition of Immovable Property) Rules, 1971 (hereinafter referred to as the 'Rules').

2. Contiguous to the Patna Aerodrome is a block of 30 acres of lands which were originally leased for fifty years, with option of renewal, by the Governor of Bihar to Hindustan Bicycle Manufacturing and Industrial Corporation Limited. This lease though dated 15-9-1950 leased out 30 acres of lands with effect from 30-7-1939. Later the lease of the land was transferred in favor of Hindustan Vehicles Limited. There was an English mortgage by Hindustan Vehicles Ltd. in favor of Bihar State Financial Corporation. The Corporation aforesaid, by virtue of the right claimed by it under Section 69 of the Transfer of Property Act read with Section 29 of the State Financial Corporation Act, 1951, sold the assets of the factory situated on the lease- hold land, alone with lease-hold rights together with right of renewal of the said lease in favor of the petitioner Company by a registered sale-deed dated 27-11-1971. This is how the petitioner came in possession of the lease hold interest in land as also the assets of the factory then existing. The right of the petitioner to the aforesaid land as a lessee was affirmed by means of a registered document executed on behalf of the Governor of Bihar on 15-2-1973.

3. The case of the petitioner is that at present out of 30 acres of land about 14 acres are occupied by permanent pucca constructions for the Factory, residential quarters of the Directors, godown and about 50 staff quarters. The petitioner is at present carrying on the manufacture of road rollers and bicycles and claims to be the only factory of its kind in the State of Bihar. The total

investment claimed by the petitioner is to the extent of rupees one crore. Recently the Company has entered into a contract with the Rajasthan Government for supply of road rollers against the I. D. A. credits on global tender worth about rupees thirty eight lakhs which supply has to be completed by 22-11-1975 according to the contract.

3-A. On 28-9-1975 the notice Annexure - 1 being under the Signature of the District Magistrate, Patna, was served on the Managing Director of the Company. The relevant part of notice is as follows:-

"By virtue of the powers conferred upon me under Bihar Government's Notification S. O. No. 1659 and S. O. No. 1661, both dated 31-10-1974, I, V.S. Dubey, District Magistrate, Patna do hereby requisition under Section 23 (1) of the Defence of India Act, 1971, read with Rule 3 of the Defence of India (Requisitioning and Acquisition of Immovable Property) Rules, 1971, the Khasmahal land bearing plot No. 23 of Khata No. 62 at Phulwari Sharif, Patna with an area of 30 acres, originally leased out to the Hindustan Bicycle Manufacturing and Industrial Corporation Limited, for public purpose for maintaining supplies and services essential for the life of the community i. e. for immediate extension of Patna Aerodrome, Patna for a period ending 30th November 1975.

2. Shri Fulchand Agarwal, Managing Director, Speed Craft Private Ltd. Phulwarisharif, Patna, the present occupier of the aforesaid land is directed to hand over possession of the above land to Shri Awadhesh Kumar Singh, Addl. Collector, Patna within three days of the service of this notice upon him, failing which the possession will be taken by the undersigned. The said Shri Fulchand Agrawal is further directed to remove his all articles from the said land within the said period."

On 30-9-1975 the Additional District Magistrate visited the spot and served a notice requiring the petitioner to remove all the articles (saz-saman) within two days.

4. It may be stated that the State of Bihar, in purported exercise of powers according to the terms of the lease, has served a notice on the petitioner resuming that the land which is subject-matter of the lease. This notice dated 15-5-1975 was served on 16-5-1975, and if this notice is valid resumption would be effective from 16-11-1975 the date mentioned in this notice. In this writ application, however, we are not concerned with the validity of this notice or the consequences or the effect thereof.

5. In support of the rule issued by this Court three main contentions have been raised. They are:

- (a) That powers of Section 23 of the Act can only be exercised where the requisition is of a temporary nature and not of a permanent character. In the instant case the requirement being of a permanent character no action can be taken under the aforesaid provision;
- (b) Annexure - 1, on proper construction requires the demolition of 50 staff quarters a temple and factory as well as the removal of huge machinery permanently fixed to the earth. This is beyond the purview of Section 23;

(c) The District Magistrate in issuing Annexure - 1 had not taken relevant considerations into account and had in particular ignored the provisions of Section 38 of the Act. The action taken was also vitiated by irrelevant considerations and the opinion formed by the District Magistrate could not therefore, be said to be an honest opinion in the eye of law.

Since I am of the opinion that the petition is fit to be allowed on the first ground urged on behalf of the petitioner. I do not find it necessary to discuss the second and third contentions raised on behalf of the petitioner.

6. In order to appreciate and judge the legal aspect of the first contention it would be necessary to refer to some of the relevant provisions of the Act which I would first quote and thereafter consider the true effect of these provisions. Section 23 (1) is as follows:-

"(1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India, civil defense, public safety, maintenance of public order or efficient conduct of military operations or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning:

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned."

Section 24 which deals with payment of compensation, so far as relevant is as follows:-

"Whenever in pursuance of Section 23, the Central Government or the State Government, as the case may be, requisitions any immovable property, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following namely:

- (i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality;
- (ii) if in consequence of the requisition of the property the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;
- (iii) such sum or sums, if any, as may be found necessary to compensate the person interested for damage caused to the property on entry after requisition or during the period of requisition, other than normal wear and tear."

Sections 29 (1) and 30 (1) may also be quoted. They are:

"29 (1) Where any property requisitioned under Section 23 is to be released from such requisition, the Government by which or under whose authority the property was requisitioned or any person generally or specially authorised by it in this behalf may, after such inquiry, if any, as it or he may in any case, consider necessary to take or cause to be made, specify by order in writing the person to whom possession of the property shall be

given and such possession shall, as far as practicable, be given to the person who appears to the Government or, as the case may be, the person authorized as aforesaid to be entitled to the possession of the property at the time such order is made.

30 (1) Any immovable property which has been requisitioned under Section 23 may, in the manner hereinafter provided, be acquired in the circumstances and by the Government specified below, namely:

(a) where any works have during the period of requisition been constructed on, in or over the property wholly or partly at the expense of any Government, the property may be acquired by that Government if it decides that the value of or the right to use, such works shall, by means of the acquisition of the property, be preserved or secured for the purposes of any Government or,

(b) where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at the time, the property may be acquired by that Government."

7. Section 23 indicates that there is power of requisitioning of immovable property for specified purposes. Section 24 deals with the payment of compensation where the property has been requisitioned. The payment of compensation envisaged is essentially the rent payable in respect of the property. Of course, there is provision for payment of damage which might have been caused to the property on entry after requisition or during the requisition other than normal on wear and tear. Section 29 relates to the manner and method of release from requisition. Section 30 deals with the acquisition of requisitioned property. It is to be noticed that this section does not contemplate acquisition of requisitioned property except under the two circumstances mentioned in Sections 30 (1) (a) and 30 (1) (b). It is not that under this section there is a general power to acquire any of the requisitioned property if the authorities think that acquisition is necessary. The absence of power to acquire property subject-matter of requisition (subject to the exception indicated), is a strong ground for holding that it is only requirement of a temporary character which is within the purview of Section 23. The provision of Section 29 in respect of release is also indicative of the intention of the legislature that the requisitioned property not acquired under Section 30, is to be released from acquisition at a later date. The power of requisition is not, in my view, a substitute for the power of acquisition. Where the real purport for the exercise of power is to take possession of property not for a temporary or fixed period, but for a use which is of a permanent nature, Section 23 appears to be inapplicable. I am thus of the view that where the public purpose for which a property is required is not of a temporary character resort cannot be had to the provision of Section 23 of the Act. Of course, even in such cases it is certainly open to the State to acquire a property for a public purpose. But that power, in my opinion, would be exercisable not under the provisions of the Act but the Land Acquisition Act or such other law as may be applicable in that regard. I am thus of the view that the legal proposition put forth on behalf of the petitioner is correct and must be accepted.

8. Learned counsel for the State contended that Section 23 does not put any limitation on the exercise of power and that even for requirement of a permanent nature power under Section 23 is exercisable. In my view, Section 23 is not to be looked at in isolation. The whole scheme of the Act has to be appreciated in order to arrive at the true import and content of the power

exercisable under the relevant provision. I have already discussed as to why, in my view, taking the various provisions of the Act into consideration the contention put forth on behalf of the petitioner is acceptable.

9. It will now be necessary to examine the factual aspect, namely, whether the purpose for which the requisition had been made is of a temporary nature or not. The Notice (Annexure - 1) states that the land is required for the "immediate extension of Patna Aerodrome". It has been stated in paragraph 20 of the petition that it is for a permanent public purpose and not for a temporary purpose that the land in question is required. A counter-affidavit has been filed on behalf of the State, but in this counter-affidavit in reply to paragraph 20 it has been only stated that "the purpose for which the land is required has already been given in the notice". It is, therefore, clear that there is no denial of the fact that the requirement is of a permanent character and not of a temporary nature. During the course of argument we observed about the vagueness in the statements made in the counter-affidavit. After the conclusion of the reply of the petitioner a counter-affidavit sworn by the Additional Collector, Patna, has been filed. But even in this affidavit the assertions made as noticed have not been denied. It has only been stated that the land is required "for public purpose for maintaining supplies and services essential for the life of the communities that is for immediate extension of Patna Aerodrome, Patna for a period ending 30th November, 1975." This only repeats what has been said in the notice and does not clarify the factual position any further. It appears to me that the authorities wanted to take steps for requisition till 30th November, 1975 as according to them the notice of resumption would take effect from 16-11-1975. The date for requisition being thus a few days later than the taking effect of resumption notice it was thought that the lands in question will be available for future permanent use. In this connection it would be pertinent to observe that the stand in the counter-affidavit (as stated in paragraph 18) is that the petitioner ought to have vacated the land much before the issue of the present notice and that he ought to have "removed the machines, if any, during the period of notice" (Paragraph 9 of the counter-affidavit).

10. Apart from the three main contentions raised certain other contentions were also raised which need not be noticed in view of my decision on the first point. I may also state that the day following the filing of the supplementary counter-affidavit on behalf of the State, the petitioner's Company filed a reply to the same. I am not expressing any opinion whether the same should be accepted or not, although I must observe that the filing of the supplementary counter-affidavit was itself late.

11. For the reasons discussed above, I am of the view that Annexure - 1 is not a legal and valid notice under Section 23 of the Act and the respondents cannot act on the basis of the notice. This application is accordingly allowed and the respondents are restrained from acting on the notice and disturbing the possession of the petitioner on the basis of the said notice. In the facts and circumstances of the case there will be no order as to costs.

NAGENDRA PRASAD SINGH, J.

12. I agree.

Application allowed.