

Jiwani Kumar Paraki

Vs

First Land Acquisition Collector, Calcutta and Others

Writ Petition No. 11222 of 1983

(V. D. Tulzapurkar, R. S. Pathak, Sabyasachi Mukharji JJ)

30.08.1984

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This is an application under Article 32 of the Constitution of India. Notice was issued and the respondents have filed counters and have made submissions on the application. The petitioner is the lessee of the premises No. 7/1A-D, Lindsay Street, Calcutta which is situated in an important commercial locality of Calcutta. The ground floor and mezzanine floor of premises No. 7/1-D, Lindsay Street, Calcutta were requisitioned by Government of West Bengal by order of requisition No. 21/58 Reqn. dated February 25, 1958 which was substituted by requisition order No. 123/60 Reqn. dated November 10, 1960 issued under the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947, hereinafter called said Act for establishing main sales show-room of respondent 4 herein which is the West Bengal Handicraft and Development Corporation Limited (a West Bengal Government undertaking).

2. The area under requisition is 2521 sq. ft. on ground floor and 1677 sq. ft. on mezzanine floor aggregating to 4198 sq. ft. The rent compensation payable under the said Act was fixed by the Land Acquisition Collector, Calcutta on or about March 31, 1959 at Rs. 1450 per month inclusive of taxes and repairs with effect from June 10, 1958 which was ultimately modified to Rs. 2500 per month by the High Court of Calcutta. It is alleged on behalf of the petitioner that in fixing the monthly compensation for acquisition by Land Acquisition Collector, the High Court in appeal took into consideration the rate prevailing in the year 1958, being the year in which the requisition took place. A showroom of respondent 4 has been set up there.

3. The contention of the petitioner is that from the very beginning that State Government had the intention of keeping the said requisitioned premises permanently. The petitioner contends that the State Government had amply power to acquire the said property under the Land Acquisition Act at the time of issue of order of requisition. In spite of power to acquire the premises in question, the State Government resorted to requisition the same with the intention of permanently acquiring property in an indirect manner thereby the State Government has acted in improper exercise of powers and authority and has not exercised the power bona fide, alleges the petitioner.

4. The petitioner further alleges that the object is clearly to avoid the obligation to pay reasonable compensation for acquisition and instead thereof continue occupying the area by paying nominal monthly rent as compensation. Therefore, according to the petitioner, the order of requisition has been passed for extraneous purpose and in arbitrary and mala fide. The petitioner also alleges that according to the present letting value prevailing in the market, the value would be over Rs. 43,668

approximately per month. We are, however, in this application not concerned with that controversy. The petitioner has submitted that requisition can be for temporary period and for a temporary purpose, and the State Government under the garb of requisition has really acquired the property and has avoided the obligation to pay compensation for acquiring the property which will be over Rs. 29 lacs.

5. According to the petitioner, the West Bengal Act of 1947 which was intended to remain in force for a short temporary period does not contain any provision for revision of rent. The said Act came into force on or about January 1, 1948. The said Act contains no provision for acquisition of any property but deals solely with requisition of property for making temporary provision. The said Act by various Acts has been renewed from time to time, the last of such renewal as per averments has been extended upto March 31, 1985. It is further the case of the petitioner that the said Act cannot be converted into a permanent Act and there cannot be a permanent requisition.

6. According to the petitioner, by this process the property in question has been kept under requisition for 25 years. This, it was submitted, is a fraud upon the power. According to the petitioner, the State Government had the option of acquisition of the property. The State Government had also full knowledge that the possession of the said area was required for a permanent purpose or at least for an indefinite period i.e. for setting up a showroom and in spite of the same did not choose to acquire the property but arbitrarily issued the order of requisition under the said Act. Petitioner states that he requires the premises in question to carry on his own business and the said right is being interfered with and therefore infringes upon petitioner's fundamental right. The petitioner contends that it violates both Article 14 and Article 19(1)(g) of the Constitution. There are various allegations about damages being done to the premises in question. We are not concerned in this application with the said allegations.

7. The petitioner prays for an order of derequisition of the premises.

8. On behalf of the respondents, the main contention is that the said Act has been renewed from time to time and there is no limitation to the power of requisition except that the same must be for public purpose. According to the respondents, the purpose in this case is indubitably a public purpose and that public purpose remains. The respondents contend that there is no limitation on the exercise of that power.

9. On behalf of the applicant, reliance was placed on the decision of this Court in *H. D. Vora v. State of Maharashtra* ((1984) 2 SCC 337) - judgment delivered by my learned brother Bhagwati to which I was a party. There the question as was posed by Bhagwati, J. was whether an order of requisition of premises can be contained for an indefinite period of time or it must necessarily be of temporary duration. The case discussed the other contention and repelled the attack on the order of requisition on the ground that the order of requisition did not set out the public purpose for which it was made. It was noted by us in the decision of *H. D. Vora* ((1984) 2 SCC 337) that the High Court had held that no material was placed before it to show what was the public purpose for which the order of requisition was made and in fact there was no denial on the part of the State Government or the appellant of the averments made on behalf of the third respondent that the appellant in that case was neither a Government servant nor a homeless person for whom the order of requisition was purported to have been made. We found that the view taken by the High Court was well-founded and it was not possible to hold on the material before us that the order of requisition was made for public purpose. On behalf of the appellant, however it was contended that the order of requisition in that case was challenged after a lapse of over 30 years and as such that challenge was liable to be

dismissed but this Court in Vora case ((1984) 2 SCC 337) relied on another ground namely, that an order of requisition was by its very nature temporary in character and could not endure for an indefinite period of time in the facts of that case, and the order of requisition in that case therefore ceased to be valid and effective after the expiration of a reasonable period of time and that it could not, under any circumstance, continue for a period of over 30 years. Brother Bhagwati noted the difference recognised by law between 'requisition' and 'acquisition' and it was further stressed that where acquisition under Land Acquisition Act, 1894 was possible, the Government under guise of requisition could not continue to use the property under requisition for an indefinite period of time thereby in substance acquiring the property because that would be misuse by the Government of its powers. It was observed in that case that if the Government wanted to take over the property for an indefinite period of time, the Government should acquire the property but it could not use the power of requisition of achieving that object. In those circumstances it was observed that the power of requisition was exercisable by the Government only for a public purpose which was of transitory character, if the public purpose for which the premises were required was a perennial one or of permanent character from the very inception, no order could be passed requisitioning the premises and in such a case the order of requisition if passed would be fraud upon the statute, for the Government would be requisitioning the property when really speaking it wanted the property for acquisition, the object of taking the property being not transitory but permanent and in such circumstances it was held that an order of requisition for a period of such a long time as 30 years as it had happened in that case made the order of requisition bad. Relying mainly on the aforesaid basis and the facts alleged in this case, on behalf of the petitioner it was urged before us that the order of requisition was bad and arbitrary.

10. On behalf of the respondents, however, attention was drawn to a decision of this Court in the case of Collector of Akola v. Ramchandra ((1968) 1 SCR 401 : AIR 1968 SC 244 : (1968) 1 SCJ 525), a decision of a Bench of three learned Judges. There, the land owned by the respondents was requisitioned under the Bombay Land Requisition Act for a public purpose viz., for establishing a new village site to resettle victims of flood. The respondents filed a writ petition in the High Court challenging the validity of the order on the ground that since the Act was a temporary one extended until then upto 1963, the power to requisition thereunder would be with the Government only during the time that it subsisted; so an order passed for a permanent purpose could not be in the contemplation of the Act. The High Court accepted the objection and quashed the order. It was held by this Court in appeal that the power of requisition under the Act could be exercised whether the public purpose was temporary or not and the exercise of that power for the purpose of rehabilitation of flood sufferers was neither an abuse of the power nor unjustified under the Act. The words "for any public purpose" in Section 5(1) were wide enough to include any purpose of whatever nature and did not contain any restriction regarding the nature of that purpose. It placed no limitation on the competent authority as to what kind of public purpose it should be for the valid exercise of its power nor did it confine the exercise of that power to a purpose which was of temporary nature. The Court observed that there was no antithesis between the power to requisition and the power of compulsory acquisition under Land Acquisition Act. Neither of the two Acts contained any provision under which it could be said that if one was acted upon, the other could not be.

11. In that case the facts were that the Government made an order of requisition under temporary Act for rehabilitating the flood victims and also initiated proceedings under the Land Acquisition Act 1 of 1894 in respect of those very lands and issued a notification under Section 4 thereof. It was contended that the action of the Government was bad.

12. The only question which was argued in that case was whether an order of requisition could be

made for a permanent purpose. The order of requisition in that case was challenged on the ground that the purpose for which the order of requisition was made, namely, rehabilitation of flood affected victims, was a permanent purpose and the order of requisition was therefore bad from its inception, since an order of requisition could be made only for a temporary purpose. The argument of the petitioner who challenged the order of requisition was, inter alia, that the competent authority had no power to invoke the Land Requisition Act inasmuch as the purpose for which it was exercised was of a permanent character. This argument appealed to the High Court and the High Court held that the order of requisition was "unjustified under the Bombay Land Requisition Act". It was only this argument which was considered by this Court and this is how this Court formulated in that case the question for its decision : "The only question arising in this appeal thus is whether the Act authorises an order of requisitioning even if the purpose for which it is made is not a temporary purpose ?" This Court had that the only restriction imposed by the statute on the power of requisition conferred on the State Government was that this power could be exercised "only for a purpose which is a public purpose" and "on the face of it the sub-section does not contain any express limitation to the power to requisition, the only limitation being that an order thereunder can be passed for a public purpose only" and there is no implied limitation "that the requisitioning authority had no power thereunder to pass an order where the purpose is not temporary". This Court said that the premises requisitioned "may be used for a temporary purpose or for a purpose which is not temporary in nature", and added that the power of requisition is not "restricted to a temporary purpose only". No question was raised before this Court in that case as to whether an order of requisition can continue for an indefinite duration. The argument before this Court in H. D. Vora case ((1984) 2 SCC 337) was not that the order of requisition was initially bad, when made, on the ground that it was for a purpose which was a permanent purpose. In fact, no one contended that the purpose of housing homeless person was not a temporary purpose but a permanent purpose and therefore the order of requisition was bad. The principal argument advanced was that though the order of requisition was good when made, it ceased to be valid and effective, because it could not legitimately be continued for an indefinite length of time. The order of requisition in that case had been allowed to continue for a period of almost 30 years and that is why this Court said that the order of requisition had ceased to be valid and effective and the premises must therefore be derequisitioned. It is no doubt true that some observations have been made in the judgment in that case with regard to the permanent or temporary character of the purpose for which an order of requisition could be made and to that extent what is said in that judgment may have to be slightly modified, but the principal decision in that case was that an order of requisition is by its very nature temporary in character and cannot be allowed to continue for an indefinite length of time, because then it would tantamount to an order of acquisition and would amount to a fraud on the exercise of the power of requisition, especially where there is no impediment in making the acquisition and no effort was made to acquire, must be regarded as a correct enunciation of the law which does not in any way conflict with what was laid down in the case of Collector of Akola v. Ramchandra ((1968) 1 SCR 401 : AIR 1968 SC 244 : (1968) 1 SCJ 525). The latter decision merely laid down that an order of requisition can be made for a permanent purpose while the former dealt with a totally different question, namely, whether, whatever be the character of the purpose for which an order of requisition was made, the question was, could the order of requisition be continued for an indefinite length of time and it was held that the order of requisition would cease to be valid and effective after the expiration of a reasonable period of time, even if it was valid when made, and what, in the circumstances of a given case would be a reasonable period of time would depend on the facts and circumstances of the case. There is therefore no contradiction between the decision in Collector of Akola v. Ramchandra ((1968) 1 SCR 401 : AIR 1968 SC 244 : (1968) 1 SCJ 525) and the latter decision in H. D. Vora Case ((1984) 2 SCC 337).

13. It may not be inappropriate to note that there are significant difference between 'requisition' and 'acquisition'. These have different legal consequences and these affect the owners concerned in different manners. But the State has the power both of requisition as well as acquisition, subject to one condition, i.e., the property acquired or requisitioned must be for public purpose. In the Words and Phrases Judicially Defined by Roland Burrows K.C. Vol. 4 at p. 562, it was observed that the word 'requisition' was not a term of art and does not connote the same state of things in every particular case.

14. In the Fourth Edition of Stroud's Judicial Dictionary at page 2355, it has been mentioned that 'requisition' is as follows :

'Requisitioning' is not a term of art and has different meanings. Its usual meaning is nothing more than hiring without taking the property out of the owner although the owner has no alternative whether he will accept the proposition of hiring or not. It may, however, involve the taking over of the actual domination of a chattel [The Steaua Romana (1944), p. 43].

"Requisitioned house"; "requisitioned land"; Stat. Def., Requisitioned Houses and Housing (Amendment) Act, 1955 (c. 24), Section 18(1).

15. In the case of Mangilal Karwa v. State of Madhya Pradesh (AIR 1955 Nag 153, 157 : ILR 1955 Nag 34), it was observed as follows :

If the term 'requisition' has acquired any technical meaning during the two World Wars it has been used in the sense of taking possession of property for the purpose of the State or for such purposes as may be specified in the statute authorizing a public servant to take possession of private property for a specified purpose for a limited period in contradistinction to acquisition of property by which title to the property gets transferred from the individual to the State or to a public body for whose benefit the property is acquired. In 'requisition' the property dealt with is not acquired by the State but is taken out of the control of the owner for the time being for certain specified purposes. Even for this limited purpose, however, the owner becomes entitled to compensation, because 'requisition' of the property amounts at least to a temporary deprivation of the property.

16. Thus, normally the expression 'requisition' is taking possession of the property for a limited period in contradistinction to 'acquisition'. This popular meaning has to be kept in mind in judging whether in a particular case, there has been in fact any abuse of the power.

17. Order of requisition and acquisition have different consequences. These have been noted by this Court in the observations of Mukherjea, J. in the decision in the case in Chiranjit Lal Chowdhuri v. Union of India (1950 SCR 869 : AIR 1951 SC 41 : 1951 SCJ 29) and the distinction between 'requisition' and 'acquisition' is also evident from Entry 42 in List III of the Seventh Schedule, Original Article 31 clause (2) of the Constitution recognised the distinction between 'compulsory acquisition' and 'requisition' of the property. The two concepts are different; in one title passes to the acquiring authority, in the other title remains with the owner, the possession goes to the requiring authority. One is the taking over of the title and the other is the taking over of the possession.

18. It was further contended on behalf of the respondents that part of the premises i.e. one room as

in the instant case before us, cannot be acquired. Therefore the ratio of the decision in the case of H. D. Vora ((1984) 2 SCC 337) would not be applicable because there was no power to acquire the premises in question. Secondly, it was urged that the petitioner in the instant case was to the owner of the property at all and the question of acquisition of the requisitioned premises does not arise at all. It was, thirdly, contended that it was not possible in the fact and circumstances of the case to get any other alternative accommodation for the showroom of the State Handicraft and Development Corporation which indisputably is a public purpose. It was emphasised that the West Bengal Premises Requisition and Control (Temporary Provision) Act, 1947 does not contain any power to acquire the premises in question.

19. The main thrust of the argument was that Section 49(1) of the Land Acquisition Act, 1894 provides :

The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired.

In other words it was urged that this provision almost prevents the acquisition of a part of a house or building.

20. It may be pointed out that Section 49(1) of the Act has been amended so far as West Bengal is concerned by the West Bengal Act 32 of 1955 with effect from October 20, 1955 and the amended Section 49(1) so far as Calcutta is concerned runs thus :

Section 49(1) : The provisions of this Act shall not be put in force for the purpose of acquiring the part only of any house, manufactory or other building, if the acquisition of the part will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable :

Provided that, if any question shall arise as to whether the part proposed to be acquired will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable, the collector shall refer the determination of such question to the court and shall not take possession of such part until after the question has been determined.

In deciding on such a reference the court shall have regard only to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the remaining portion of the house, manufactory or building.

21. The aforesaid provision suggest that even a part of a building or a house can be acquired provided the conditions mentioned and the procedure specified therein are followed and there is no absolute bar to the acquisition of a part of a house or a building as suggested by the counsel for the respondents.

22. In view of the decision in the case of H. D. Vora ((1984) 2 SCC 337) in the light of the decision of this Court rendered by Bench of three Judges in Collector of Akola v. Ramchandra (1950 SCR 869 : AIR 1951 SC 41 : 1951 SCJ 29) and bearing in mind the distinction between 'requisition' and 'acquisition' as also the provisions of West Bengal amended Section 49(1) (quoted above), the correct position in law would be that it will not be correct to say that in no case can an order of requisition for permanent purpose be made but in a situation where the purpose of requisitioning the

property is of a permanent character and where the Government has also the power and the opportunity to acquire the property or a part thereof especially upon the fulfilment of the conditions of Section 49(1) of the Land Acquisition Act (as amended by the West Bengal Act) to the extent applicable, if the Government chooses not to exercise that power not attempts to exercise that power to achieve its purpose, then that will be bad not because the Government would be acting without power of requisition but the Government might be acting in a bad faith. In other words, if there is power to acquire as also the power to requisition and the purpose is of permanent nature by having the property or a part thereof for the Government then in such case to keep the property under requisition permanently might be an abuse of the power and a colourable exercise of the power not because the Government lacks the power of requisition but because the Government does not use the other power of acquisition which will protect the rights and interests of the parties better.

23. Where one is repository of two powers that is power of requisition as well as power of acquisition qua the same property and if the purpose can equally be served by one which causes lesser inconvenience and damage to the citizen concerned unless the repository of both the powers suffers from any insurmountable disability, user of one which is disadvantageous to the citizen without exploring the use of the other would be bad not on the ground that the Government has no power but on the ground that it will be a misuse of the power in law.

24. It is true that the purpose indisputably in the instant case is a public purpose. It is also true that the only part of the building namely one room has been requisitioned for the showroom but the premises in question had remained under requisition for over 25 years and the purpose of having the premises in question is of a permanent and perennial nature. But that by itself without anything more would not enable the Court to draw the inference that the exercise of the power was bad initially, nor would the continuance of the requisition become mala fide or colourable by mere lapse of time. In order to draw such an inference some more material ought to have been placed before the Court. In the circumstances after having heard counsel on either said fully we felt that the following would be an appropriate order to be made in the instant case :

- (1) The impugned requisition order is upheld but the continuance of the requisition of the premises in question is permitted subject to the conditions mentioned hereinafter.
- (2) The Government is directed to take steps to acquire premises in question by complying with the conditions mentioned and by following the procedure prescribed in Section 49(1) of the Land Acquisition Act, 1894 as substituted for the State of West Bengal by the West Bengal Act 32 of 1955 and if possible issue an appropriate order acquiring the same of Government wants the continued use of the premises. Such steps should be completed within a period of three years from today.
- (3), If, however, there are insurmountable difficulties in acquiring the premises under Section 49(1), the Government will be at liberty to apply to this Court for appropriate directions.
- (4) We also hope that the Government would take steps to acquire any alternative property or premises under Land Acquisition Act, 1894 in view of the fact that the purpose of the Government is more or less permanent and such steps should also be taken not beyond a period of three years as aforesaid.

(5) If the aforesaid conditions or directions are not complied with, the petitioner will also be at liberty to apply to this Court for appropriate directions in accordance with law.

(6). In the mean time, the parties are at liberty to make any appropriate application for the enhancement of rent or compensation in accordance with law, if they are so entitled to, and this will also not prejudice the parties from proceeding with any suit for damages etc. that may be pending.

25. The parties will pay and bear their own costs.

26. The application is disposed of accordingly.

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