

Jiwani Kumari Parekh

Vs

Satyabrata Chakravorty, Managing Director and Chief Executive of the West Bengal Handicraft Development Corpn. Ltd.

Contempt Petition No. 71 of 1990 and Interlocutory Application No. 1 of 1990 in Writ Petition (Civil) No. 11222 of 1983

(M.H. Kania, R.M. Sahai JJ)

10.10.1990

JUDGMENT

KANIA, J. -

1. Sett Mannalal Surana Memorial Trust is the owner of a building situate at 7/1D, Lindsay Street, Calcutta, one of the busiest street in Calcutta where the New Market is situated. The petitioner is the lessee of the said building from the said Trust. On February 25, 1958, a portion of the ground floor premises in the said building admeasuring 4198 sq. ft. (referred to hereinafter as "the said premises") was requisitioned by the Government of West Bengal under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. (hereinafter refereed to as the West Bengal Act"). The propose for which the said premises were requisitioned was establishing the main showroom of West Bengal Handicraft Development Corporation Limited, a West Bengal Government Undertaking The said showroom is called "Manjusha" and has become a landmark in Calcutta. In H. D. Vora v. State of Maharashtra ((1984) 2 SCC 337) this Court held that the provisions for requisition could be resorted to only where premises were required for a temporary purpose but not where they were required for a permanent purpose. If premises were required for a permanent purpose, they have to be acquired in accordance with law. Following upon this decision, the petitioner filed the aforesaid Writ Petition No. 11222 of 1983 in this Court praying for a mandatory order directing that the premises should be derequisitioned and handed over to the petitioner. Certain interim applications were made in this Court and orders were passed thereon to which it is not necessary to refer in this judgment.

2. By an order dated January 16, 1990 certain directions were given to respondent 4 in the writ petition. The relevant portion of the said order runs as follows :

"In view of the earlier orders, we direct respondent 4 to hand over the possession of the premises in question to the petitioner with nine weeks from today subject to their obtaining any order from the Calcutta High Court in the appeal pending in that court against the decision of a learned Single Judge in W.P. No. 2063 of 1987 or acquiring any independent right to retain possession of the suit premises within that period."

3. It is contended by Shri Shanti Bhushan, learned counsel for the petitioner that as the respondents have not succeeded in obtaining any order from the Calcutta High Court in the said appeal or in acquiring any independent right to retain possession of the said premises within the period of nine weeks from January 16, 1990, as set out in the said order, they were bound to hand over the

possession of the said premises to the petitioner and have committed contempt as they have deliberately failed to do so.

4. We find that it is not possible to accept the submission set out hereinabove. On February 21, 1990, the Government of West Bengal issued a notification under Section 4 of the Land Acquisition Act as applicable to the State of West Bengal, declaring its intention to acquire the said premises. On February 27, 1990, the said declaration was duly published. By the beginning of March 1990 the declaration under section 6 of the Land Acquisition Act in respect of the said premises was duly made published and on March 1, 1990 the Government of West Bengal authorised the First Land Acquisition Collector to take possession of the said premises under Section 17(1) of the Land Acquisition Act. Public notices were given on March 9, 1990. A few days later, the trustees of the said trust which owned the said building filed a writ petition in the Calcutta High Court challenging the validity of the acquisition proceedings in respect of the said premises which had been initiated consequent upon the amendment of the Land Acquisition Act as applicable to the State of West Bengal and on March 20, 1990, the Calcutta High Court directed the status quo to be maintained regarding possession.

5. It is clear that unless the said order dated March 20, 1990, is vacated, it is not possible for the respondents to proceed with the acquisition and acquire title to the premises. The contention of the learned counsel; for the government to acquire the said premises on the ground floor of the said building without acquiring the corresponding area on the upper floors. It was submitted by him that such acquisition would be clearly bad in law in spite of the amendment carried to the provision of Land Acquisition Act as applicable to the State of West Bengal by the insertion of Section 49-A therein by Land Acquisition (West Bengal Amendment) Act, 1986, which came into force on February 14, 1990, after obtaining the consent of the President of India. Section 49-A permits acquisition of a part of a house. In our view, the question whether the acquisition is valid or not is pending for decision in the Calcutta High Court in the said Writ petition filed by the said Trust as owner of the building challenging the validity of the said amendment.

6. In our opinion, before a party can be committed for contempt, there must be a wilful or deliberate disobedience of the orders of the court. In the present case, we do not find that any such wilful or deliberate or reckless disobedience of our order dated January 16, 1990, has been committed by the respondent to the contempt petition. Hence, the contempt petition is dismissed. There will be no order as to costs.

7. We hope that the Calcutta High Court will be able to dispose of the said writ petition challenging the validity of the said amendment as early as possible.

8. Interlocutory Application No. 1 of 1990 in Writ Petition No. 11222 of 1983 is not pressed and is allowed to be withdrawn with liberty to renew the same if any occasion arises.

9. Although we are of the view that the respondent has not committed contempt, we do realise that in case the petitioner succeeds in the writ petition, the respondent would have remained in possession of the said premises, for a long time after they should have handed over the possession of the same to the petitioner. We find that the respondent has already been directed to pay compensation for the use of the said premises at the rate of Rs. 15,000 per month by the order of this Court passed over two years earlier. We direct that the respondent shall deposit, in addition, an amount of Rs. 10,000 per month commencing from October 1, 1990, in the court, the first of such deposits to be made on or before October 20, 1990, and deposits for each succeeding month to be

made by 15th day of each succeeding month. The amounts deposited shall be invested by the Registrar General at suitable intervals in a nationalised bank in fixed deposit after consulting the parties.

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