

SUPREME COURT OF INDIA

Roy Estate

Vs.

State of Jharkhand

C.A.No.3146 of 2009

(Dalveer Bhandari J.)

01.05.2009

JUDGEMENT

HARJIT SINGH BEDI, J.

1. Leave Granted.

2. The facts leading to the appeal are as under: The property in dispute known as 'Katrass House' built over an area of 1.7 acres of land on Circular Road, Ranchi was purchased by Late Shri Ganesh Chandra Dey vide registered sale deed dated 26th January 1933. World War-II broke out on 3rd September 1939 on which the Viceroy promulgated the Defence of India Ordinance 1939 under which the Defence of India Rules were issued. On 25th April 1942, Rule 75 A was inserted in the Defence of India Rules empowering the Central Government to requisition any property necessary or expedient for securing the defence of British India and other related matters. Japan entered World War-II on the side of Nazi Germany on the 7th December 1941, after its attack on the United States Seventh Fleet in Pearl Harbour, Hawaii and soon after a string of victories over the Allies in South East Asia and upto Burma brought the Imperial Japanese Army to India's Eastern doorstep. It was

thereafter thought prudent to shift the headquarters of the Indian Army's Eastern Command from Kolkata to Ranchi. Vast areas of land and other residential property were accordingly requisitioned under Rule 75 (A) *ibid*. Katras House too was requisitioned for this purpose. The World War ended in 1945 but the property continued to be remain under requisition. The Requisitioning and Acquisition of Immovable Property Act 1952 (hereinafter called 'the Act') was thereafter promulgated and Section 23 thereof provided that all the old requisitions were now deemed to have been made under Section 3 of the Act but by virtue of an amendment made in 1970 Section 6 (1-A), the Central Government was not authorized to retain any property under requisition for a period beyond 17 years. The Deputy Commissioner, Ranchi however, on a misconception of the law transferred Katras House, undoubtedly a requisitioned property, to the Civil Surgeon, Ranchi without the consent of its owner and on vacation of the said property by the Civil Surgeon, vide by Order dated 30th April 1958, transferred the property to the Principal, Ranchi Women's College (Respondent no.3 herein) under Section 11 (2) (b) of the Bihar Building Lease Rent and Eviction Control Act 1947 (hereinafter called the 'Rent Act') subject to a monthly payment of rent directly to the owner. In July 1995, the then owner of the property through his attorney, filed an Eviction Title suit no.8 of 1995 under the provisions of the Rent Act for eviction of Respondent no.3 alleging that the college was a tenant in the demised premises. Respondent No. 3 as well as the Deputy Commissioner, Ranchi appeared in the said Suit as Defendants and filed their written statements. Respondent no.3 took a categorical stand that Katras House had been requisitioned for purposes of the Army during World War-II and had been allotted to it by the Deputy Commissioner under the Act, and an application for its vacation would lie before the Deputy Commissioner, and as such the Court Civil had no jurisdiction to entertain the Suit. This Suit was eventually dismissed in default for non-prosecution in the year 1998.

The compensation payable under Section 8 (2) of the Act was, however, regularly paid by Respondent no.3 to the owner.

Katras House was purchased by Shri L.N. Dey from its owner by a registered sale deed dated 9th January 2001 and pursuant thereto the necessary mutations were made in the revenue record and it is the admitted position that the rent/compensation is now being received by the new owner.

It is the case of the Appellant that a letter dated 23rd November 2002 was received from the Administrator, Ranchi Municipal Corporation that on inspection it had been found that Katras House was in a dangerous and uninhabitable state and a direction was issued under Section 247 (1) of the Ranchi Municipal Corporation Act 2001 that the building which had been declared as dangerous, should either be demolished or subjected to extensive repairs to make it habitable. The Appellant thereupon served a copy of this notice on the Deputy Commissioner on 8th July 2003 requesting him to de-requisition the building so that it could be demolished or repaired, as the case may be, failing which there was a possibility that the girls residing in the building which was being used as a hostel, may suffer some injury.

The request of the Appellant was accepted and an order was made by the Deputy Commissioner on 8th July 2003, de-requisitioning the property and directing its return to its owner. Vide order dated 25th August 2003, however, the Deputy Commissioner, in partial supersession of the order of 8th July 2003, referred the matter to the Secretary, Human Resource Development, Government of Jharkhand, Ranchi and the Vice Chancellor, Ranchi University to take a final decision with respect to the ownership and title of the said property. On receiving the revised order, the Appellant approached the Secretary, Department of Education on 14th October 2003 giving evidence as to his ownership of the property. The Joint Secretary of the Ministry, however, wrote a letter of 1st March 2004 to the Secretary, Building & Construction Department to arrange for an inspection of the property and to ascertain as to whether it was unsafe and unfit for habitation. The inspection was held over several days in May & June 2004 and a report was tendered that as the building had been constructed before the year 1919 and as the quality of the construction had deteriorated, the building was no longer fit for habitation. This report was forwarded to the Secretary, Human Resource Development Department by the Chief Engineer, Building Construction Department on 21st June 2004 but it appears that no result followed on which the Appellant filed Writ Petition (Civil) No.4955 of 2004 in the High Court seeking a direction to the Respondents, specifically to Respondent No.3 to relinquish the possession of the property forthwith to the owner so that the building could be demolished or repaired to make it safe. Respondent No.3 filed its counter affidavit admitting that Katras House had been originally requisitioned for Army purposes during World War- II and had later been allotted to the Civil Surgeon and on its vacation by the Civil Surgeon, had been allotted to the respondent on 30th April 1958 under Section 11(2)(b) of the Rent Act and that it had been in use as a hostel for girls for more than 45 years. The matter was heard by a learned Single Judge, who in his Judgment dated 20th September 2005 observed that it was not possible to determine the question of right, title and possession over the land and building in writ proceedings under Article 226 of the Constitution of India and that this matter could not be decided by the Secretary, Human Resource Development Department or the Vice Chancellor of the Ranchi University and therefore, the Order dated 25th August 2003 was bad to extent. It was, however, left to the Competent Authority under the 'Act' to determine whether the building in question should be de-requisitioned or retained by the Government.

3. Aggrieved by the aforesaid Judgment, the Appellant preferred a Letters Patent Appeal before the Division Bench on 6th January 2006, but simultaneously pursued the liberty granted by the Single Bench in the judgment dated 20th December 2005 and filed a representation before the Deputy Commissioner, Ranchi (being the Competent Authority under the Act) seeking an order of de-requisition of Katras House. The Deputy Commissioner by his Order dated 4th April 2006 ordered that the property should be released and handed over to the Appellant with effect from 4th April 2006. Faced with this situation Respondent No.3, the Principal, Women's College, Ranchi filed Title Suit No.134 of 2006 in the Court of the Munsif, Ranchi challenging the Order dated 4th April 2006 pleading that the aforesaid Order was without jurisdiction and also seeking on interim injunction during the pendency of the Suit. The Appellant filed its written statement on 2nd August 2006 pleading inter alia that the jurisdiction of the Civil Court was barred under Section 19 of the Act, and also an application under Order VII, Rule 11 of the CPC that the question of jurisdiction be treated as a preliminary issue. This prayer was rejected by the Munsif vide Order dated 14th November 2006. The Appellant thereupon preferred Writ Petition (Civil) No.7497 of 2006 pleading that the proceeding before the Civil Court were barred by Sections 18 and 19 of the Act. The High Court disposed off the writ petition with the direction that the Munsif should re-consider the pleas raised in the application aforesaid without being prejudiced by his earlier Order dated 14th

November 2006.

This order of the High Court was challenged by way of a Letter Patent Appeal. The Appellant also moved an application for review of the Order dated 14th November 2006 which too was rejected. These facts were brought to the notice of the Division Bench of the High Court in the Letters Patent Appeal proceedings vide an affidavit dated 7th September 2007. The High Court, however, by its Judgment and Order dated 1st October 2007, dismissed the Letters Patent Appeal in spite of the changed circumstances holding that the remedy of the Appellant lay elsewhere and that it was for the Civil Court to decide the question of jurisdiction raised in the application under Order 7 Rule 11 of the CPC. It is in these circumstances that the matter is before us by way of Special Leave Petition.

4. Several arguments have been addressed before us by Mr.

K. Venugopal, the learned Senior Advocate for the appellant.

He has emphasized that it was the admitted position that Katras House had been requisitioned under Rule 75 A of the Defence of India Rules in the year 1942 and by operation of law, the said requisition would now be deemed to have been made under the Act. He has pointed out that the Order of the Division Bench observing that only the Civil Court could go into the matter was not in accordance with law as the provisions of the Act were applicable and Section 19 thereof specifically barred any proceedings before the Civil Court. He has further pointed out that Respondent No.3 in its written statement filed in 1995 in the eviction suit filed by the power of attorney holder of the earlier owner had admitted that the property had been requisitioned for the army and had pleaded that proceedings before the Civil Court were barred. He has pointed out that this volte face had been made in order to frustrate the Order of the Deputy Commissioner dated 4th April 2006 which had been validly made under Section 6 (1A) of the Act. He has further pointed out that the requisition of a property could not continue indefinitely as the original purpose of the requisition had ceased to exist and more particularly as the requisition could not continue beyond the year 1987 i.e. a period of 17 years from the year 1970 as provided by Section 6 (1A) *ibidem*. For these two submissions Mr. Venugopal has placed reliance on *H.D. Vora vs. State of Maharashtra and Ors.* (1984) 2 SCC 337, and *Grahak* SCC 192. Mr. Venugopal has further pointed out that the Deputy Commissioner was not authorized to transfer Katras House to Respondent No.3 vide Order dated 30th April 1958 purportedly under Section 11 (2) of the Act as the conditions for the applicability of this provision did not exist. He has also pleaded that as Respondent No.3 in the Suit filed in the year 1995 had claimed that the Civil Court had no jurisdiction in the matter, it was now estopped from the claiming to the contrary and saying that the Civil Court had the jurisdiction in proceedings which were now pending in the Civil Court.

5. Mr. Dholakia, the learned senior counsel appearing for Respondent No.3 has, at the very outset,

very fairly conceded, that the question of title was not disputed but as the question as to whether the relationship of landlord and tenant existed inter se the parties was a matter which could be examined only by the Civil Court and that this procedure that had been adopted by the respondent by filing a civil suit challenging the order dated 4th April, 2006 of de-requisition made by the Deputy Commissioner.

6. We have heard the learned counsel for the parties and gone through the record. Although, a feeble attempt has been made by the learned counsel for the Respondent doubting the factum of the requisition made in the year 1942 for the purpose of the Army, it stands virtually admitted now that such an order had indeed been made under Rule 75 A of the Defence of India Rules. It is also the conceded position that by virtue of various provisions made in subsequent laws, the said order would now be deemed to be one made under Section 3 of the Act. In this view of the matter, the question would arise as to whether the Civil Court would have jurisdiction in the matter or that the remedy of the parties elsewhere. It is significant that in the civil suit filed in the year 1995 by the previous owner of the property, a comprehensive written statement had been filed by the Principal of Respondent No.3, and the positive stand taken was that the building in question had been requisitioned by the Deputy Commissioner-cum-District Magistrate, Ranchi for military purposes under the Defence of India Rules in the year 1942 and that the Deputy Commissioner had allotted the said premises to the Ranchi Women's College by order dated 4th April 1958 under Section 11 (2) of the Rent Act and as such the civil suit was barred and the remedy for de-requisition lay only before the Competent Authority, that is the Deputy Commissioner-cum-District Magistrate, Ranchi. Concededly, this suit was dismissed in default and was not pursued any further. It is equally true that the appellant herein too has taken a vacillating stand with regard to the jurisdiction of the Civil Court or otherwise in other legal proceedings inter se the parties. However, as per findings of all the Courts and as per written statement filed, the fact that the property had indeed been requisitioned in the year 1942 under Rule 75 A of the Defence of India Rules stands virtually admitted. In this view of the matter the controversy would be covered by Sections 3, 6 & 19 of the Act.

7. Section 3 of this Act gives power to the Competent Authority to requisition any immovable property for any public purpose, being a purpose of the Union and Section 4 thereof gives the power to the Competent Authority to take over the possession of the requisitioned property. Section 6 deals with release from requisition and insofar as is relevant, is reproduced below:

6. Release from requisitioning.

(1) The Central Government 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 purposes for which any requisitioned property was being used cease to exist, the Central Government shall, unless the property is acquired under section 7, release that property, as soon as may be, from requisition.

"(1-A) Notwithstanding anything contained in sub-section (1), the Central Government shall release from requisition, - (a) any property requisitioned or deemed to be requisitioned under this Act before the commencement of Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970, on or before the expiry of a period of [seventeen years] from such commencement;

(b) any property requisitioned under this Act after such commencement, on or before the expiry of a period of [seventeen years] from the date on which possession of such property was surrendered or delivered to, or taken by, the competent authority under section 4, unless such property is acquired under section 7 within the period of" [seventeen years] aforesaid.] (2) Where any property is to be released from requisition, [under sub-section (1) or under sub-section (1-A)] the competent authority may, after such inquiry, if any, as it may in any case consider necessary to make 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 from whom possession was taken at the time of the requisition or to the successors-in- interest of such person.

[3] The delivery of possession of the property to the person specified in an order under sub-section (2) shall be full discharge of the Central Government from all liability in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is given.

8. A bare perusal of Section 6 (1-A) and 6(2) would show that the property cannot be requisitioned permanently and that the maximum period fixed by the Amendment Act of 1970 is 17 years from that date and that Section 6 (2) further provides that unless the requisitioned property is acquired under Section 7 within the period of 17 years aforesaid, it shall be released to its owner and as far as practicable, be given to the person from whom the possession had been taken at the time of the requisition or to the successor in interest of such person. Concededly, the appellant herein is the successor in interest of the owner from whom the property had been requisitioned in the year 1942. It is, therefore, obvious that the requisition could not have been continued beyond the year 1987 unless the property had been acquired, which is concededly not the case before us.

9. Mr. Dholakia has, however, emphasized that the status inter se the parties was that of landlord and tenant, the appellant being the landlord, and as the appellant had been accepting rent and had also sought and received an enhancement thereof on several occasions , the suit could not be dismissed on the ground that the civil court's jurisdiction was barred. We are of the opinion, however, that the payment of rent in such matters would not change the legal position with regard to the rights and obligations of the requisitioning authority and the person from whom the property had been

requisitioned. It is impossible to accept the plea that if the appellant whose property has been requisitioned in desperation seeks an enhancement of the rent, that would ipso-facto create a tenancy so as to preclude the obligations imposed on the Central Government under the Act. While repelling a similar submission in H.D. Vora's case this is what this Court had to say:

"There was also one other contention urged on behalf of the appellant in a desperate attempt to protect his possession of the flat and that contention was, since he had paid rent of the flat to Rukmanibai and such rent was accepted by her, he had become a direct tenant of Rukmanibai and the order of requisition had become totally irrelevant so far as his possession of the flat is concerned. This contention is, in our opinion, wholly unfounded. The appellant admittedly came into occupation of the flat as an allottee under the order of requisition passed by the State Government and even if any rent was paid by the appellant to Rukmanibai and such rent was accepted by her, it did not have the effect of putting an end to the order or requisition. The appellant was an allottee of the flat under the order of requisition and he was liable to pay compensation for the use and occupation of the flat to the State Government and the State Government was in its turn liable to pay compensation to Rukmanibai for the requisitioning of the flat and if, therefore, instead of the appellant paying compensation to the State Government and the State Government making payment of an identical amount to Rukmanibai, the appellant paid directly to Rukmanibai with the express or any event implied assent of the State Government, the order of requisition could not cease to be valid and effective. It did not matter at all whether the appellant described the amount paid by him to Rukkanibai as rent, because whatever was done by him was under the order of requisition and so long as the order of requisition stood, his possession of the flat was attributable only to the order of requisition and no payment of an amount described as rent could possibly alter the nature of his occupation of the flat or make him a tenant of Rukmanibai in respect of the flat".

Some of the observations in H.D. Vora's case were modified on some other matters in Grahak Sanstha Manch case (Supra) but the observation in paragraph 7 afore-quoted were duly affirmed.

10. To our mind there exists yet another circumstance which militates against the case of Respondent No. 3 with regard to the creation of a tenancy vis-à-vis the appellant. Admittedly, Respondent No.3 had been inducted into Katras House under the order of the Deputy Commissioner dated 30th April 1958, under Section 11 (2) of the Rent Act. This provision reads as under:

"(2) (a) Where a servant of the Government in possession of any building as a tenant intends to vacate 20 such building, he shall give fifteen day's previous notice in writing of his intention to do so to the landlord, and to the District Magistrate who shall under intimation to the landlord, within a week of the receipt of the notice either allot building to any other servant of the Government whom the District Magistrate thinks suitable, subject to the payment of rent, and the observance of the conditions of the tenancy by such servant of the Government, or direct that the landlord shall be put in possession of the building:

Provided that when no such order is passed by the District Magistrate, the landlord shall be deemed to have been put in possession of the building.

(a) xxx xxx xxx xxx (b) Where a building is vacated by a servant of the Government, any person occupying such building other than the persons referred to in clause (a) shall be liable to be evicted by the District Magistrate in such manner as may be prescribed:

Provided that, after a landlord has been or is deemed to have been put in possession of such building, he may let it to any person".

11. It would be clear from a bare perusal of Section 11(2) (a) that it postulates several conditions for the transfer of a building already in possession of a Servant of the Government to any other servant of the Government, but it does not authorize the transfer of such a building to any other person.

It has been conceded before us that respondent No.3, the Ranchi Women's College, is not run or controlled by the Government but is a private college under private management. To our mind, therefore, the very order of allotment made on 30th April, 1958 was completely unauthorized. Concededly also Katras House was under requisition with the Union of India for purpose of the Union and there is no provision under the Act for transfer of such a property to any other person. Even assuming for a moment, the Act did authorize such a transfer, the condition of transfer visualized under section 11(2)(a) did not exist and the transfer was thus, bad at the very outset.

12. In this background, the question now arises is as to whether the jurisdiction of the Civil Court was barred and whether the appellant should undergo a trial on facts which are admitted. Section 19 of the Act is reproduced hereunder:

"Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act".

13. A bare perusal of this provision would show that it is only the Competent Authority (read Deputy Commissioner) who would have jurisdiction in respect of any matter under the Act, and the jurisdiction of the Civil Court was explicitly barred. We also find that in the suit filed in the year 1995, Respondent No.3 had taken a specific plea that it was only the Competent Authority under the Act who could make an order of de-requisition sought by the owner and the jurisdiction of the Civil

Court was barred. Mr. Dholakia has, however, (and rightly), pointed out that Appellant too had been taken a vacillating stand in a different set of proceedings. We find that both appellant and the respondent have been equally ambivalent with respect to their relationship and rights inter- se with the sole purpose of defeating the other party's rights by whatever means possible. To our mind, this ambivalence would not be determinative of the legal issues that have been raised on the basis of admitted facts. It is the admitted fact that the property had been requisitioned in the year 1942 for Army purposes under Rule 75 A of the Defence of India Rules which would be deemed to be a requisition under Section 3 of the Act. The maximum period for requisition in such cases is 17 years and ought to have ended in the year 1987, but has in fact continued for almost 22 years thereafter. The creation of the so called tenancy in favour of a respondent of a requisitioned property is not visualized under the Act and even otherwise the conditions for the creation of such a tenancy by virtue of Section 11 (2) of the Rent Act do not exist.

The Competent Authority under the Act was, therefore, under an obligation imposed under Section 6(2) to return it to its owner. To our mind, therefore, the observations of the Munsif and High Court, that the appellant must have his remedies in the Civil Court is adding insult to injury in a situation where almost none of the material facts are in dispute.

14. Mr. Venugopal has also raised a plea of estoppel based on the conflicting stand on the question of jurisdiction taken by respondent no.3 from time to time. In view of the fact that the appellant has been equally guilty of a similar stand and our findings on the other issues, we are disinclined to go into this aspect.

15. We accordingly allow the appeal, set aside the Order of the Division Bench and direct that Katras House and the entire requisitioned property shall be released in favour of the appellant by the end of this year. The respondent is directed to pay all the arrears of rent due as of now and the rent upto December and also files an undertaking to vacate the premises as ordered within a period of two months from today.

Should such an undertaking not be filed, we issue a direction to the Competent Authority, that is the Deputy Commissioner, Ranchi to take steps to evict the respondent and hand over the property to the appellant forthwith. The appellant will also have its costs from Respondent No.3 which we determine at Rs. One lakh.