

Manas Sett and ors. Vs. Union of India (Uoi) and ors.

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Court : Patna

Decided On : Feb-04-2000

Judge : S.K. Chattopadhyaya, J.

Appeal No. : C.W.J.C. No. 209 of 1986 (R)

Appellant : Manas Sett and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Mr. Trivedi

Disposition : Application Allowed

Prior history : S.K. Chattopadhyaya, J. 1. The moot question to be decided in this writ application is whether even after expiry of the Requisition and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as 'the Act, 1952'), the acquisition made under Section 6 of the Act 1952, the respondents can still hold the property of the petitioners under acquisition and to decide this question some necessary facts are to be portrayed. 2. Admittedly, petitioners 1 to 4 are the descendants of late Banbe

Judgement :

S.K. Chattopadhyaya, J.

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2. Admittedly, petitioners 1 to 4 are the descendants of late Banbehari Sett. Petitioners 5 to 8 are the heirs and legal representatives of Gostabehari Sett and petitioners 9 and 10 are daughters-in-law of late Gostabehari Sett. They have prayed for quashing the order of the Deputy Commissioner, Ranchi, dated 12.1.1965 as contained in Annexure-2 and also for issuing a writ of mandamus to direct the respondents to do requisition the property in question commonly known as 'Hem kunj'. Prayer has also been made to prohibit the respondents and their officers from giving effect to the said order of the Deputy Commissioner and from changing the nature and character of the property resulting in deterioration of the same. Prayer for finalising the payment of recurring compensation within a definite period has also been made.

3. The property in question belongs to the petitioners is not disputed by the respondents and, as such, the description of the same need not be reiterated.

4. It appears that the Administrative Commandant, some time in the year 1964 extended a proposal for hiring of the property for residential purposes for Military use for a period of two years with an extension clause of mutual agreement vide letter dated 9.12.1964 as contained in Annexure-1. This proposal of the Administrative Commandant, however, was not accepted by the owners of the premises and such request was turned down by a letter dated 16th December, 1964. This reply is also a part of Annexure-1. Being refused, it appears that the Administrative Commandant approached the then Deputy Commissioner, Ranchi (Respondent No. 3) and on such approach being made respondent No. 3 in exercising his power under Section 29 of the Defence of India Act, 1962, passed an order requisitioning the said premises and directed the owners to give vacant possession within two days. This impugned order (Annexure-3) was passed by respondent No. 3 on 12.1.1965 without giving any alternative arrangement by the

Government for the residence of the owners and their family members.

According to the petitioners, pursuant to this order, possession of the predecessors-in-interest of the petitioners was forcibly taken by the Military Authorities on 23.1.1968.

5. The grievance of the petitioners is that no relief was ever granted by the Government to the petitioners till the filing of the writ application in accordance with the provisions as laid down under the relevant provisions of the Act, 1952. According to them, when their predecessors-in-interest refused to let out their residential house and in absence of any alternative arrangement by the Government, they were driven out of their residential houses by the Military personnel by destroying most of the valuable trees, flower, etc. The predecessors-in-interest of the present petitioners were entitled for adequate compensation for the loss caused to them. Further, it is alleged that without giving any notice to the predecessors-in-interest of the petitioners, arbitrarily rate of recurring compensation has been fixed by the Senior Deputy Collector, Ranchi, by allowing meagre compensation of Rs. 1,297.50 paise per year for the occupation of 7.50 Acres of land for the said premises of the 'Hem Kunj' and Rs. 4.50 only was fixed for monthly rent of the said building. This order of the Collector is Annexure-3 to the writ application. Objection to this arbitrary assessment, of compensation was filed by the owners of the building, namely, Gostabehari Sett and Banbehari Sett on 27.10.67 and the State Government exercising its power under Sub-section

Though till the filing of this writ application on 3.2.1986, Arbitration Case No. 1 of 1973 was pending but during course of argument learned Counsel for the parties informed the Court that the said Arbitration case was disposed of by judgment and Award dated 1.1.1994 and, as such, this Court is not required to go into the question of awarding compensation to the present petitioners.

6. Mr. N.K. Prasad, learned Counsel appearing on behalf of the petitioners, has contended that when the purpose for which the property was requisitioned has ceased to exist, the respondents are bound to release the said property from the acquisition, because under Section 6(1A) of the Act the Central Government is under legal obligation to derequisition

the property which was requisitioned in 1964 under the Defence of India Act, 1962. His further contention is that the purpose for continuing requisition of the property for over long 34 years must be said to have been outlived for which the property was requisitioned and, thus, retention of the property till date is arbitrary and unreasonable. He contends that when the notice for acquisition of the property has already been quashed by the High Court on 26.7.89 there appears no justification for the authority in retaining the said property specially when no further action has been taken by the Central Government. Mr. Prasad with reference to the application filed on 19.3.1998, submits that during the pendency of this writ application in 1987 another notice for acquisition of the land was published in the Gazette under the Act, 1952 against the present petitioners and by an amendment petition the said notification was also impugned in the present writ application. However, on 25.3.1987 the Division Bench gave liberty to the petitioners to file a separate writ application for the reliefs prayed for in the amendment petition. The petitioners, pursuant to the said order, filed C. W.J.C. No. 714 of 1989 (R), which was allowed by the Division Bench by its order dated 26.7.1989 (Annexure-19 to the writ application).

Under this background, Mr, Prasad continues, when all efforts of the concerned authority had failed, the Deputy Commissioner, Ranchi, issued memo dated 19.1.1993 under the Land Ceiling Act in the name of predecessors-in-interest of the present writ petitioners at their Calcutta address knowing fully well that the predecessors-in-interest of the present writ petitioners had already died. However, the petitioners appeared and filed their statement stating all the relevant facts and challenging the notice issued against the dead person. It was also brought to the notice of the concerned authority that pursuant to the order of this Court dated 17.9.1986, no further steps could be taken by the authorities as that would amount to gross violation of the High Court's order but even then the authorities were bent upon to deteriorate the property by all means. Thus, Mr. Prasad submits, that this Court should direct the respondents to respect and obey the order of this Court dated 17.9.1986 and a direction should be given so that the property in question could be easily demarcated from the northern side, where the authorities are trying to deteriorate the condition of the land by measuring the land for converting it into a playground for the school purpose and not for the Military purpose. Last

argument of the Learned Counsel is that at least in view of the Letter of the Central Government dated 25.4.1985, the local authorities are bound to release the property of the petitioners, which are still under requisition.

7. A counter-affidavit has been filed on behalf of respondents 1 and 4, in which, inter alia, a stand has been taken that all the immovable properties requisitioned under the Defence of India Act, 1962, which have not been released from such requisition before 10th January, 1968, as from that date be deemed to have been requisitioned by the competent authority under the Act, 1952 for the purpose for which such property was held immediately before the said date and all the provisions of Act, 1952 shall apply accordingly in view of Section 25(1) of the Act, 1952 as amended by Act No. 31 of 1969. Refuting all contentions of the petitioners that no notice was ever given before requisitioning the property the stand of the answering respondents is that provisions of Sections 29 and 30 of the Defence of India Act, 1962 were duly followed. Denying the statement that the Army has already left the building in question and shifted to Army cantonment, it is stated that the property is in the occupation of the premises. The answering respondents have admitted in paragraph 25 of the counter-affidavit that 'no part of the building is in existence and that thieves have taken away all the materials of building. The property is in the active occupation of the Army'. However, from the averments, it is established that the Army has left the premises and, as such, the property has become haunting place of the criminals.

It is further stated that in view of the office memorandum dated 22nd October, 1983, by the Ministry of Works and Housing of the Central Government, any property requisitioned or deemed to have been requisitioned under the Act, 1952 prior to 11th March, 1970, which came to the knowledge of the petitioners on 25.2.84, could be retained under the requisition up to 10th March, 1985, but subsequently, this period has been extended for two years from 10th March, 1985. Explaining the contents of the letter as contained in Annexure-9, it is stated that this letter of 30th March, 1985, was written to the predecessors-in-interest of the petitioners due to the fact that at that time the Military was considering to vacate the building but on consideration, it was found that it was essential to retain the property for which the proceeding for acquisition had already been started.

However, no such document has been annexed to show that such type of consideration was ever made by the competent authority. Referring to Annexure-1, it has been reiterated that the date mentioned in paragraph 2 i.e. 10.3.85 has been extended for further two years.

8. Thus, from the above noted submissions of the parties, it is clear that the house in question was requisitioned by the then Deputy Commissioner, Ranchi, by his order dated 12.1.65 i.e. more than 30 four years ago, but, according to the respondents, the same is still under acquisition in view of the office memorandum dated 29.3.1985, by reason of which in place of the words 'fifteen years', the words 'seventeen years' have been substituted. In order to appreciate the contention raised by the parties it is necessary to peruse some of the documents annexed with this writ application.

9. Annexure-1 is a letter dated 9th December, 1964, from the Administrative Commandant, Ranchi, by which Gostabehari Sett was informed that the Commandant was willing to hire the house in question for residential purposes of the army. The consent of the owner in this regard was sought for by stating that in case he was willing to hire the above house for army, he should forward his willingness on the attached form with approximate rent, etc. It was pointed out that the Army will pay the rent to be fixed by the Deputy Commissioner, Ranchi. It appears that in reply to the said request letter Gosto Behari Sett had written a letter dated 16th December, 1964, straightway refusing the above request on the ground that such house was a health resort for his family, which cannot be let out. The Commandant was requested to find out another house for the said purpose.

Next order is that of the then Deputy Commissioner, Ranchi, dated 12.1.1965, by reason of which in exercise of his power under Section 29 of the Defence of India Act, 1962, read with notification dated 13th December, 1962, the property in question was requisitioned. The said property was requisitioned for efficient conduct of the Military operation. By this letter Gasto Behari Sett was ordered to deliver the vacant possession and to hand over the possession within two days of receipt of the said order. The letter of the Senior Deputy Collector, Ranchi, as contained in Annexure-3, shows that some yearly, compensation was fixed for

occupation of 7.50 acres of land and monthly rent of the building was assessed at Rs. 450/- On 11.8.82, petitioners 1 to 3 wrote a letter to the Union of India through its Secretary Ministry of Defence and the Government of Bihar through its Secretary, Ministry of Homes and other concerned officers requesting them to derequisitioning the premises on the ground that as the said house was required reasonably for use and occupation of their family members. It was also mentioned that the purpose for which the said premises was requisitioned is over, which tantamount to derequisitioning of such property. This letter is Annexure-6, which amount to a request notice.

One of the most important documents is the office memorandum of Ministry of Works and Housing, New Delhi, dated 22nd October, 1983 (Annexure-7) forwarded to the State Government, Union Territories Administrations and all Ministers/Department of the Government of India. The implications, consequents to the amendments to the Principal Act, 1952, made by the Parliament Act, 1980 were also brought to their notices and it was clarified that 'any property requisitioned or deemed to have been requisitioned under R.A.I.P. Act, 1952 prior to 11th March, 1970 could be retained under requisition up to 10th March, 1985. Consequently, 'any property requisitioned under the said Act on or after the 11th March, 1970 can be retained under for a maximum period of fifteen years from the date on which possession of such property was surrendered or delivered to, or taken by the competent authority under Section 4 thereof unless such property is acquired under Section 7 of the Principal Act Within a period of fifteen years.' This fact was also brought to the notice of respondent No. 4 by the petitioner, Tapas Sett, by his letter dated 3.1.1985.

The letter dated 30th March, 1985 from the office of the D.E.O. Bihar and Orissa Circle, Danapur Cantonment to Gasto Behari Sett and some of the petitioners is Annexure-9. By this letter, respondent No. 4 wanted to know from the petitioners that as the Army authorities had proposed to derequisitioning the entire land with structures, whether they were willing to take over the property with a value of Rs. 40,706.00 because some defence structures of the same amount were created on the portion of land measuring 7-50 acres approximately to Hem Kunj building for defence use. In reply to the same, the petitioners on 8.4.1985 requested

respondent No. 4 to furnish the details of expenditure on the said construction item-wise. As no reply to the said letter was received by the petitioners, again on 9.5.1985, they requested respondent No. 4 to furnish in details the cost of construction on each item. It appears even no reply was given to this reminder and ultimately on 5.6.1985 (Annexure-12) the petitioners wrote a letter to respondent No. 4 that in view of order dated 22nd October, 1983, the property in question cannot be held under acquisition and, as such, the petitioners were entitled to claim damages for withholding the said property beyond the said date. Ultimately, respondent No. 4 by his letter dated 5th September, 1985 (Annexure-13) informed the petitioners that the said property was still required for the use of the Army and, as such, it was decided that the property in question was not required to be released from the acquisition and, therefore, the question of furnishing clarification as sought for by the petitioners by their dated 9.5.1985 did not arise.

10. From the aforesaid facts, it appears that the concerned respondent did not pay any heed to the office memorandum dated 22nd October, 1983 (Annexure-7) and continued to hold the property under acquisition on the ground that the said property was still required for the use of the army, However, no such decision of the superior authority of respondent No. 4 has been annexed in this regard.

Another important document is Annexure-15, which is the office memorandum dated 25th April, 1985. The subject of this memorandum is 'Requisitioning and Acquisition of Immovable Property Act, 1952-Need for release of requisitioned properties in time and keeping control over requisitioning of properties by various Ministries/Departments'. This office memorandum clearly indicates that the properties requisitioned under Section 6(1) of Act, 1952 were required to be released from Requisition by 10th March, 1985 and properties requisitioned after 10th March, 1970, within fifteen years from the date of requisition but since number of properties requisitioned by various departments could not be released from requisition within the above-mentioned period, an ordinance was promulgated on 8th March, 1985 amending Sections 6(1) and 8(2A)(C)(ii) of the Act to enable retention of such properties for a further period of two years. This Ordinance was subsequently amended by the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1985.

11. From a bare perusal of this office memorandum, it is absolutely clear that Section 6(1) and other Sections of Act, 1952 were amended in 1985 only to facilitate the concerned departments to release the requisitioned properties by 10th March, 1985. As because the statutory requirement of release of the properties within specified period was overlooked, such amendment in the Act was necessitated. From the memorandum, it also reveals that while introducing this Bill in Parliament in 1985 the concerned Minister gave an assurance to the Members of Parliament that all the properties, which were due to be released from requisition, would be derequisitioned positively before two years and, if possible, much earlier. It was further specified that there was no possibility of further amendment of the Act for retention of the requisitioned properties beyond the period of seventeen years and to that effect all the Ministers/Departments, etc. were requested to take expeditious action for releasing the properties requisitioned on or before 10.3.1970 in respect of the matter which is under litigation in the Courts and it was decided that the provision of the Act will have to be brought to the notice of the Courts for decision/direction. Each of the Minister/Department/Union Territory, which had requisitioned the property, were held responsible to ensure that the said office memorandum should be followed in its words and spirit. It was also made clear that in case of any delay or violation of the provisions of the Act, the concerned Ministry/Department etc. will be held responsible.

12. It does not stand to reason as to howinspite of specific direction of the Central Government the answering respondents are still insisting that the property is still under requisition. Admittedly, on 12.1.1965 the land of the petitioners including the residential building 'Hem Kunj'was requisitioned by the Army under the order of the Deputy Commissioner. The memorandum dated 25.4.1985 (Annexure-15) says that the properties requisitioned on or before 10.3.70 were required to be released by 10.3.1985. Similarly, properties requisitioned after 10.3.70 must be released within 15 years from the date of such requisition. However, for the reasons stated in the said memorandum by virtue of an Ordinance on 8.3.85 this period of fifteen years were extended by two years, meaning thereby that properties requisitioned after 10.3.1970 ought have been released within seventeen years. Thus, on or before 10.3.1985, the petitioners' property ought to have been released by the

concerned authority and withholding the property beyond the said period is absolutely against the law. Moreover, the extending period of two years, in my view, will be applicable to those properties, which were requisitioned after 10.3.1970, which is not the date in relation to the properties of the petitioners. Even accepting the argument of Mr. Trivedi for the time being that extended period of two years is also applicable in the case of the petitioners, but even then seventeen years from 12.1.65 will be 12.1.1982 and not for an indefinite period. As noticed above, when the property in question was ready under acquisition step was taken for acquiring the same under the Act, 1952 and such notice under Section 7(1) of Act, 1952 was served on some of the petitioners. Objection was filed jointly. As no opportunity of being heard was given to them, they moved this Court in C. W.J. C. No. 714/89 (R) making a grievance that the procedure as laid down in Sub-section (1) of Section 7 of Act, 1952 was not followed. A Division Bench of this Court considering the facts and law was of the view that no opportunity was given for hearing to the petitioners on the show cause filed by them and on this ground the impugned order of acquisition was quashed with a liberty to the respondents to proceed in accordance with law with regard the property be longing to the petitioners known as 'Hem Kunj'.

13. There is nothing on record to show that this order was impugned by the respondents before the Supreme Court or any step was taken by them by giving an opportunity of hearing to the Petitioners. Mr. Trivedi, Learned Counsel for the respondents, when confronted with this aspect of the matter, could not answer as to why in spite of opportunity given to the respondents they did not proceed in accordance with the matter for acquisition of the said property under Section 7(1) of Act, 1952. The notice purported to be under Section 7(1) of the Act, 1952 is of 1986 as contained in Annexure-16. This notice was served under the signature of the Deputy Collector, Ranchi, and not a notice published in the official Gazette as required under Section 7(1) of the Act, 1952. Moreover, it is well settled that the power of acquisition of a requisitioned property is conditional on the existence of the circumstances enumerated in Section 7(1) and it is not a general power of acquisition for a public purpose. On the contrary, the notice under Section 7(1) issued to the petitioners does not indicate any of the circumstances detailed in Section 7(1), rather it specifically states that the property shall be acquired for

'public purpose, namely, for army planning, Hem Kunj Morabadi (Defence Department)'. Thus, none of the requirements envisaged in Section 7(1) of the Act 1952 has been fulfilled.

14. The only argument of Mr. Trivedi on instruction is that because the petitioners have been granted compensation, there was no necessity to follow the directions of the Government of India contained in its office memorandum dated 25.4.1985 (Annexure-15). This agreement has not been advanced by the concerned respondent in their counter-affidavit but Mr. Trivedi submits that he has received instruction from respondent No. 4 the Defence Estate Officer, Dinapore Cantonment, Dinapore to submit before this Court to that effect.

15. It is really surprising that in spite of the fact that there is clear direction of the concerned Ministry for releasing the requisitioned property within a specified time, in utter disregard to the said directions respondent No. 4 has taken an absurd stand by submitting that as because the compensation has been paid to the petitioners the directions as contained in Annexure-15 need not be obeyed. In my view, this submission made on behalf of respondent No. 4 is an example of dereliction of duty in not obeying the directions of the concerned Ministry. He has failed to appreciate that the compensation was awarded not for requisition of the property for ever but only for requisition of the property for certain period and purpose and that too on yearly basis as well as on monthly rent. The concerned Ministry was of the view that when the purpose for which the property was requisitioned should be released within no time and to that effect an assurance was given to the Parliament, the respondent No. 4 was duty bound to release the property of the petitioners. It seems that as respondent No. 4 has failed to obey the direction of the concerned Ministry within time for which he is answerable to the authority, in order to save his skin, he has advanced such an absurd argument through his Counsel before the Court.

16. In the result, I allow this application and quash the order of the Deputy Commissioner, Ranchi, dated 12.1.1965 as contained in Annexure-2 and direct respondent Nos. 2 to 4 to immediately release the land and the building known as 'Hem Kunj' to the petitioners without any further delay and positively within a

period of one month from the date of receipt/production of a copy of this order. In the facts and circumstances of the case a cost of rupees two thousand (Rs. 2,000/-) is imposed to be paid by the concerned respondent.

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