

ElgIn Properties and anr. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Sep-30-1982

Reported in : AIR1983Cal61

Judge : Ramendra Mohan Datta, Actg. C.J. and ;C.K. Banerji, J.

Acts : West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 - Sections 2 and 3(1); ;[Constitution of India](#) - Article 226; ;[West Bengal Premises Tenancy Act, 1956](#)

Appeal No. : A.F.O.O. No. 205 of 1980 and Matter No. 1439 of 1980

Appellant : ElgIn Properties and anr.

Respondent : State of West Bengal and ors.

Advocate for Def. : Prabir Roy Chowdhury, Adv.

Advocate for Pet/Ap. : J.N. Roy, Adv.

Disposition : Appeal allowed

Judgement :

Ramendra Mohan Datta, Actg. C.J.

1. This appeal arises from the judgment and order of Basak, J. dated June 18, 1980.

2. The matter was in respect of an application under Article 226 of the [Constitution of India](#) wherein the petitioners Elgin Properties challenged an order of requisition bearing No. 13/80 REQN dated 17th April, 1980 issued by the State of West Bengal in exercise of powers conferred by Sub-section (1) of Section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (hereinafter referred to as the said Act). The Rule Nisi issued herein was discharged by the learned Judge and the application was dismissed. All interim orders were ordered to be vacated. Elgin Properties thereupon preferred this appeal.

3. The facts are that the Official Trustee for West Bengal, the respondent No. 6 herein is the trustee to the trust of D. A. David for Davidian Girls' School by and under a deed of trust dated September 28, 1974 and as such trustee is the legal owner of premises No. 1-B, Ashoutosh Mukharjee Road, Calcutta (hereinafter referred to as the said premises). The petitioner appellant Elgin Properties carry on business of development of real property. The Official Trustee granted a registered lease dated September 28, 1974 with the leave of this Court in favour of the appellant for a term of 21 years commencing from May 1, 1969 with an option on the part of the appellant to renew the same for another period of 21 years. The said lease was obtained by Elgin Properties for the purpose of developing the said property. The appellant was authorised to build at their own cost the upper storey or storeys on the existing building or to construct a new building. The existing structures consist of a two storeyed building with the outhouses. At the time of the said lease a portion of the ground floor of the said premises was occupied by Caxton and Co., the respondent No. 7 herein. Two of the rooms on the ground floor of the said premises are occupied by Martin and Harris Ltd. The remaining portion comprises of baths, lavatories, urinals, common passages and common lobby which were in use of all the occupiers of the said premises. The staircase leading to the first floor begins from the ground floor. There is no access to the first floor of the said premises except through that ground floor.

4. The respondent Caxton Employees Union is a registered trade union. The said trade union claims to represent the workers and employees of the said Caxton and Co.

5. The appellants claim that Caxton and Co. did not have any tenancy right in respect of the said premises. They could not produce any such right at any point of time. They were held to be trespassers and a decree was passed against them for their eviction. The appellant filed a suit being Suit No. 111 of 1972 against Caxton and Co., inter alia, for recovery of possession in the Court of the Subordinate Judge at Alipore. At that point of time the appellant was in possession of the premises by virtue of the agreement for lease entered into by them with the Official Trustee. A decree was passed on March 13, 1976 for eviction of Caxton and Co. Caxton and Co. preferred an appeal to this Court but did not succeed. Caxton and Co. then filed an application for special leave to appeal to Supreme Court of India. There also the special leave petition was dismissed. Elgin Properties then moved the trial Court for proceeding with the execution of the decree in Execution Case No. 14 of 1976. Caxton and Co. then filed Misc. Petition under 47 of the Code of Civil Procedure which was allowed on the ground that there was discrepancy in the description of the property as given in the decree for possession with a direction to amend the execution petition. Such amendment was allowed by the Subordinate Judge at Alipore. Caxton and Co. then made another application under Section 47 of the Code of Civil Procedure but the same was rejected by the learned Subordinate Judge on March 27, 1981.

6. From the aforesaid proceeding it would seem that Caxton and Co. practically exhausted all their remedies which were available to them in the Court proceedings. The appellant's case is that Caxton and Co. has not paid the occupation charges and mesne profits since August, 1969. We are told that an order for payment of huge arrear of occupation charges have been directed to be paid by instalments and the first of such instalment would fall due sometime in July, 1982. According to the petitioner Caxton and Co. has been a trespasser and they have been so held to be trespasser by the different Courts at Alipore and by this High Court. The appellant's further case is that they have been wrongfully occupying about 16 thousand sq. ft. in the said premises. In the pending application for determination of mesne profits the petitioner-appellants have claimed a sum of Rs. 13 lakhs on account thereof.

7. The appellant's further case is that finding no other way out the respondent No. 7 Caxton and Co. through its partner Arun Ghosh and through the Secretaries and office bearers of the employees union approached the Government of West Bengal for suitable solution of their problems. Pursuant thereto in April, 1976 through the instrumentality of the official trustee of West Bengal a meeting was called at his office and the same was attended by the appellant No. 2 Pravin Popat, the said Arun Ghosh Partner of Caxton and Co. and two office bearers of the employees union. At the said meeting the Official Trustee wanted to settle the said matter at the instance of the Government of West Bengal by finding out ways and means for such settlement. No fruitful result could be obtained therefrom. According to the appellant the said two office bearers of employees union openly threatened that the employees union was a trade Union affiliated to the centre of Indian Trade Unions and they had considerable influence over the then Government of West Bengal and there would be no difficulty to achieve the order for requisition of the said portion of the said premises.

8. Soon thereafter the premises were requisitioned under order of requisition bearing No. 13/80 REQN dated 17th April, 1980. Admittedly, no notice of such requisition was served on Elgin Properties. But a copy of the requisition order was received by them from the Deputy Official Trustee of West Bengal by their covering letter dated 26th April, 1980 intimating thereby that the said Official Trustee of West Bengal had been served with the said notice on April 25, 1980 at 4.45 P.M. The petitioner thereupon made the application and obtained a Rule nisi.

9. The State of West Bengal through its Deputy Secretary to the Government of West Bengal, Land and Land Reforms Department, one Jatiswar Datta has filed an affidavit in which it is stated that the employees union on 5th Feb., 1980 made a representation to the Minister-in-Charge, Dept. of Labour, Government of West Bengal to save the workmen and the industry apprehending eviction of their employer Caxton and Co., from the premises in question. Upon enquiry being made by the Private Secretary to the Minister-in-Charge, Department of Labour, Caxton and Co. by their letter dated 19th Feb., 1980 confirmed that the contents of the letter of the employees union were true and requested the Government to help them in the matter. Such request was made by Caxton's letter dated 19th Feb.,

1980. The said letter dated 19th Feb., 1980 was forwarded by the Minister-in-Charge, Department of Labour to the Minister-in-Charge of the Land Reforms and Land Utilization Department of the Government of West Bengal for his consideration. On Feb. 20, 1980 the Minister-in-Charge for Land and Land Reforms Department asked the Joint Secretary of the Department to examine the matter and put up the file to him immediately. On 27th Feb., 1980 the Joint Secretary of the Land and Land Reforms Department asked the Deputy Secretary, Requisition Branch of their Department to examine the question of 'public purpose' in the light of the representations received. On or about 10th Mar., 1980 Caxton again made representation to the Minister-in-Charge of the Land and Land Reforms Department and to the Minister-in-Charge of the Commerce and Industries Department of the Government stating therein all their works and commitments to the various State Governments, the Government of India and the Royal Government of Bhutan in matter of printing jobs entrusted to them by these Governments as well as the number of workers involved with the prayer to save their industry from closure and unemployment of large number of workers by requisitioning the said property and allowing the respondent No. 7 to carry on their service to Government of India and to the different State Governments and Private Sectors. Both the aforesaid letters were identical except as to the last part thereof which has created a great deal of confusion inasmuch as the originals from which such copies were disclosed were not forthcoming from the Government files.

10. Thereafter on 11th March, 1980 the Minister-in-Charge of the Land and Land Reforms Department asked the Deputy Secretary of the Requisition Branch of that Department to put up the file immediately. On 12th March, 1980 the Deputy Secretary of the Requisition Branch asked the Enquiry Officer of the Land and Land Reforms Department to enquire into the matter and report immediately. On 14th March, 1980 the Enquiry Officer, Land and Land Reforms Department submitted his Enquiry Report after making enquiry on the spot and recommending requisition of 16 rooms in the ground floor of premises no. 1B, Ashutosh Mukherjee Road, Calcutta together with a descriptive plan of the rooms recommended for requisition by him. It is to be noted, at this stage, that for reasons best known to the Government, this descriptive plan on the basis whereof the requisition order was issued was not disclosed in the proceeding herein at any

stage. The file was produced before us and the same was found in the file. It is to be noted further that if this file had been produced before Basak, J., possibly the learned Judge might not have directed a further plan to be made out in respect of the area under occupation. I shall discuss about the subsequent plan later in my judgment at the relevant time.

11. On 18th March, 1980 the matter was examined by the Deputy Secretary, Requisition Branch of the Land and Land Reforms Department and the said officer suggested that the views of the Commerce and Industries Department of the Government of West Bengal should be obtained and, accordingly, referred the matter to the Special Officer (Law) and Joint Secretary of the Land and Land Reforms Department for his opinion. The Joint Secretary sought the views of the Commerce and Industries Department with special reference to the following question viz.,

(1) Whether the Press caters to the needs of the Government, both State and Central but particularly the State Government.

(2) Whether existence of the industry as such including employment of considerable number of employees is at stake due to nonavailability of suitable accommodation.

(3) Whether the concern made serious efforts to find out suitable accommodation before making the prayer for requisition, and

(4) Whether the Commerce and Industries Department shall pay compensation that may be assessed under the relevant Act.

12. Meanwhile the Commerce & Industry Department upon receipt of a representation from Caxton and Co. dated 10th March, 1980 asked for the details and particulars and evidence in support of their claim. Caxton submitted the details and evidence in support of their claim by their letter dated 26th March, 1980 saying that they were working as Printers of various State Governments, Government of India and other authorities and bodies. Caxton also expressed their inability to find out suitable accommodation in spite of the efforts on their part

through State agency. Thereafter on April 1, 1980 the said Department of Commerce & Industry examined the queries made by the Joint Secretary, Land and Land Reforms Department dated 18th March, 1980 and took the decision to request the Land and Land Reforms Department to requisition the portion of the premises in question after observing the legal formalities. The matter was thereafter examined by the Land and Land Reforms Department and the Government having been fully satisfied that public purpose existed for the purpose of preventing loss of employment of the workers employed by Caxton and to help Caxton to cater to the needs of the Government of West Bengal, Government of India and various other Governments by rendering services to them as Printers of various jobs including security printing job and on the basis thereof passed the impugned order of requisition on April 17, 1980.

13. According to the said Jatiswar Datta the said order of requisition was passed after due deliberation and consideration of the aspects of the matter bona fide reasonably and in the public interest and for the public purposes and on the representation of Caxton and its employees union and also taking into consideration the vital interest of the various State Governments, Government of India and the Royal Government of Bhutan in the matter of keeping the industry of Caxton as a going concern unhampered and uninterrupted. Furthermore the interest of large body of workmen who were in imminent threat of loss of employment consequent upon eviction of the respondent No. 7, from the said premises was involved.

14. Arun Chose a partner of Caxton, and also as a party to the Rule, in his affidavit denied that Caxton did not pay occupation charges and mesne profits since August, 1979 as alleged. He has further stated that he made a representation to the Minister-in-Charge, Commerce and Industry, Government of West Bengal on 10th March, 1980 stating, inter alia, that Caxton was engaged in the services of the Government of India, Government of West Bengal, Government of Tripura, Mizoram and Bhutan and that Caxton and Co. were also doing security jobs like printing of lottery tickets for Government of Tripura, Royal Government of Bhutan and the Government of West Bengal and also stated that there were more than 200 employees working under Caxton. He requested the said Minister that unless

Government could take some steps to provide accommodation for the Press by requisitioning the said premises, the employees might lose their job due to closure of Caxton. and Co. The said Minister asked for some clarification which was furnished. It is stated that Caxton and Co. holds stocks of papers on behalf of the various State Governments and have been regularly printing lottery tickets for the Government of Tripura, Royal Government of Bhutan, Indian Red Cross Society, Government of Nepal etc. inasmuch as Caxton and Co. has special security arrangements which are not normally available with any other printers. Besides Caxton and Co., were engaged in doing various printing works for various private concerns. It is estimated that Caxton and Co. had more than 50% of their total business from Government of India and other State Governments. They had more than 200 employees and had also apprentices under the Central Board of Apprentice Training. The said boys after completion of their Diploma Course from Jadavpur School of Printing and Technology were sent to Caxton and Co. for acquiring practical training pertaining to the course. Caxton had also some facilities for imparting training to the staff employed by the Bengal Government Press.

15. The first point that is urged on behalf of the appellant is that the requisition order was passed mala fide. In support of their contention, it is contended that the apparent object viz., securing continuity of employment of the 200 workers of the Press, is not the real object behind the requisition. The real object is to frustrate and/or to nullify the decree of ejectment which has been affirmed up to the Supreme Court level and to allow Caxton and Co. to continue in that very same premises in respect of which they have been adjudged trespassers by all the different Courts of law in the ejectment proceeding. It is further argued that the impugned order has been issued in aid of Caxton and Co. with the object of resisting or defying or out-manoeuvring the decree of the Court and to stall the judicial process. Such object is mala fide to the core and no public or statutory authority should act in aid of any such object. It is contended that the continuity of employment of the workers engaged therein could not be ensured even by providing accommodation for Caxton and Co. The employer would be free to dismiss any workmen, review the strength of the workmen, close down its business or may change the nature of the business as and when they might think

fit and proper. No assurance or undertaking was ever taken from Caxton by the authority concerned before deciding to requisition the premises or even thereafter to the effect that the employees would be continued in employment even though Government was asking for several other particulars. Records would show that neither was any enquiry made nor was there any recommendation by the Labour Department for requisitioning the property. The only endorsement by the Labour Minister is about asking the Land Revenue Minister to take such action as he would deem fit. Records would further show that Government was not willing to pay rent compensation out of its own funds. It is contended that the professed public purpose was not even worth spending from public fund. None of the Government Departments, ever satisfied itself that the Press would be closed if Caxton would be evicted from the premises. Although the plea of interest of labour has been taken yet as a matter of fact the requisition is not in favour of the workmen but in favour of the private employer. The records would further show that the authorities started with the idea of requisitioning the premises before going into the question of public interest.

16. In this connection Mr. Mitter has referred to certain incorrect statements made by Arun Ghosh the Partner of Caxton and Co. In para 8 of his affidavit he has stated that neither he nor the secretary or office bearer of the union or Caxton and Co. ever approached the Government. The statements are contradicted in annexure to paragraph 9 of his affidavit. There he admits that he made a representation to the Commerce and Industry Ministry but he is silent about his letter dated 10th March, 1980 bearing No. CAX/GEN/C/951/79 which he wrote to the Minister-in-Charge of the Department of Land Utilization and Reform and Land Revenue. In that letter he requested the Govt. for requisitioning the said premises. On the very same date namely 10th March, 1980 he addressed another letter to the Minister-in-Charge of Commerce and Industry being letter No. CAX/GEN/C/952/79 where he did not speak of requisitioning the premises and requested the said Ministry to formulate a method by which he could save the unemployment of the workers and the closure of the industry. There is another letter disclosed in this proceeding written on the same date to the same Minister-in-Charge, Commerce and Industry but bearing different No. viz. CAX/GEN/C/962/79 where the said Arun Ghose requested the said Minister to

requisition the said property. In the same manner he wrote to the Minister-in-Charge, Department of Land Utilization and Reform and Land Revenue. We called for the original of the letter No. 962 from which the said copy was printed in the records of this proceeding but neither the original was produced from the Government file nor was the copy thereof produced on behalf of the Caxton and Co, or by Arun Ghose. Accordingly that letter remained unexplained.

17. Referring to the affidavit of Nantu Lal Gure, the Secretary of the employees' union, it is contended that the deponent had denied the meeting held by the Official Trustee although the same is not denied by ARUN Ghose. The deponent is silent about his own letter which he is supposed to have written to the Minister-in-Charge of Labour. The Bengali letter was brought out from the file of the Government. In fact the trend of his affidavit is such that he has practically denied his own letter.

18. On such facts, and the conduct as shown hereinabove, on the part of the Government, it is contended that the Government has acted mala fide. We have carefully considered this point. But in our opinion this is not a case where it could be said that the Government was acting mala fide. The matter has been considered by all the Departments concerned and the relevant Departments have made their notings on the file showing that they have applied their mind into it after taking every possible precaution and making enquiries into the matter. The fact that the Secretary of the employees' union made some incorrect statements or that there existed some discrepancies here and there would not make the action on the part of the Government, mala fide. It is true that the Government has acted very promptly in the matter but that by itself cannot be held to be mala fide conduct. That is only desirable in every matter in the normal course and it is always expected that such prompt steps would be taken on the part of every Government concerned. The allegation is not that the Government acted in a hasty manner in a way that it could not have applied its mind. The contention that the real object of the Government was to frustrate or to nullify the decree of ejectment or to allow Caxton and Co. to continue in that very premises, although they were found to be trespassers by Court of law, would not by itself amount to any mala fide act on the part of the Government. There is no ground or material on record whatsoever to

come to that finding. Had that been so, the Govt. would not have taken so much care to take the matter through all the departments concerned and to get their views thereon in the manner it should normally be done. It may be that ultimately the decision on their part had the effect of nullifying the decree for ejectment passed by the Court of law, but that would not by itself amount to any mala fide action on their part. Even assuming that the order for requisition was bad in furtherance of highly irregular exercise of power yet it could not be called mala fide on the part of the Government. The Government had before it some essential fact to the effect that 200 workmen might be in difficulty in continuing their services if Caxton was not allowed to continue their business in the said premises. Considering the possibility of huge loss of employment the Government might have issued a requisition order not with a view to render direct relief or service to Caxton although their action might have indirectly benefitted Caxton. The question has to be examined more in details while dealing with the question of public purpose, But suffice it to say for the present that there was no mala fide conduct on the part of the Government in issuing the said order.

19. That being the position we are of the view that there is nothing in the point that the Government acted mala fide in the matter of issuing the order for requisition.

20. The next point that is urged before us is that the order for requisition itself is vague to such an extent that it would be difficult to enforce the same if the order for requisition is allowed to stand. The order relates to the requisitioning of the portion of the premises viz. the entire ground floor of the said premises. The addition of the word 'entire' signifies that no portion of the ground floor is sought to be left out although admittedly some part of it is not in the occupation of Caxton and Co. The expression 'now in occupation' would signify that at the time of requisitioning the premises, the entire ground floor without any exception was in the occupation of Caxton although admittedly that was not so at the said relevant point of time. It is contended that the Court below did not consider the effect of the expression 'entire'. The learned Judge of the Court below was of the view that the area could be ascertained and, in fact, it appears, that in course of bearing before him he directed a fresh measurement and relied on a plan prepared by the Land Acquisition Department. The learned Judge was of the view that whether it was 16

or 22 rooms was not a material consideration. It is contended that there was non-application of mind on the part of the requisitioning authority in issuing the order of requisition by describing it as the 'entire ground floor' in the occupation of Caxton. That was a misdescription of the property which was Bought to be requisitioned. If such requisition order was to be allowed to stand then it could hardly be executed. If such an order was to be executed, and if 22 rooms would be taken into account, as to have been requisitioned, then the area in the occupation of other concerns would also come within the scope of the requisitioning order.

21. In our opinion the requisitioning order must be clear and definite so that it can be given effect to when the same has to be enforced. The plan prepared by the Land Acquisition Department pursuant to the order of the Court below at a much later date, would show that the corridors and other spaces had also been taken into consideration so as to include them within the scope of the requisitioning order. In their, written statement before the Alipur Court Caxton had quoted the area as 16,000 sq. ft, In the writ petition Elgin Properties have also stated on that basis the area as 16,000 sq. ft. and the same has not been denied in the affidavit-in-opposition. Before the Court below Mr. Arun Prokash Chatterjee made a statement that the area would not exceed 8,000 sq. ft. The enquiry report, which has been made a part of the records herein and the plan mentioned therein revealed an area of 7,900.75 sq. ft. But the plan prepared by the Land Acquisition Department which has also been made a part of the records herein revealed that the area was 11,449.66 sq. ft. In this plan, as stated herein above, the number of rooms also vary. That being so, the subject-matter of the property remains undecided by the requisitioning order. We would also mention here, in the affidavit-in-opposition filed by Arun Ghose a partner of Canton and Co. affirmed on 15th April, 1981 before this Bench the area has been calculated at 11,278.66 sq. ft. Be that as it may, at the relevant point of time in respect whereof the area has to be calculated is round about the date of the requisitioning order. But significantly enough the plan on the basis whereof the said measurement was given by the Enquiry Officer in his report has been withheld from Court for reasons best known to the Government authority concerned. In our opinion, the order of the Court below in asking the authority to prepare a fresh plan, far from helping the Court, made the confusion worse confounded. In our opinion, such an order at such a

stage of the proceeding in the facts of this case should not have been made and the Court should have considered the scope of the order of requisition on the basis of the materials before it. The order of requisition on the basis of the subsequent plan prepared by Government authority would materially affect and alter the scope of the order and, as such, except for its own clarification, such a plan cannot be taken into consideration by the Court in removing the vagueness of the requisition order.

22. In the case of *Sm. Subhasini Debi v. State of West Bengal*, (1977) 2 Cal LJ 476, S. K. Datta, J. dealing with the West Bengal Land (Requisition and Acquisition) Act (2 of 1948) considered the question of vagueness in the description of the requisitioned premises. There the impugned notice mentioned that the 'middle' of the plot measuring 2 1/2 cottahs was to be requisitioned. Nothing further was specified and, accordingly, in the facts of that case it was decided that it was not possible for the petitioner to know whether the portion of the plot belonging to her had been affected by the requisition in question. Reliance was placed on the decision in the case of *Pramatha Nath v. State of West Bengal*, (1966) 70 Cal WN 503. That case was also decided under Section 3 of the said Act of 1948 and there also the notice was struck down by D. Bagu, J. on the ground that the requisition order did not specify the portion of the plot of land which was sought to be acquired and as such the description of the requisitioned area as 'portion' was considered as insufficient and vague. S. K. Datta, J. in *Subhasini Debi's* case (*supra*) observed that the description in the impugned order in the context of the said premises was vague and unworkable and as such the order of requisition was held to be invalid.

23. In the facts and circumstances of the case before us we are of the view that the order of requisition is vague, indefinite, incapable of execution and is invalid.

24. It was next argued by Mr. Mitra that under Section 3(2) of the said 1947 Act, it is mandatory that the order of requisition made under Section 3(1) of the said Act, be served, on the landlord and, where the premises is let out to tenant, also on the tenant. The contention is that the order of requisition must be served on the landlord irrespective of the question whether the landlord is in actual physical

possession of the premises or any part thereof or not at all. The principle underlying the above provision is that of natural justice. Such principle would demand that the person whose property or interest in the property is sought to be affected by the order of requisition must be intimated so that he might know his position and take such action as he might think best. It would appear that under Section 4(1)(a) the Collector may by notice in writing order the person in occupation of the premises to vacate the same and under Clause (aa), the Collector may by notice in writing 'order the landlord or the tenant, as the case may be, to remove the articles belonging to him, if any,' and lying in the requisitioned premises. Thus although the landlord might not be in actual physical occupation of the premises but if he has any articles lying therein an obligation is cast upon him to remove the same upon the receipt of a notice from the Collector under the said Section 4(1)(aa) of the Act. Under Sections 5 and 5A also the landlord is obliged, inter alia, not to 'disturb any convenience of easement attached to any premises requisitioned' or not to 'remove, destroy or render unserviceable anything provided for permanent use' with the premises under requisition and 'shall be bound at his own expenses' to provide such supplies and services as were provided by him for the premises immediately before its requisition and also to make repairs as the Collector may consider necessary for proper use and occupation of the premises. By the order of requisition it is the right of property of the landlord or the user thereof which is immediately affected and the decree for eviction obtained by the appellant No. 1 herein against Caxton and Co. which has become final is sought to be rendered wholly nugatory by the order of requisition. The appellant No. 1 being the person entitled to receive the rent of the premises on its own account is the landlord within the meaning of the said expression as defined in Section 2(c) of the said Act. The Official Trustee being the superior landlord of the appellant No. 1 is not affected by the order of requisition. Admittedly, the order of requisition was not served at all by the authorities concerned on the appellant. The order of requisition was sought to be served on the Official Trustee who however, in his turn, forwarded a copy thereof to the appellant No. 1. It appears that whereas the possession of the premises was required to be taken by the State Government on the 26th April, 1980, as per the said notice of requisition and it was actually taken on that date, the Official Trustee

also sent the copy of the impugned order of requisition to the appellant No. 1 on the 26th April, 1980 and the same was received by the appellant No. 1 after the purported possession had already been taken over by the State and redelivered to Caxton and Co. It is not the case of the State that the Official Trustee was requested to serve the order of requisition on the appellant No. 1 or that he acted as the agent of the State in the matter of the service of the said order. Even Rule 3 of the Rules framed under the said Act for service was also not followed. It will appear from the order as served on the Official Trustee that he was served as the owner of the said premises and he was directed to place the above property at the disposal of the respondent No. 2 on the 26th April, 1980 at 10.30 a.m. or any subsequent date when the officer deputed will take charge and possession thereof. The letter dated 26th April, 1980 written by the Official Trustee to the appellant No. 1 forwarding a copy of the order of requisition to the appellant No. 1 does not in any way indicate that the Deputy Official Trustee was acting in the matter for and on behalf of the State or as its agent. Although the State was fully aware that Caxton & Co. was not a tenant and a decree for eviction had been passed against it and in favour of the appellant No. 1 by a competent Court holding Caxton & Co. to be a trespasser, yet the copy of the requisition order which was served on Caxton & Co. by the State showed that the State wrongfully and illegally described Caxton & Co. as tenant.

25. Mr. Prabir Roy Chowdhury appearing for the respondents Nos. 2 and 3 being the State respondents refers to the schedule to the notice under Section 3(2) of the 1947 Act and to the report of the Enquiry Officer and submits that only 16 rooms were requisitioned. He urges that if the order of requisition is read in relation to the facts placed before the Court below, there would be no inconsistency or vagueness in the said order. What was intended to be requisitioned was clear from the report of the Enquiry Officer. Mr. Roy Chowdhury refers to the definition of landlord in Section 2(c) of the 1947 Act which means, inter alia, any person who for the time being is receiving or is entitled to receive rent of any premises whether on his own account or on account or on behalf of or the benefit of any other person, or as a trustee, guardian or receiver for any other person or who would so receive or be entitled to receive rent if the premises are let to a tenant. Under Sub-section (2) of Section 3, the order of requisition is required

to be served on the landlord and if the premises are let out to a tenant then also on the tenant. By the order of requisition, it is the landlord, namely, the owner or trustee or receiver or guardian who would be ultimately affected. It is also submitted that in the event of requisition of a premises the contractual obligation between the landlord and the tenant remains in abeyance. Here the Official Trustee is the landlord. Mr. Roy Chowdhury refers to Clause (b) of Sub-section (3) of Section 1 of the [West Bengal Premises Tenancy Act, 1956](#) which provides that the said Act did not apply to any premises requisitioned by Government and urges that this clearly shows that the landlord, upon requisition of the premises, will not be entitled to demand or recover rent from the tenant of the requisitioned premises. Thus the appellant Elgin Properties, so long as requisition would remain in force, would have no obligation of liability to pay any rent to the Official Trustee its landlord inasmuch as the West Bengal Premises Tenancy Act would not apply to the requisitioned premises.

26. The contention of Mr. Roy Chowdhury is not only unacceptable but also fallacious. The said provision that the [West Bengal Premises Tenancy Act, 1956](#) shall not apply to any premises requisitioned by the Government does not, in our opinion, contemplate that the contractual relationship created between landlord and his tenant is suspended or is kept in abeyance. It merely contemplates that in the event of requisition of a premises the various advantages and obligations to which the landlord and the tenant are subjected under the said Act in respect of tenancies governed by the said Act would not apply in the event of requisition of such premises by the Government. No tenant pays or is liable to pay rent to his landlord by virtue of the provisions of the [West Bengal Premises Tenancy Act, 1956](#), but such obligation is under a contract between the two independently of the said Act. The only provision in the [West Bengal Premises Tenancy Act, 1956](#) which affects the contractual relationship or obligation between the landlord and the tenant in a tenancy to which the said Act applies is contained in Section 3 of the said Act, but that section also does not affect the contractual obligation of the tenant to pay rent to the landlord except in certain cases where fair rent might be fixed under the said Act. It is next contended that the intention of the legislature in the 1947 Act is to give notice to the person who owns the property sought to be requisitioned and as such, two separate definitions have been given in the Act

defining landlord and tenant. It is contended that in a particular premises there could be only one landlord receiving rent on his own account when he is the owner or receiving rent for the benefit or on behalf of other persons where the property is vested in trustee or is in the custody of receiver or guardian. The purpose of a notice is to apprise the parties affected, that is, the landlord and the tenant.

27. It is also urged that the definition of landlord and tenant as given in Section 2 (c) and (g) of the 1947 Act should be given a harmonious construction. Landlord is the person to whom the ultimate reversion will go, that is, the owner or the other persons mentioned in Section 2(c) and tenant is the person by whom or on whose account rent is payable unless there is a special contract to the contrary. Thus here the Official Trustee is the landlord and although Elgin Properties is the tenant but, as already submitted, that because of the requisition the obligation of Elgin Properties to pay rent to the Official Trustees remained in abeyance. As it was neither in occupation of the premises nor any articles belonging to it were in the premises, it was not necessary to serve the order of requisition or notice under Section 4(1) of 1947 Act on Elgin Properties. The intention of the legislature is to serve the order or the notice on the tenant in occupation or on the occupier so that they might not be taken by surprise and put into difficulties, but that question did not arise in the case of Elgin Properties. In any event the order of requisition was served on Elgin Properties through the Official Trustee who forwarded the same to Elgin Properties.

21. We are unable to accept the contention of Mr. Roy Chowdhury that there would be only one landlord in one premises which would necessarily mean that there would, therefore, be only one class of tenants being the tenants under such landlord who according to Mr. Roy Chowdhury, would be the owner or the trustee or receiver or guardian in respect of the premises. Neither the Transfer of Property Act, 1882 nor the [West Bengal Premises Tenancy Act, 1956](#), supports such contention. Under both the Acts there could be gradation of landlords as well as of tenants. If a person takes on rent any premises from the owner, trustee or receiver or guardian, he would be a tenant under the person from whom he has taken the premises on rent. Such tenant may also let out the premises in his turn to the other person or persons and thus the person letting out would be the landlord of

the person or persons to whom he has let out and in such manner there might be a chain of landlords and tenants in respect of one premises. We have already observed earlier that there is no question of the obligation of Elgin Properties to pay rent to the Official Trustee remaining in abeyance because of the requisition. The contract to pay rent between the parties is neither abrogated nor kept in abeyance because of the requisition. Such 'contract is not entered into between the landlord and the tenant by reason of or under the [West Bengal Premises Tenancy Act, 1956](#). It is, well settled that monthly tenancy is a lease under Section 105 of the Transfer of Property Act, 1882.

29. It is also urged by Mr. J. N. Roy that service of notice under Section 3(2) of the 1947 Act on the Official Trustee was sufficient and it was not necessary to serve it on Elgin Properties, the lessee under the Official Trustee. Reference is made to the definition of landlord in Section 2(c) of the said Act which comprises within its purview a number of persons as the landlord including a trustee.

30. The above contention of Mr. Roy is wholly unacceptable. We have already given our reasons for such view earlier. The intention of the legislature is to define landlord as a person who for the time being is receiving or is entitled to receive rent of any premises. Such rent may be received by such person on his own account or on account or on behalf or for the benefit of any other person or as a trustee, guardian or receiver for any other person who would so receive rent or is entitled to receive the rent if the premises were let out to a tenant. In this context the legislature used the expressions 'trustee, guardian or receiver' and in defining tenant under Section 2(g) the legislature meant any person by whom or on whose account rent is payable for any premises. Thus, if Caxton and Co. was a tenant of the portion in their occupation they would be tenants under Elgin Properties the lessee under the Official Trustee and would be liable to pay rent to such lessee and not to the Official Trustee. Thus Elgin Properties would be landlord in relation to Caxton and Co. if it was a tenant of the said premises. The person who would be affected by the order of requisition directly is Elgin Properties and not the Official Trustee. In this context we are of the opinion that it was mandatory on the State Government to serve the order of requisition under Section 3(1) of the Act on Elgin Properties. This not having been done the order of requisition did not take

effect and any subsequent steps taken thereunder were all illegal, invalid and of no effect and were liable to be quashed. It is recorded that the validity of the notice under Section 4 and the non-service thereof have not been argued at present by Mr. Mitter before us and, accordingly, we have not expressed any opinion thereon in this appeal.

31. The learned Judge of the Court below, in our opinion was clearly wrong and erred in holding that forwarding of the copy of the order of requisition by the Official Trustee to the appellant No. 1 was sufficient compliance with the provisions of Section 3(2) of the said Act. As the order of requisition was not served by the State on the appellant No. 1 which was imperative under Section 3(2) of the Act, the order of requisition could not be given effect to and steps taken in aid thereof were all illegal, bad and invalid. The order of requisition remained inoperative and had not taken effect and, as such, possession of Caxton and Co. continued to be as of a trespasser and not as of an allottee under the said impugned order of requisition. In *State of West Bengal v. Pulin Krishna Roy Estate (P.) Ltd.* reported in : AIR1981 Cal234 this Bench observed as under (at p. 247):

'In our opinion, the expressions 'landlord and tenant' as used in Sub-section (2) of Section 3 do not refer to the superior landlord or the tenant of the first degree but the tenant in occupation of the premises sought to be requisitioned and his immediate landlord, who are directly affected by an order of requisition made under Sub-section (1) of Section 3 of the 1947 Act. Admittedly the order of requisition was not served on Pulin Krishna Roy Estates (P.) Ltd. the respondent No. 1 the landlord of the said flat. Under Sub-section (2) of Section 3 of the 1947 Act service of the order of requisition made under Sub-section (1) of Section 3 of the 1947 Act, both on the landlord and on the tenant, if the property is let out to tenant, is mandatory and non-compliance with such mandatory provision, in our opinion, makes all subsequent proceedings and actions taken under the order of requisition wholly unauthorised, illegal and bad,'

32. In the case of *Sudhira Bala Roy v. State of West Bengal* reported in : AIR1981 Cal130 another Division Bench of this Court proceeded on similar basis and held that the respondent authority had acted illegally in dispossessing the appellants

from the premises in question, and directed possession to be restored to the appellants on the ground of non-service of the order of requisition upon the appellants.

33. It is next urged by Mr. Mitra that there was no public purpose for which the requisition could be made. The purpose of the requisition, not being a public purpose at all, the order of requisition is illegal, invalid and without jurisdiction. The contention is that the requisition was made with a view to allow Caxton and Co. to occupy the premises and to carry on its business therein. The requisition for a private organization cannot be a public purpose. In *Sudhira Bala Roy v. State of West Bengal* (supra) although the above contention was mooted but the same was not decided by the Division Bench.

34. In our opinion even if a requisition is made ostensibly for a private organization but if the ultimate purpose for such requisition is to benefit the public in general or a substantial section of the public it may in such circumstances be a public purpose. For example, if a property is requisitioned for an individual or an organization for establishment therein of a hospital or some other benevolent or charitable institution which is to benefit the public in general or a large section of them the order of requisition, in such circumstances, might very well be a public purpose.

35. The question in the present case would, however, be whether the impugned requisition for Caxton and Co., a private printing press, could be said to be a public purpose in the facts and circumstances of the case. We shall deal with this aspect of the matter later. It is urged that the purpose of the requisition was to enable Caxton and Co. to occupy the premises at a cheap rate. The State Government has sought to explain the public purpose behind the requisition as continuance of employment of 200 workers of Caxton and Co. It is contended that apart from helping Caxton and Co. no other purpose for the requisition is established from the records submitted by the State before the Court below. Admittedly, no work of the State of West Bengal was done by Caxton and Co. after 1978. After the appeal, preferred by Caxton and Co. in this Court against the ejectment decree, was dismissed by this Court on 8th March, 1979. the Official Trustee at the instance of

the State Government called a meeting of the parties at his office to find out ways and means for a settlement. The said meeting was attended by the appellant No. 2, the respondent No. 8 Arun Ghosh a partner of Caxton and Co. and two representatives of the respondent No. 9 Caxton Employees Union. This meeting is admitted by Caxton and Co. in the affidavit-in-opposition filed in the Court below on its behalf by Arun Ghosh. In the affidavit filed on behalf of the Official Trustee also this meeting is admitted but in the affidavit of Nantulal Gurey filed on behalf of Caxton Employees Union the respondent No. 9 who is alleged to be the Secretary of this Union, the said meeting is described as a concocted story and he has disowned any knowledge of the meeting. Be that as it may, no settlement could be arrived at at the said meeting. Thereafter the respondent No. 7 took various proceedings including application for special leave to appeal before the Supreme Court which was ultimately dismissed. The proceedings continued up to January, 1980. From the State Government records as disclosed in the Court below it would appear that on 28th January, 1980 the Minister in charge, Judicial Department had a discussion with the Joint Secretary (Requisition) and the Minister had in his possession copies of judgments etc. in the suit between appellant No. 1 and Caxton and Co. and on 5th February, 1980 there was a representation by Caxton Employees Union to the Labour Minister, Govt of West Bengal to save the workmen and the industry apprehending eviction from the said premises, Curiously enough Nantulal Gurey in paragraph 7 of his affidavit has denied that the order of requisition was made at the instance of the respondent No. 9. On the 9th February, 1980 Caxton and Co. wrote to the private Secretary to the Labour Minister confirming the contents of the said letter dated 5th Feb., 1980 written by the Union and asking for help in the matter. By a letter dated 10th March, 1980 the respondent No. 7 requested the Land and Land Revenue Minister and the Commerce and Industries Minister to requisition the said property. On the 26th March, 1980 the Commerce and Industries Department wrote to the respondent no. 7 asking for certain particulars in connection with its prayer for requisition of the ground floor of the said premises. By its letter dated 27th March, 1980 the respondent No. 7 purported to furnish the particulars asked for and agreed to deposit the compensation payable in respect of the requisition of the said property with the State. Thereafter on the 17th April, 1980 the order of requisition was

made. On the 26th April, 1980 the said order was forwarded by the Official Trustee by its forwarding letter addressed to the appellant No. 1 informing that possession would be taken on the 26th April, 1980 at 10.30 A.M. or on any subsequent day as the case may be. The order of requisition as well as a notice dated 26th April, 1980 under Section 4 (1) (a) of the said Act was served on the respondent No. 7 describing it as tenant in the former and as tenant occupier in the latter directing it to vacate the same premises on or before 26th April, 1980 at 10.30 A.M. and intimating that possession would be taken on behalf of the State. On the 26th April, 1980 possession was purported to have been taken over of the requisitioned property by the State and the same was also stated to have been redelivered to the respondent No. 7 by the Assistant Secretary, Commerce and Industries Department, Government of West Bengal.

36. From the records as disclosed by the State Government, we have not been able to find any formation of opinion by the State Government, or by any of the Ministers who had occasion to consider the matter that there was public purpose on account whereof the said premises could be requisitioned. At page 450 of the main Paper Book following notings in the Government file appear. The first noting is by Shri K. P. Ghosh, Minister-in-charge, Labour Department which reads as under :

'Labour Department.

A Memorandum dated 9th February, 1980 from Caxton and Co. are sent herewith. The letter will speak for itself. NIC, LR and LU Department may please consider their prayer and take such action as he deems fit in this case.

Sd/- K. P. Ghose.'

The next noting is by Shri Binoy Krishna Chowdhury, Minister-in-Charge and Land Reforms Department which reads as follows :

'Jt. Secy. L & LR Dept. to examine and put up immediately.

B. Chowdhury.

26-2-80

Benoykrishna Chowdhury

Minister-in-Charge. Land & Land Reforms Department

Govt. of W. Bengal.'.

37. At page 44 of the main Paper Book there is a noting by Shri B. Chowdhury, the Minister-in-Charge, Land and Land Reforms Department as under:

'B/S R & Ch (Reqn) will please put up immediately.

Sd/- B. Chowdhury

11-3-80'

On the same page the following notings appear :

'EO will please enquire and report immediately.

Sd/- Illegible.

12-3-80'

Below that the noting reads: 'Report submitted.

Sd/- Illegible.

14-3-80

38. The report of the Enquiry Officer is at pages 441 to 443 of the main Paper Book which recommends 'R. O. as per schedule above may issue.'

39 From the notings at pages 436 and 437 of the Main Paper Book it appears that the decision that the property intended to be requisitioned might be requisition for use and occupation of Caxton & Co. was taken by the Secretary on the 7th April, 1980 and the said officer on the 15th April, 1980 directed that the draft requisition order with the forwarding Memo to the ISR/AC be placed for approval and the

same be put up to his successor. The order of requisition was made on the 17th April, 1980. Nothing has been disclosed by the State Government to show that even the draft order of requisition was approved by any Minister or the decision for requisition was taken by any minister. The State Government is the authority under Section 3(1) of the 1947 Act to form the opinion in the matter but, there is nothing to show that the order of requisition was passed by such authority. Thus the contention of Mr. Roy Chowdhury whether the facts justified the order of requisition being passed or the authority acted as a reasonable and prudent man in the matter is wholly immaterial, inasmuch as the premise on which such argument was based was non-existent.

40. Mr. J. N. Roy, learned Advocate appearing for Caxton & Co. the respondent No. 7, submitted that such will depend on the question whether the order of requisition was made for a public purpose and, therefore, the Court has to consider what is a public purpose.

41. In this context Mr. Roy cited the decision of the Judicial Committee in the case of *Hamabai Framjee Petit v. Secy. of State for India* reported in 42 Ind App 44: (AIR 1914 PC 20). Here the Privy Council was concerned with the question whether construction of buildings for Government servants constituted a public purpose. In our view the question is no more a matter of interpretation by Court inasmuch as 'Public Purpose' as defined in Section 2(ff) of the 1947 Act now includes, providing residential accommodation for employees of the State Government where the provision of such accommodation is, in the opinion of the State Government, necessary, in the public service. Mr. Roy also relied on the decision of a Division Bench of this Court in the case of *Amarendra Nath v. State of West Bengal*, reported in (1963) 67 Cal WN 647. This was a case of acquisition under the Land Acquisition Act, 1894 where the acquisition was made for a college open to all students irrespective of their caste and creed. It was urged by Mr. Roy that the question of availability or non-availability of alternative accommodation was wholly irrelevant in the matter of formation of opinion as to public purpose even if such a question was raised by an officer of the State Government in this context. Mr. Roy in support of his contention relied on *Smt. Venkatamma v. City Improvement of Trust Board, Mysore* reported in : AIR 1972

SC2683 . Here, certain lands were acquired by the Board of Trustees under the City of Mysore Improvement Act, 1903. The said Act authorised acquisition, to give effect to improvement schemes which, inter alia, included establishment or construction of markets. A notification for the acquisition specified the purpose of acquisition as forming certain straight road schemes, but certain portions of the properties acquired were set apart for construction of shops. This was challenged. The Supreme Court observed that construction of shops being in effect construction of a market, the acquisition was permissible under the Act. It was urged before the Supreme Court that as the shops were to be let out to private individuals the same could not be a public purpose. The Supreme Court observed that any purpose which directly benefits the public or a section of it was a public purpose. The said shops would cater to the needs of the people living in the locality but for which they would have to go to distant parts of the city for shopping, and, therefore, building of shops in the locality would add to their comfort and convenience and therefore, the lands were being acquired for a public purpose.

42. The next case cited by Mr. Roy was *State of Karnataka v. Ranganatha Reddy* reported in : [1978]1SCR641 . Here, certain contract carriages which were being run by private individuals for carrying public were sought to be acquired by the Government which was challenged in various writ petitions. The Supreme Court observed that acquisition by State of immovable or movable property for commercial purposes could be a public purpose. It was held that acquisition of contract carriages their permits and other assets for running them for the purposes of Karnataka State Road Transport Corporation could not be challenged as being not for a public purpose merely because it was for the purpose of transferring them to the said Corporation. The Supreme Court referred to the object and reasons of the impugned law, its preamble and various provisions thereof and came to such conclusion.

43. It is next contended that Caxton and Co. catered to the needs of Government and printing of lottery tickets which were purchased by public, constituted a public purpose. Any commercial venture of the Government would also be a public purpose and if printing and issuing lottery tickets, a commercial venture of the Government was done through Caxton and Co. then it would follow that Caxton

and Co. in printing Lottery tickets was acting in furtherance of public purpose.

44. It was urged that even if a requisition or acquisition gave benefit to private individuals constituting a large section of private persons the same would be for a public purpose. In the present case by the requisition, benefit was sought to be given to a large number of employees of Caxton and Co. and if providing accommodation to a large number of industrial workers was a public purpose then there is no reason why ensuring continuity of employment of a large number of workers would not likewise be a public purpose, particularly when question of unemployment is a serious concern of the State. Acquisition for industrial site has been held by the Supreme Court to be a public purpose.

45. In *Arnold Rodricks v. State of Maha-rashtra* reported in : [1966]3SCR885 the Supreme Court held that development and utilisation of lands as industrial and residential areas was a public purpose and affirmed its earlier decision in *State of Bombay v. Bhanji Munji* reported in : [1955]1SCR777 that requisitioning of premises for housing persons having no housing accommodation was a public purpose. The Supreme Court also observed that public purpose varied with the time and the prevailing conditions in localities and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites. Although these sites would be allotted to members of the public who would get individual benefit but it would be in the interest of general community that these members of the public would be able to have the sites to put up residential houses and factories. At any rate where a large section of the community was concerned, its welfare was a matter of public concern. Thus the welfare of a large proportion of persons living in Bombay being a matter of public concern the impugned notification which served to enhance the welfare of that section of the community was for public purpose. But if there is colourable exercise of power by the State, where it appears so, then what the Government was satisfied about, was not a public but a private purpose or no purpose at all and the action of the Government would be colourable and would not be relatable to the powers conferred upon it by this Statute and the action of the Government would be a nullity.

46. The earliest representation on behalf of Caxton and Co. to the Government for help in the event of ejection of Caxton and Co. from the said premises appears to have been made as disclosed from the Govt. notings in their file, was on the 5th Feb., 1980 when the respondent No. 9, the union wrote to the Labour Minister for help. From the said notings it also becomes evident that the State Govt. was thinking of requisition of the said premises even before any formal representation was made to it by the Union or Caxton and Co. It is also significant that Natulal Gurey, the Secretary of the Union in his affidavit-in-opposition filed in the Court below has denied that the said order of requisition was made at the instance of the union nor did he mention of any representation being made to the State Govt. or the Labour Minister by or on behalf of the Union.

47. In our opinion, the purported public purpose as sought to be asserted on behalf of the State Govt. is wholly untenable and is not supported by the records disclosed by the Government. A decree for eviction did not per se or necessarily mean closure of the industrial undertaking nor could it be said that there would be unemployment due to closure. The report submitted by the Enquiry Officer does not show or disclose any such ground or any ground whatsoever justifying requisition of the said premises. There were no materials before the State Government for formation of any opinion as to the existence of any public purpose to justify the order of requisition. The State Government did not scrutinise or make any enquiry if Caxton and Co. in fact took any step to find a suitable alternative accommodation for shifting the press. The copies of letters forwarded by Caxton and Co. to the State Govt. from Estate agents do not establish anything. No attempt was made by or on behalf of the State Govt to verify the truth or otherwise of the particulars of land said to have been furnished by the Estate agents to Caxton and Co. No advertisements were issued by Caxton and Co. to find out a suitable accommodation. The State Govt. also did not take any step or offer to provide any other accommodation to Caxton and Co. The letters dated 5th February, 1980 written by the Union or the letters dated 9th February, 1980, 10th March, 1980 or 26th March, 1980 written by Caxton and Co. to the different Ministers asking for help were not considered by the State Govt. in forming its opinion as to the existence of public purpose or the necessity for the requisition. It would appear from the Govt. notings in the file that neither the closure of the

business nor unemployment of workers by themselves were considerations for the State Govt. in forming its opinion for requisition of the said premises.

48. The notings dated 19th March, 1980 at pages 453-454 of the main paper book show that the following considerations weighed with the Government, (i) Whether the Press catered to the needs of the Government both State and Central and particularly the State Government, (ii) Whether existence of the industry as such including employment of a considerable number of employees was at stake due to non-availability of suitable accommodation, (iii) Whether the concern made serious efforts to find out suitable accommodation before making the prayer for requisition and (iv) whether the Commerce and Industries Department would pay compensation that might be assessed under the relevant Act by the authorities as well as by Court if reference was made, and confirmation of these points were asked for by the Govt. from Caxton and Co. The reply given by Caxton and Co. to the said Enquiries by its letter dated 26th March, 1980 was the basis for coming to the conclusion that public purpose existed and order of requisition was made.

49. The notings in the Government file dated 1st April, 1980 at pages 403-404 of the main paper book would clearly show that no independent enquiry was made by or on behalf of the State to come to any conclusion and the decision for requisition was taken on the basis of mere conjectures and surmises. The letters of the Estate agents clearly show that alternative accommodation was available thus the case of non availability of such accommodation was not sustainable.

50. The question of requisition was referred to the Commerce and Industries department on the basis that the press run by Caxton and Co. was a public utility service. Public utility service is defined in Section 2(m) of the Industrial Disputes Act and the press run by Caxton and Co. did not come within the purview of the said definition. Even if the said press came within the purview of a small scale industry yet all such industries were not public utility services but curiously enough the Commerce and Industries department became, overzealous in somehow requisitioning the said premises. The Labour Department made no recommendation for the requisition and the small scale Industries department was not at all consulted in the matter. The recommendation by the Commerce and

Industries Department for requisition of the premises was an irregular exercise of power. As already observed after 1970 no work of the West Bengal Govt. was done by Caxton and Co. directly or indirectly. No representation was made to the State Govt. by the other State Government or by the Central Government whose works were done by Caxton and Co. that they would suffer prejudice if the press was closed. The order of requisition was made to afford Caxton and Co. financial relief as new accommodation elsewhere might be more expensive. The order was made not for the benefit of the workers or for saving the industry as was ought to be held out, in the affidavit in opposition filed on behalf of the State Govt. affirmed by Jatiswar Dutta.

51. It is submitted that if the motive or purpose for the requisition was extraneous to public purpose and the order of requisition was passed under the cloak of public purpose the same would amount to malice in law. It is urged that public purpose is a purpose in which interest of the general public as opposed to the interest of individuals is concerned. In the instant case the requisition was made for a private printing press and the property requisitioned was made over to the employer, a private individual. There was no guarantee that the workers would be retained or the business would not be closed or discontinued. The employment of the workers was also not assured nor were the workers directly benefited by the requisition. Caxton and Co. was and is a trespasser and a trespasser who set up an industry in the property in which it has trespassed has done so knowingly with the risk of eviction by due process of law and it could not complain of such eviction and ask for requisition of the property to save it from eviction after it had failed in all its attempts to set aside the decree. If Caxton and Co. was a tenant of the said premises the position might have been different, as in that event it would have been in lawful possession of the said premises but being a trespasser the State Government by an order of requisition would not and could not legalise the possession of an unauthorised occupier and also legalise that which was illegal.

52. We have discussed in detail the principles involved in the meaning of the expression 'public purpose' with reference to the Supreme Court decisions and accordingly, the several decisions of this Court cited by Mr. Mitra in the following cases need not be discussed in detail. Such cases are :

: AIR1957 Cal310 Satya Narayan Nathani v. State of West Bengal; (1958) 62 Cal WN 158, Gobardhan Jayaswal v. First Land Acquisition Collector; (1962) 66 Cal WN 456, Amiya Prova Das Gupta v. First Land Acquisition Collector; : AIR1964 Cal175 Paresh Nath v. State of West Bengal.

53. On this point it is lastly urged by Mr. Mitra that 1947 Act did not provide for requisition or acquisition of property for or on account of a private organisation as has been provided in the 1948 Act. In support of his contention Mr. Mitra has cited several decisions in the case of : AIR 1965 SC646 , State of West Bengal v. P. N. Talukdar; (1962) 66 Cal WN 456 at pages 461 to 462, Amiya Prosad Das Gupta v. The First Land Acquisition Collector; 48 Mad LJ 204 : (AIR 1925 Mad 837) (Veeraraghavachariar v. Secy, of State for India); (1874) 9 Ch App 423 at page 428 (Attorney General v. Terry). We do not think that any detailed discussion on such cases is necessary on that point.

54. On the basis of the findings as set out and discussed above we hold that the order of requisition is vague, indefinite, incapable of execution and is invalid and the same should be struck down. We further hold that the order of requisition not having been served on Elgin Properties in accordance with the provision of Section 3(2) of the Act of 1947 the same could not be given effect to and the steps taken in aid thereof were all illegal, bad and invalid and remained inoperative and of no effect. That not having been done the order of requisition did not take effect and any subsequent step taken thereunder were all illegal, invalid and of no effect and were liable to be quashed. We accordingly quash the same. On the question of public purpose We hold that the assertion made on behalf of the State Government that there was a public purpose in requisitioning the said premises, is wholly untenable and cannot be supported by the records disclosed by the State Government.

55. The result, therefore, is that the appeal must be and is hereby allowed. The order of the Court below is set aside. The order of requisition bearing No. 13/80 Reqn. dated April 17, 1980 is struck down. The Rule Nisi is made absolute and a writ of mandamus is directed against the respondents NOS. 1, 2 and 3 viz. the State of West Bengal, First Land Acquisition Collector and J. Datta, Deputy

Secretary, Land and Land Revenue Department, Government of West Bengal, Requisition Branch, commanding them to withdraw, rescind and recall and to forbear from giving any effect to the impugned order of requisition bearing No. 13/80 Reqn. dated April 17, 1980 in terms of prayer (a).

56. The appellant is entitled to the costs of this appeal from the State respondents.

C.K. Banerji, J.

57. I agree.

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