

Anderson Wright and Co. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Apr-21-1982

Reported in : AIR1982Cal522

Judge : M.M. Dutt and ;Monoj Kumar Mukherjee, JJ.

Acts : West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 - Sections 3(1) and 4(1)

Appeal No. : A.F.O.D. No. 591 of 1979

Appellant : Anderson Wright and Co.

Respondent : State of West Bengal and ors.

Advocate for Def. : Sachindra Chandra Das Gupta, ;Suproakash Banerjee, Advs. (for Nos. 1 to 3), ;R.C. Deb, ;Hiranmoy Dutta, ;Ashim Ghosh, ;Malay Guha, ;P.K. Sen Gupta and ;Tapas Kumar Mukherjee, Advs.

Advocate for Pet/Ap. : D. Pal, ;Bhaskar Gupta and ;S. Khaitan, Advs.

Disposition : Appeal dismissed

Judgement :

ORDER

No. 19/77

Calcutta, the 27th May 1977.

WHEREAS It is proposed to requisition the premises described in the schedule below for a public purpose under Sub-section (1) of Section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (West Bengal Act V of 1947).

Now, therefore, in exercise of the power conferred by Clause (b) of Sub-section (3) of the said Act the Governor is pleased to direct that until the expiry of three months from the date of the order Shri Sarat Chandra Roy and Sri Durga Prasad Roy of 101, Sova Bazar St., Calcutta-6, the owners and M/s. Anderson Wright and Co., of 7, Wellesley Place, Calcutta 1, the tenant shall not, without the permission of the State Government, let out the said premises.

The Schedule

Description of the premises 7, Wellesley Place (3rd floor), Calcutta, Northern portion, measuring approx. 5550 ft. and right of use of other amenities now in occupation of Khardah Co. Ltd.

By Order of the Governor

Sd/- Illegible

Deputy Secretary to the

Government of West Bengal.

No. 331

Copy forwarded to Messrs. Anderson Wright and Co. of 7, Wellesley Place, Calcutta-1, tenant of the premises referred to in the order above.

Sd/- Illegible

First Land Acquisition Collector

Calcutta.

5, Bankshall Street, Calcutta.

The 27th May, 1977.'

The appellant by its letter dated June 6, 1977 addressed to the Dy. Secretary, Govt. of West Bengal and the First Land Acquisition Collector, Calcutta made the following representation:

'6th June, 1977

To

(1) The Deputy Secretary to the Government of West Bengal, Govt. of West Bengal, Land Utilisation and Reforms and Land and Land Revenue Department, Requisition Branch, Writers' Buildings, Calcutta-1.

(2) The First Land Acquisition Collector, Calcutta, Calcutta-1.

Dear Sirs,

Sub : Order No. 19/77 dt. 27th May, 1977.

Copy of the aforesaid order was forwarded to us by the First Land Acquisition Collector, Calcutta vide his memo No. 331 dated 27th May, 1977. We are very much surprised to note the contents thereof.

Without prejudice to our rights and contentions in the matter, we wish to bring the following facts to your kind consideration:

1. It is incorrect that Khardah Co. Ltd. are occupying 5550 sq. ft. of space on the northern portion of the 3rd floor of premises No. 7, Wellesley Place, Calcutta.
2. Actually by and under an agreement of leave and licence dated the 18th Feb., 1976 the said Khardah Co. Ltd. is occupying only 1000 sq. ft. of space on the northern side out of the office space belonging to us on the 3rd floor of premises No. 7, Wellesley Place, Calcutta-1. The said Khardah Co. Ltd., is occupying the said 1000 sq. ft. of the office space as licensee under us on and from the 1st of Jan., 1976 at a licence fee payable to us at the rate of Rs. 2/- per sq. ft. per month

according to English Calendar month. We further place on record that since Jan., 1976 no licence fee has been paid to us by the said Khardah Company Ltd.

3. The rest of the portion is being used and/or enjoyed by M/s. Ramnugger Cane and Sugar Co. Ltd. and/or East Coast Commercial Co. Ltd. by and under separate deeds of leave and licence from time to time entered into with them by us and or by ourselves. We would request you to make note of the aforesaid position. However, as directed by your aforesaid order, we shall not disturb the status quo in any manner, In the meantime, we are trying to contact the Chairman of the committee of Management and IRCI appointed for the purpose of management of Khardah Co, Ltd. in order to (effect?) an amicable settlement with regard to the use and enjoyment of the office space required, by them.

Yours faithfully,

For Anderson Wright & Co.,

Sd/- Illegible

Partner.

Copy to:

1. Mr. J. C. Talukdar, Chairman, Committee of Management, Khardah Co. Ltd. 7, Wellesley Place, Calcutta-1.
2. Industrial Reconstruction Corporation of India Ltd. 19, Netaji Subhas Road, Calcutta-1.
3. The Ramnugger Cane and Sugar Co. Ltd., Calcutta-1.
4. East Coast Commercial Co. Ltd., Calcutta-1.
5. It appears from the said representation that according to the appellant, Khardah Company had been in occupation of only 1000 sq. ft. out of 5500 sq. ft. of floor space in the northern block and the remaining portion was under the occupation of the other licensees of the appellant, namely, Ramnugger Cane and Sugar Co, Ltd.

and East Coast Commercial Co. Ltd. The appellant by its letter dated June 22, 1977 stated the same thing to Sri J. C. Talukdar, the Chairman of the managing committee of Khardah Company, that is to say, the appellant claimed that besides 1000 sq. ft. of the northern block of the third floor of the said premises which was in occupation of Khardah Company at a licence fee of Rs. 2/- per sq. ft., the other licensees of the appellant had been in occupation of the remaining floor space of the said northern block. The appellant also signified its willingness to give to Khardah Company a floor space of 4000 sq. ft. of the said northern block on leave and licence at a licence fee of Rs. 2/- per sq. ft. Thereafter, a correspondence ensued between the appellant and the said Sri J. C. Talukdar as to the terms and conditions of such leave and the licence. Indeed, by its letter dated September 8, 1977, the appellant sent to the said Sri J. C. Talukdar a draft of the proposed leave and licence agreement. The proposed leave and licence agreement did not ultimately materialize.

6. It was alleged by the appellant that on Oct. 3, 1977, the appellant received from the First Land Acquisition Collector, Calcutta, a copy of the impugned order of requisition dated September 28, 1977 made by the State Government under Section 3(1) of the Act stating inter alia that the northern block of the third floor etc., of the said premises as described in the schedule to the said order was needed for a public purpose. In forwarding the copy of the impugned order by his memo No. 479 Req. dated September 30, 1977, the First Land Acquisition Collector, Calcutta directed the appellant to place the requisitioned property at his disposal and control on and from Oct. 4, 1977 at 9-30 A. M. or on any subsequent day when an officer deputed from his office would take charge and possession of the property and prepare a schedule of existing fixtures.

7. On Oct. 4, 1977, the appellant moved a writ petition against the order of requisition before B. C. Ray, J. and obtained the Rule Nisi out of which this appeal arises. The appellant also obtained an interim order whereby the parties were directed to maintain status quo. It has been alleged by the appellant in its affidavit-in-reply that the said interim order was communicated to the respondents by the appellant's learned Advocate Miss. Aparna Datta by her letter dated Oct. 4, 1977, and a photostat copy of the said letter was affixed on the outer gate of the northern

block in the third floor of the said premises. It is alleged by the appellant that the officers of the respondents had forcibly taken possession of the northern block by breaking open the lock at 4 P. M. on that day, that is, Oct. 4, 1977. In this connection, it may be recalled that according to the respondents, possession was taken at 9-30 A. M. and they have denied that possession was taken at 4 P. M.

8. At the hearing of the Rule Nisi from Amiya Kumar Mookerji J., the impugned order was challenged on behalf of the appellant on the grounds that there was no formation of opinion before the impugned order was issued; that the order was not served on the appellant as required under Section 3(1) of the Act; that no notice under Section 4(1) of the Act was served on the appellant; that the impugned order was mala fide and there was no public purpose inasmuch as the 'Khardah Company had been already in possession of a portion of the requisitioned premises; and that no opportunity of being heard was given to the appellant before the impugned order was passed.

9. The learned Judge overruled all the above contentions of the appellant. The learned Judge observed that he was satisfied from the records produced before him that a copy of the impugned order was duly served on the appellant. It was held by the learned Judge that service of a notice under Section 4(I) of the Act was not necessary. As to the appellant's contention that it should have been given an opportunity of making a representation before the impugned order was made the learned Judge, on a consideration of some decisions of the Supreme Court as also of this Court, took the view that it was not necessary that before any order of requisition was passed by the State Government, the owner or the occupier of the property should be given a hearing or should be allowed to put objections to the proposed order of requisition. It was, however, observed by the learned Judge that representations might be made by the aggrieved party after the order of requisition was served on him. The contention of the appellant, that the impugned order was mala fide, and that there was no public purpose, was rejected. Upon the said findings, the learned Judge discharged the Rule Nisi Hence this appeal.

10. The appellant did not make the owners of the said premises No. 7, Red Cross Place, Calcutta, parties in the writ petition. One Durga Prasad Roy, claiming to be

the present owner of the said premises filed an application in the appeal praying for his addition as a party respondent. The application was allowed and he was added as a party respondent in the appeal. He had contested the appeal and supported the respondents.

11. We fail to understand why the appellant assailed the validity of the order of requisition before the learned Judge on the ground of non-service of the same on the appellant when, it is apparent from the writ petition, a copy of the order of requisition was forwarded to the appellant on Oct. 3, 1977 by the First Land Acquisition Collector. Calcutta by his memo No. 479 Req. dated Sept. 30, 1977. In view of the said contention, the learned Judge had to look into the Government records and, as stated already, came to the finding that the impugned order of requisition was duly served on the appellant. No such contention has, however, been advanced before us on behalf of the appellant.

12. Dr. Debi Pal, assisted by Mr. Bhaskar Gupta, learned counsel appearing on behalf of the appellant has urged before us two points. The first point is that the provisions of the Act not having excluded, either expressly or by necessary implications, the rules of natural justice, on the contrary, there being sufficient indication for compliance of such rules in Section 3(1) of the Act, it was incumbent upon the respondents to give the appellant an opportunity of being heard before the impugned order of requisition was made by the State Government. It is submitted that as the respondents had acted in defiance of the rules of natural justice, the impugned order of requisition is invalid and should be quashed. The second point relates to non-service on the appellant of any notice under Section 4(1) of the Act. The contention of the appellant in this regard is that as the notice under Section 4(1) of the Act was not served, nor was the appellant given a reasonable time to vacate the requisitioned premises, the taking of possession of the same was illegal and the appellant should be restored back to possession and the impugned order should be struck down on that ground.

13. So far as the first point relating to the compliance of the rules of natural justice is concerned, it has been vehemently urged on behalf of the appellant that the proviso to Section 3(1) gives a strong indication that before an order of requisition

is issued, the owner and the occupier of the premises in question should be given a hearing. The proviso to Section 3(1) enjoins that no premises exclusively used for the purpose of religious worship shall be requisitioned. In support of this contention much reliance has been placed on behalf of the appellant on a decision of the Supreme Court in *Madan Gopal v. District Magistrate, Allahabad*, : [1973]2SCR610 . In that case, requisition was made under Section 3 of the Q. P. (Temporary) Accommodation Requisition Act, 1947. Section 3 of the U. P. Act provides for requisition. . The first proviso to Section 3 of the U. P. Act is somewhat similar to the proviso to Section 3(1) of the Act with which we are concerned. Besides the first proviso, Section 3 of the U. P. Act contains another proviso providing inter alia that no accommodation which is in the actual occupation of any person shall be requisitioned unless the District Magistrate is further of the opinion that suitable accommodation exists for his needs or has been provided to him. It has been observed by the Supreme Court that although the U. P. Act does not contain an express provision, for notice and hearing before the making of a requisitioning order, such a provision should be read there by necessary implication. It has been pointed out that there are objective factors which should be enquired into before any order is made. Further, the Supreme Court observed that the first proviso to Section 3 of the U. P. Act strongly suggests the implication of notice and hearing in the main part of Section 3. It is also pointed out that the second proviso requires that the owner of the property should be heard before it is requisitioned.

14. Relying on the observation of the Supreme Court on the first proviso to Section 3 of the U. P. Apt, it has been submitted on behalf of the appellant that as the proviso to Section 3(1) of the Act is similar to the first proviso to Section 3 of the U. P. Act, it should be held that the said proviso also suggests notice and hearing before the making of an order under Section 3(1) of the Act. We have noticed the second proviso to Section 3 of the U. P. Act which is absent from Section 3(1) of the Act. It is true that the Supreme Court in *Madan Gopal's* case has observed that the first proviso to Section 3 of the U. P. Act strongly suggests the implication of notice and hearing, but the Court has also taken into consideration the second proviso. In this connection, we may refer to another decision of the Supreme Court in *Daud Ahmad v. District Magistrate, Allahabad*, : [1972]3SCR405 where the

Supreme Court, on a consideration of only the second proviso to Section 3 of the U. P. Act, observed that the person affected should be given a notice and hearing before any order of requisition was made. It has been observed 'It is the nature of the power and the circumstances and conditions under which it is exercised that will occasion the invocation of the principle of natural justice. Deprivation of property affects rights of a person. If under the Requisition Act the petitioner was to be deprived of the occupation of the premises the District Magistrate had to hold an enquiry in order to arrive at an opinion that there existed alternative accommodation for the petitioner or the District Magistrate was to provide alternative accommodation'. Thus it follows that the second proviso to Section 3 of the U. P. Act was of much significance on the question of notice and hearing by implication before the making of an order of requisition. There is, however no provision like the second proviso to Section 3 of the IT. P. Act in Section 3(1) of the Act with which we are concerned and, that makes all the difference between these two provisions. We are, therefore, unable to accept the contention of the appellant that by necessary implication Section 3(1) of the Act provides for notice and hearing before an order of requisition is made.

15. It is, however, urged that Section 3(1) of the Act not having excluded, either expressly or by necessary implication, the observance of the principles of natural justice, such notice and hearing to the person affected like the appellant should have been given before the respondents made the order of requisition. In support of this contention, the appellant has placed reliance on a few decisions of the Supreme Court which are: *Swadeshi Cotton Mills V. Union of India.* : [1981]2SCR533 ; *S. L. Kapoor v. Jagmohan*, : [1981]1SCR746 ; *Madhusuaan Chhotalal Patel v. Special Land Acquisition Officer*, : AIR 1980 SC318 ; *Smt. Maaeka Gandhi v. Union of India*, : [1978]2SCR621 ,

16. We do not think that in the facts and circumstances of the case, we are to consider the question as an abstract proposition of law. We may assume in favour of the appellant that the respondents are obliged to comply with the principles of natural justice by giving the person affected an opportunity of being heard or of making a representation before issuing an order of requisition. On such assumption, let us now consider whether the appellant was given such an

opportunity. It has been stated already that by order No. 19/77 dated May 27, 1977 which has been set out above, the appellant was communicated the information, inter alia, that the northern block of the third floor of premises No. 7, Red Cross Place, Calcutta was proposed to be requisitioned under Section 3(1) of the Act, and the appellant and the owners were directed not to let out the premises until the expiry of three months from the date of the said order without the permission of the State Government. After the receipt of the said order the appellant, by its letter dated June 6, 1977 which has also been set out above, made a representation to the Dy. Secretary to the Govt, of West Bengal and the First Land Acquisition Collector, Calcutta. In the said representation, the appellant stated that the Khardah Company was in occupation of only 1000 sq. ft. of the floor area of the said northern block out of 5500 sq. ft., and the remaining floor area was in the occupation of Ramnugger Cane and Sugar Co. Ltd. and East Coast Commercial Co. Ltd. under separate leave and licence agreements with the appellant. The appellant also stated in the said representation that it would not disturb the status quo in any manner as directed. It is apparent from the said representation that the appellant was not, in the least, aggrieved by the proposal for requisition of the northern block, and it was only interested in establishing that it was in occupation of 4500 sq. ft of floor space of the said northern block, presumably for the purpose of monthly compensation. Indeed, in its correspondence with Khardah Company, the appellant claimed its occupation of 4500 sq.ft. of floor space and tried to persuade Sri J. C. Talukdar, the Chairman of the committee of management of the said company to enter into a leave and licence agreement with the appellant in respect of 4000 sq. ft. of floor space at the rate of Rs. 2/- per sq. ft. per month. Be that as it may, it is manifestly clear from the facts stated above that before the impugned order was passed, the appellant was served with a notice of the proposed order of requisition and, indeed, the appellant had made a representation in writing. In the circumstances, in our opinion, it does not lie in the mouth of the appellant that it was not given any opportunity of being heard or of making a representation before the impugned order of requisition was made. The contention of the appellant is without any substance and is rejected.

17. We may now consider the second point of the appellant as to the non-service of any notice under Section 4(1) of the Act. Clause (a) of Section 4(1) provides

'where any premises are requisitioned under this Act the Collector may by notice in writing order the person in occupation of the premises, if any, to vacate the premises within a period of ten days from the service of the notice'. Under the proviso to Section 4(1), the Collector may, for reasons to be recorded in writing, extend the said period up to two months. There is serious dispute between the parties as to the time when possession was taken by the Collector. According to the respondents, possession of the northern block was taken on Oct. 4, 1977 at 9-30 A. M. At that time, one Sri S. C. Talwar was present. On the other hand, it is alleged by the appellant that possession of the requisitioned premises was forcibly taken at 4 P. M. on that date. We are, however, not really concerned as to when possession was taken by the respondents on Oct. 4, 1977.

18. The question before us is whether the appellant was served with a notice under Section 4(1) of the Act. Section 4(1) provides for service of a notice requiring the person in occupation to vacate within a period of ten days which may be extended by the Collector up to two months. In a Bench decision of this Court under the Act in *Smt. Sudhira Bala Roy v. State of West Bengal*, : AIR1981 Cal130 it has been observed that so long as the person in actual physical possession of the premises is not called upon to vacate the premises, he will not be obliged to do so, even though he is served with the order of requisition. Further, it has been observed that in order to give effect to the order of requisition, a notice in writing has to be served on the person in actual possession of the premises to vacate the same. The complaint of the appellant is that no notice under Section 4(1) of the Act has been served on it. This allegation of the appellant however, does not appear to be true. It has been noticed earlier that in forwarding a copy of the order of requisition to the appellant by his memo No. 479 Req. dated Sept. 30, 1977, the First Land Acquisition Collector, Calcutta, directed the appellant to place the requisitioned property at his disposal and control on and from Oct. 4, 1977 at 9-30 A. M. or on any subsequent day when an officer deputed from his office would take charge and possession of the property. This direction was given by the Collector obviously under Section 4(1) of the Act. In our opinion, in a given case it will be sufficient compliance of Section 4 of the Act, if the Collector in forwarding an order of requisition also directs the person in occupation to vacate the premises within the time prescribed by Section 4(1). In view of the facts stated above, it

cannot but be held that the appellant was served with a notice under Section 4 of the Act., It seems to us that as the said memo of the Collector directed the appellant to vacate the requisitioned premises, the learned Judge held that no notice under Section 4(1) of the Act was necessary. There is, therefore, no foundation for the complaint of the appellant that no notice under Section 4(1) of the Act was served on it.

19. Though a notice under Section 4(1) of the Act was served on the appellant, yet it did not give the minimum period of time to vacate the requisitioned premises; such period being ten days from the date of the order of requisition. The notice must, therefore, be held to be insufficient. But the question is, was the appellant prejudiced by the insufficiency or shortness of the notice or can the appellant make a complaint about the same? The answer to the question should be in the negative. The notice under Section 4(1) to vacate is to be served on the person in occupation. In other words, only the person who is in actual physical possession of the requisitioned premises will be directed to vacate the same as held by this Court in Sudhira Bala's case (supra). It is the case of the appellant that Ramnugger Cane & Sugar Co. Ltd. and/or the East Coast Commercial Co. Ltd. were in occupation of the remaining portion of the northern block on the third floor of the said premises. Therefore, on its own admission, the appellant was not in actual physical possession of any portion of the requisitioned premises and, therefore, the question of serving a notice on the appellant does not arise as rightly contended: by Mr. P. K. Sen Gupta, learned counsel for the addedrespondent, the owner. We do not think that, as the appellant was not in actual physical possession of the requisitioned premises, it was prejudiced by the insufficiency or shortness of the notice under Section 4(1) of the Act. The contention of the appellant relating to the alleged non-service of the notice under Section 4(1) of the Act is without any substance and is overruled. No other point has been urged on behalf of the appellant.

20. For the reasons aforesaid, the judgment of the learned Judge is affirmed and this appeal is dismissed. In view, however, of the facts and circumstances of the case, there will be no order for costs.

21. The appellant prays for a certificate for appeal to the Supreme Court under Article 134A of the Constitution. We do not think that any substantial question of law of general importance is involved in this case. The oral prayer for a certificate is, accordingly, disallowed.

22. No order need be made on the application for compensation filed on behalf of the added respondents. The application shall be deemed to have been disposed of along with this appeal. This order is without prejudice to the rights and contentions of the parties for compensation before the appropriate forum.

Monoj Kumar Mukherjee, J.

23. I agree.

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