

Madanlal Chamaria Vs The State

Court: Calcutta High Court

Date of Decision: May 1, 1950

Acts Referred: West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 " Section 2, 20, 20(2), 3, 3(4)

Citation: (1951) 1 ILR (Cal) 639

Hon'ble Judges: Lahiri, J; K.C. Das Gupta, J

Bench: Division Bench

Advocate: Narendra Kumar Basu and Sisir Kumar Basu, for the Appellant; Nirmal Kumar Sen, Deputy Legal Remembrancer, for the Respondent

Judgement

K.C. Das Gupta, J.

This Rule was obtained by the Petitioner for the quashing of proceedings in which he has been prosecuted u/s 20(2) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947.

2. The prosecution case is that, on August 3, 1948, premises No. 1, Muktarani Babu Street, Calcutta, of which the Petitioner along with his two

brothers are the owners, were requisitioned u/s 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. By the

requisitioning order, the Governor was--

further pleased to direct the First Land Acquisition Collector, Calcutta, to secure possession of and control over the said premises and to take

such other action as is necessary in connection with the requisitioning in accordance with the provisions of the said Act.

3. On the same date, the First Land Acquisition Collector, Calcutta, passed an order forwarding copy of the requisitioning order to the present

Petitioner and in the further following terms:

He is directed to place the above property at my disposal and control on and from August 6, 1948, or on any subsequent day at 11-30 a.m. when

an officer deputed from this office will take charge and possession of the property and prepare a schedule of existing fixtures.

4. Four witnesses have been examined on behalf of the prosecution and a charge has been framed against Petitioner alleging that he did not on

August 6, give possession of premises No. 1, Muktarani Babu Street, Calcutta, though the order of requisition was duly served on him.

5. It is to be noticed that the learned Magistrate, in framing the charge, seems to think that the Petitioner was guilty of not obeying the order of

requisition that was passed by the Governor. It is made clear, however, here by the learned Deputy Legal Remembrancer that what the Petitioner

is really accused of is his neglect to obey the order that was passed by the First Land Acquisition Collector on August 3, directing him to place the

property at his disposal and control. It is obvious that the order of requisition, which was signed, as by order of the Governor, by the Assistant

Secretary to the Government of West Bengal, did not itself direct the Petitioner to do anything. Consequently, there can be no case of the

Petitioner neglecting to obey the order of requisition. It has been argued by Mr. N.K. Basu, on behalf of the Petitioner, that the failure to obey the

order of the First Land Acquisition Collector mentioned above did not constitute an offence; first, because there was really no valid requisition in

the case, inasmuch as the premises No. 1, Muktarani Babu Street, Calcutta, did not fall under the definition of premises as defined in Section 2(e)

of the Act, for it was on August 5, 1948, neither let nor intended to be let; secondly, because the direction by the First Land Acquisition Collector

was not in accordance with the provision of the Act, being directly in contravention of the provisions of Section 4 of the Act.

6. On the question whether premises No. 1, Muktarani Babu Street, Calcutta, fall within the definition of "premises" in Clause (e) of Section 2 of

the Act, I do not think it is possible to come to a decision, inasmuch as the prosecution evidence has not yet been closed and it is arguable that

evidence may be led which might show that on August 3, 1948, the premises, if not let, were at least intended to be let.

7. The other contention of Mr. Basu is, in my opinion, unanswerable. Section 4 provides that where any premises have been requisitioned under

the Act, the Collector may, by notice in writing--

(a) order the existing tenant or occupier, if any, to vacate the premises within ten days of the receipt of the notice.

8. It is well to remember Sub-section (4) of Section 3, by which the Provincial Government can direct the Collector--

to take such further action as is necessary in connection with the requisitioning of the premises.

9. This "action" has to be in accordance with the provisions of the Act. Section 4 clearly contemplates that the person in occupation of the

premises which are requisitioned will have ten days time to vacate the premises from the date of the receipt of the notice. In the present case, the

Collector passed order directing the Petitioner to give up possession on--

August 6, 1948, or on any subsequent day at 11-30 a.m. when an officer deputed from this office will take charge and possession of the property

and prepare a schedule of existing fixtures.

10. Thus the Petitioner was being directed to give up possession much before the tenth day from the receipt of the notice. It was contended by the

learned Deputy Legal Remembrancer that this direction by the First Land Acquisition Collector was not the notice in writing contemplated by

Section 4 of the Act, but an earlier measure under Sub-section (4) of Section 3. I cannot imagine that the Act contemplated that while u/s 4 the

tenant or the occupier would have ten days time to vacate the premises, still the Collector had, by something in Sub-section (4) of Section 3,

power to direct the delivery of possession earlier than the period fixed in Section 4. To read such a meaning into the provisions of Sub-section (4)

of Section 3 would be to make the provision of Section 4 of the Act entirely nugatory. In my judgment, in taking further action as is necessary

within the meaning of Sub-section (4) of Section 3, the Collector has no power to direct delivery of possession in contravention of the provisions

of Section 4 of the Act.

11. My conclusion, therefore, is that the order passed by the Collector in this case on August 3, 1948, was itself not an order in accordance with

the provisions of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. Consequently, the Petitioner by not

obeying the order, cannot be considered to have committed any offence u/s 20 of the Act.

12. I would, therefore, order that the proceedings pending against him in the Court of the Presidency Magistrate be quashed.

Lahiri, J.

13. I agree.