

(1988) 12 DEL CK 0035

Delhi High Court

Case No: Civil Writ Petition No. 1577 of 1986

S Rajdev Singh and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Dec. 12, 1988

Citation: AIR 1989 Delhi 238

Hon'ble Judges: Rabindranath Pyne, C.J; Gian Chand Jain, J

Bench: Division Bench

Advocate: Arun Mohan, Harjinder Singh and E.P.S. Mangat, for the Appellant; Sat Pal and H.L. Tikku, for the Respondent

Judgement

R.N. Pyne, C.J.

One S.B. Ranjit Singh after obtaining on lease a plot of land bearing No. 25 in Block "B" Connaught Place, New Delhi, constructed a building thereon having shops in inner circle of Connaught Place. This writ petition related to a show room (shop) in the said building abutting on main Connaught Place (Inner Circle). The said show room (shop) is hereinafter referred to as "the said property". By Deed of Gift dated February 5, 1946 the said S.B. Ranjit Singh made a gift of the ownership of lessee's right including the said building to the petitioner No. 1, Raj Dev Singh.

2. By a show cause notice and/or order dated October 6, 1952 issued by the Estate Officer under Sub-section (i) of Section 3 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as the "RAIP Act") called upon S. B. Ranjit Singh/Deccan Airways Limited and M/s. Hazara Singh and Son to show cause as to why the said property should not be requisitioned. Thereafter another notice and order dated December 3, 1952 to the similar effect was served upon the petitioner No. 1. In this notice and order it is stated that the said property is needed or likely to be needed for a public purpose to wit, proper and efficient functioning of the Government of India being a purpose of the Union and that the said property should be requisitioned. Thereafter by an order dated April 23, 1953 the said property was requisitioned under Sub-section (2) of Section 3 and Section 4 of the

RAIP Act and it is stated by the petitioners that possession of the said property was taken from the petitioner No. 1 and was placed at the disposal of M/s. Deccan Airways.

3. It appears that upon Deccan Airways vacating the said property it was allotted to and placed at the disposal of the Jammu and Kashmir Government by letter dated January 7, 1955 pursuant to the request of the said Government for allotment of the said property. The said Government opened an emporium in the said property which was utilised basically for promoting national integration and awareness of the culture and arts of various parts of the country by selling handicrafts and other items, the production design and consumption of which were peculiar to the State of Jammu and Kashmir .

4. It is stated by the petitioners that; a complex, popularly known as Baba Kharak Singh Marg Complex was completed in late 1970 and various State emporia were asked to shift into that. Consequently, the Government of Jammu and Kashmir for whom requisitioning of the said property was continuing from term to term on the ground and assumption that the public purpose of requisitioning the shop for emporium was still subsisting, also moved to the said newly constructed complex. Respondent No. 3 took possession of Unit No. 7 in the Emporia Complex on August 5, 1971. According to the petitioners with the moving of the respondent No. 3 in the said complex, the public purpose for whom the said shop was requisitioned ceased to exist.

5. Thereafter by Deed dated March 25, 1971 the petitioner No. 1 made a gift of the half share of the said premises No. 25-B, Connaught Place to the petitioner No. 2.

6. The petitioners wrote letter dated March 17, 1972 to the respondent No. 1 requesting for de-requisition of the said property stating that the purpose for which the same was requisitioned was not being carried out as the said property was being utilised by a commercial organization which was not a public purpose within the meaning of the RAIP Act.

7. In 1977 the petitioner filed in this Court civil writ petn. No. 368 of 1977 and the notice to show cause was issued to the respondents therein. However, on August 22, 1977 the said writ petition was withdrawn because of the extension of the statutory period of requisition by a further period of five years under the RAIP Act.

8. By letter dated January 20, 1982 the Deputy Director of Estates, Government of India, wrote to the petitioner No. 2 stating that the question of de-requisition of the said property would be considered only after it was vacated by the respondent Nos. 2 and 3.

9. Thereafter by letter dated June 19,1982 the respondent No. 1 revoked and cancelled the allotment of the said property in favour of the respondent Nos. 2 and 3.

10. On July 12, 1982 the respondent No. 3 filed a civil suit being Suit No. 932 of 1982 in the Delhi High Court for declaration and injunction against, inter alia, the respondent No. 1 and the petitioner No. 2. On July 14, 1982 an order of injunction was passed restraining dispossession of the plaintiff in the said suit. However, on January 19, 1984 the said order of injunction was vacated.

11. On September 14, 1983 the petitioners filed a suit being Suit No. 1278 of 1983 against the respondents for mandatory injunction and possession of the said property. On September 15, 1983 an ex parte interim order was passed against respondent No. 3 herein restraining it from in any manner transferring or parting with possession of the said property. However, by order dated January 21, 1984 the said order was stayed.

12. On March 8, 1985 the RAIP Act was amended by Act No. 20 of 1985 whereby Sub-section (1A) of Section 6 was amended and the words "fifteen years" wherever they occurred therein, were substituted by the words "seventeen years".

13. The petitioners have alleged that 30 years period of the government acquisition expired in April, 1983 and the possession by the Government thereafter under the cover of the RAIP Act has become illegal and unconstitutional.

14. In the above circumstances the petitioners filed the present petition. The main prayers of this writ petition are as follows:

a) This Hon'ble Court may be pleased to issue a writ of mandamus or order or direction in the nature of mandamus declaring the acts of respondents in continued requisition/ occupation of property 25-B Connaught Place, New Delhi, as illegal and directing them to handover possession to the petitioners.

b) That a writ in the nature of certiorari be issued calling upon the records of the Respondents and quash the order of "Requisitioning" (if any be found on the file) of the said premises and direct the Respondents to hand over the vacant possession in terms of the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952, as amended.

15. In the counter-affidavit filed on behalf of respondent No. 1 it is stated that the said property was requisitioned under the RAIP Act for use by the Deccan Airways. On vacation of the accommodation by Deccan Airways, it was allotted to the Jammu and Kashmir Government on January 7, 1955 for running their Arts Emporium as a very special case. In 1965 it was decided to de-requisition the said property and the respondent No. 2 was requested to make alternative arrangement for their Emporium and to handover the vacant possession of the building to CPWD. However, the request of the Chief Minister of the respondent No. 2 for continued use of the said property was examined but it was felt that under the RAIP Act the property could be requisitioned by the Central Government for any public purpose, being the purpose of the Union. Since the building at 25-B, Connaught Place, New

Delhi, was being used by respondent No. 3, which was a State Government Undertaking, the purpose of the Corporation could not be considered to be a purpose of the Union although it might be a public purpose and as such use of the said premises by respondent No. 3 was not legally correct and was open to be challenged in the Court. Since the request on behalf of respondent No. 1 to respondent No. 3 to discontinue the occupation of the said property was not heeded to, the Minister of Works and Housing on May 21, 1982 again requested the Chief Minister of respondent No. 2 to arrange for vacating the said property and informed him that if the same was not vacated by May 31, 1982 the respondent No. 1 would be left with no option but to take necessary legal action under the Public Premises (Eviction of Unauthorised Occupants) Act, to get the said property vacated. Since the said property was not vacated the allotment was cancelled with effect from July 19, 1982 and the Trade Commissioner of respondent No. 2 was directed to handover vacant possession of the premises to CPWD before July 18, 1982 failing which action for eviction of the respondent No. 3 from the said property as also for recovery of damages for unauthorised occupation thereof with effect from 19-7-1982 would be taken against the respondent No. 3.

16. In the counter-affidavit filed on behalf of respondent Nos. 2 & 3 it is stated that the said property was allotted to them in lieu of the shop occupied by respondent No. 2 at that time in Block "A", Connaught Place, Near Post Office, for running Emporium, and since that accommodation was required by the Estate Officer for allotment against other demands, a request was made to respondent No. 2 that they should not handover the existent accommodation in Block "A" to the landlords/owners of the said premises. It is further stated that the said accommodation was held by respondents 2 and 3 in their independent capacity under a private contract. It is also stated that the allotment of the said property by the Estate Office to respondent No. 2 was in exchange of shop No. A-5, Connaught Place, New Delhi, which was subsequently requisitioned by the Estate Officer for allotment against other demands. It is further stated that respondent No. 2 never intended to open a show room of the State Handicrafts at Baba Kharak Singh Marg and the said property at Baba Kharak Singh Marg was certainly not given to the State Government in lieu of the disputed premises. It is further stated that as the said property was given in exchange of the premises No. A-5, Connaught Place, New Delhi, the Estate Office and the petitioners are estopped from changing their stand now and asking for eviction of respondents 2 and 3 from the said show room. It is also stated that the liability of respondents 2 and 3 in respect of the said shop is to the respondent No. 1 and not to the petitioners.

17. Mr. Arun Mohan appearing on behalf of the petitioners has submitted that the respondents in the instant case do not dispute the facts of ownership of the disputed property of the petitioners, the requisition thereof and the lapse of the period of requisition on 8th March, 1987. Hence, according to him, as the period of requisition lapsed on 8th March, 1987 u/s 6 of the RAIP Act, as amended by the

Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1985, the possession of the property should be delivered to the person from whom the possession thereof was taken. According to him, in the instant case, as admitted by respondent No. 1 in the counter-affidavit the possession of the property was taken from the petitioner No. 1. Hence after the expiry of the period of requisition the vacant possession of the property should be given to the petitioners, who are the present owners of the property. Mr. Sat Pal, learned Advocate appearing for respondent No. 1, does not dispute the contention of Mr. Arun Mohan. Mr. H. L. Tikku, learned Advocate appearing for respondents Nos. 2 and 3, has admitted the facts stated above but has contended that the possession in the instant case should not be made over to the petitioners inasmuch as the possession of the property, pursuant to the order of requisition, was taken from Deccan Airways and not from the petitioners.

18. Before proceeding further it would be appropriate at this stage to set out Section 6(1A) of the RAIP Act, 1952 as amended by Section 3 of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970. The said section states as follows:

6(1A). Notwithstanding anything contained in Sub-section (1), the Central Government shall release from requisition,

a) any property requisitioned or deemed to be requisitioned under this Act before the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970 on or before the expiry of a period of fifteen years from such commencement:

b) any property requisitioned under this Act after such commencement, on or before the expiry of a period of fifteen years from the date on which possession of such property was surrendered or delivered to, or taken by, the competent authority u/s 4, unless such property is acquired u/s 7 within the period of fifteen years aforesaid.

19. Section 2 of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1985 which came into force on March 8, 1985 provides that in Section 6 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as the principal Act), in Sub-section (1A), for the words "fifteen years", wherever they occur, the words "seventeen years" shall be substituted. therefore in view of the above amendment the period of requisition had expired on March 8, 1987, Hence the disputed property should have been vacated on March 8, 1987.

20. The petitioners moved the instant writ petition in 1986. In the petition the petitioners have challenged the requisition of the disputed property on the ground that 30 years period of Government requisition has expired in April, 1983 and any possession by the Government thereafter under the cover of RAIP Act is illegal and

unconstitutional and hence the requisition cannot continue endlessly. However, in paragraph 9 of the reply to the counter-affidavit verified on September 10, 1987 the point has been taken that the period of seventeen years has also lapsed on March 8, 1987 and hence the respondents are bound to restore back possession of the said property to the petitioners forthwith.

21. Although the petitioners in the petition have not taken the ground that the period of requisition lapsed on March 8, 1987 yet in reply to the counter-affidavit, as mentioned above, such point has been taken. Hence in our view it is open to the petitioners to urge this point in this writ petition. The Court is entitled to take the subsequent events into account which have occurred during the pendency of the writ petition. Inasmuch as the period of requisition expired on March 8, 1987 the holding of possession after the said date under the cover of requisition is unauthorised and unlawful. In view of the aforesaid facts and in view of the cancellation of the licence of the requisitioned premises to the respondent No. 2, they are not entitled to remain in possession of the disputed property and their possession thereof is also unauthorised and unlawful.

22. Relying on the case of State of Madhya Pradesh Vs. Bhailal Bhai and Others, Mr. Tikku has submitted that since disputed questions of fact arise in the instant case the Court will not exercise its discretion under Article 226 of the Constitution of India.

23. Mr. Arun Mohan has submitted that in the case of Mahant Bal Dass v. State of Himachal Pradesh, 1987 Suppl SCC 701 the Supreme Court has observed that "unless the writ petition involves a question of title, it is maintainable".

24. In the instant case, as stated earlier, the respondents do not dispute (i) ownership of the disputed premises; (ii) the requisition thereof and (iii) the question of lapse of the period of requisition. Only dispute raised by the respondents Nos. 2 and 3 is with regard to the fact as to whom the possession of the property is to be made over after the expiry of the period of requisition. The question as to whom the possession of the property is to be made over is considered hereinafter. But since there is no dispute about the facts mentioned hereinbefore and no disputed question of title is involved in this case, we are unable to accept the above submission of Mr. Tikku.

25. It has been submitted by Mr. Tikku that even if the respondents Nos. 2 and 3 have no right in law to remain in the disputed premises and even if their continued occupation of the disputed premises is illegal, the Court cannot issue a writ asking them to cease to violate the law by them on account of continuing occupation of the disputed premises and the parties whether it is the petitioners or the Union of India must be left to its remedy under ordinary law i.e. civil suit and till such a proceeding is decided the respondents Nos. 2 and 3 are entitled to remain in possession even if it is unlawful.

26. We are unable to accept the above submission of Mr. Tikku. The petitioners as owners of the disputed property and as citizens of India can always approach the Writ Court with a prayer that the occupation of the disputed premises by the respondent No. 3 through the respondent No. 2 (which is a State within the meaning of Article 12 of the Constitution of India) to whom the disputed premises was allotted by the respondent No. 1, after the expiry of the period of requisition is illegal, without authority of law and results in deprivation of their right and injury of their property and therefore the action of the respondent No. 2 is amenable to writ jurisdiction of this Court and more so when the respondent No. 2 does not claim any title to the property from the petitioners.

27. Mr. Arun Mohan in support of his contention that the requisition of a property cannot continue for an indefinite period, has relied on the cases of H.D. Vora Vs. State of Maharashtra and Others, and Ramanand Shaw and Others Vs. State of West Bengal and Others. The above cases support the contention of Mr. Arun Mohan. However, in view of the fact that the statutory period of requisition had already expired in the instant case, it is not necessary to deal with the above cases.

28. Mr. Tikku thereafter argued that in the instant case the disputed property was requisitioned and made over to the respondents Nos. 2 and 3 in lieu of the shop which was then occupied by respondent No. 3 in Block "A", Connaught Place, near Connaught Place Post Office, which was required by the respondent No. 1 for allotment against other demands. It was, therefore, argued by Mr. Tikku that in view of the above, the respondent No. 1 promised to give possession of the disputed property against the shop in Block "A", Connaught Place, New Delhi, and hence respondent No. 1 should stick to that promise and in fact the respondent No. 2 is entitled to the benefit of promissory estoppel in the instant case. He has further argued that the contention of the petitioners that the possession of the portion of a complex popularly known as Baba Kharak Singh Marg Complex was given to the respondents Nos. 2 and 3 in exchange of the disputed property is not correct. He has argued that the above are all disputed questions of fact and cannot conveniently be dealt with in a writ petition made under Article 226 of the Constitution of India, hence, according to him, this application is also not maintainable. We see no force in the above contentions of Mr. Tikku in the facts and circumstances of the case, as in our view the period of requisition having expired on March 8, 1987 the possession of respondents Nos. 2 and 3 of the disputed property has become (sic) and unlawful. For the purpose of deciding this case it is not necessary to enter into the disputed questions of fact mentioned above. The question of exchange of possession of the disputed property with the property which was in possession of respondents Nos. 2 and 3 and also the fact that the emporia at Baba Kharak Singh Marg was given in exchange of the requisitioned property are in our view not germane in the instant case. If there is any promissory estoppel in favour of respondents Nos. 2 and 3 against respondent No. 1, it is open to respondents Nos. 2 and 3 to take appropriate step against respondent No. 1 but

such promissory estoppel is not in any way binding on the petitioners in the facts and circumstances of this case.

29. Mr. Tikku has next submitted that the petitioners filed Suit No. 1278 of 1983 against the respondents for issue of a mandatory injunction for de-requisition of the disputed property which is still pending and in view of the pendency of the above suit, this writ petition is not maintainable. According to him the petitioners are not entitled to take two parallel proceedings at the same time.

30. Mr. Arun Mohan has submitted that in the above suit the petitioners have claimed a mandatory injunction against the respondents calling upon them to derequisition the disputed property and decree for possession in respect thereof on the ground that the allotment of the disputed property made by respondent No. 1 in June, 1982 to the respondents Nos. 2 and 3 was cancelled. The instant writ petition is on a totally different cause of action and is based primarily on the fact that the statutory period of requisition having been lapsed on March 8, 1987, hence the possession of the property by the respondents is unauthorised and unlawful and the same be made over to the petitioners. Hence, according to him, the causes of action in the above suit and in the writ petition being different there is no bar for the High Court to entertain the writ petition and the contention of Mr. Tikku has, therefore, no force. Mr. Arun Mohan has further submitted that the High Court has certainly a discretion to grant relief under Article 226 of the Constitution of India even if there was alternative remedy. Further, that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than a rule of law and at any rate it does not oust the jurisdiction of the Court. In support of this contention he has relied upon the cases of The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, and Rani and Ram and Shyam Company Vs. State of Haryana and Others.

31. In our view the contention of Mr. Arun Mohan on the above point has substance and we accept the same.

32. It was lastly argued by Mr. Tikku that the possession of the disputed property having been taken from M/s. Deccan Airways, it should be handed over to Indian Airlines, as successor-in- interest of Deccan Airways under Sections 2(v) and 16 of the Air Corporation Act. In support of this contention Mr. Tikku has relied on the case of Mushtaq Ahmed Vs. Union of India and Others. In this case it has been observed that as to the particular person out of several claimants who would be entitled to delivery of possession on de-requisition is a matter to be decided by the Competent Authority in accordance with the provisions of the RAIP Act.

33. In the counter-affidavit filed on behalf of respondent No. 1 it is stated that on vacation of the accommodation i.e. the disputed property by M/s. Deccan Airways it was allotted to Jammu & Kashmir Government on January 7, 1955 for running their arts emporium as a very special case. It appears that the disputed property was

requisitioned by order dated April 23, 1953. Thereafter by the letter dated January 7, 1955 the disputed property was placed at the disposal of the respondent No. 2. In suit No. 932 of 1982 filed by the respondent No. 3 it is stated that since 1955 it has been carrying on business at the disputed property.

34. In the above circumstances it is clear that the respondent No. 1 after taking possession of the disputed property made over the same to the respondent No. 2.

35. Section 6(2) of the RAIP Act provides that where any property is to be released from requisition under Sub-section (1) or subsection (1A), the Competent Authority may, after such inquiry, if any, as it may in any case consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person from whom possession was taken at the time of the requisition or to the successors-in-interest of such person.

36. In the instant case after the expiry of the period of requisition on March 8, 1987 and the cancellation of the licence in favour of respondents Nos. 2 and 3, they are not entitled to hold possession of the disputed property and withholding of disputed property is unauthorised and unlawful. Hence the respondents Nos. 2 and 3 are bound to deliver vacant possession of the property to the respondent No. 1, who in our view, will make over possession of the same to the petitioners from whom the possession was taken.

37. For the aforesaid reasons in our view this writ application succeeds and the rule nisi is made absolute. We direct the respondents to deliver vacant possession of the disputed property to the petitioners within three months from today. In the facts and circumstances of the case we direct that respondents Nos. 2 and 3 to pay the cost to the petitioners. Counsel fee at Rs. 1,000/-.