

Before : A. L. Bahri, J.

A. K. SIRCAR,—Petitioner.

versus

THE DISTRICT MAGISTRATE, GURDASPUR AND ANOTHER,  
—Respondents.

Civil Writ Petition No. 9540 of 1988

23rd October, 1989.

*Requisitioning and Acquisition of Immovable Property Act, 1952—S. 3—Government in unauthorised occupation—Eviction orders confirmed—Stay application before executing court dismissed—Notice for requisition—Legality of.*

Held, that the provision that it is only such property which is not in possession of the Government that can be requisitioned and after notice under section 3 is issued, the owner or occupier could be restrained from transferring or alienating the property without permission of the competent authority. The facts of the case, as they are, indicate that the State was already in possession of this property when notice under section 3 was ordered to be issued. To the properties which are already in possession of the State Government, provisions of section 3 of the Act are not at all attracted.

(Para 6)

*Petition Under Articles 226/227 of the Constitution of India praying that:—*

- (i) that the records of the case may be called for;
- (ii) that after a perusal of the record and hearing upon the counsel for the parties, this Hon'ble Court may be pleased to grant the following reliefs:—
  - (a) issue an appropriate writ order quashing the order dated 5th October, 1988 (Annexure P-5) of requisitioning of the building passed by respondent No. 1;
  - (b) restrain the respondents from enforcing the requisitioning order Annexure P-5;
- (iii) that any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued;
- (iv) that any other relief to which the petitioner may be found entitled in the facts and circumstances of the case may kindly be granted by this Hon'ble Court;

- (v) that the requirement of filing the certified copies of the annexures may kindly be dispensed with;
- (vi) that the requirement of serving the advance notices of this petition on the respondents herein may kindly be dispensed with in view of the urgency of the matter as any initiative to serve them at this stage would unnecessarily delay the filing of the petition in this Hon'ble Court;
- (vii) that the costs of this petition may kindly be awarded in favour of the petitioner and against the respondents herein as he has been put to avoidable expense at their hands;
- (viii) it is further prayed that during the pendency of the petition in this Hon'ble Court, the operation of the requisitioning order Annexure P-5 dated 5th October, 1988 may kindly be stayed and/or the dispossession of the petitioner may kindly be stayed.

Arun Jain, Advocate, for the Petitioner.

H. S. Bedi, A.G. (Pb.), for the Respondents.

#### JUDGMENT

A. L. Bahri, J.

(1) The present is a case of flagrant abuse of Government machinery to grab private property of the petitioner. Even after the petitioner was successful in a civil suit, the respondents in order to retain illegal possession took resort to the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 to legalise their unauthorised occupation.

(2) A. K. Sircar is the petitioner who challenges in this writ petition filed under Articles 226 and 227 of the Constitution order dated October 5, 1988, Annexure P.5, whereby respondent No. 1, the District Magistrate, Gurdaspur, intended to requisition the building. The petitioner claimed to be owner of the building and vacant land known as 'Happy School, Gurdaspur'. Originally Miss Dowrthy Giri Bala Sircar was the owner who died on October 30, 1977. Civil litigation regarding ownership of the property started wherein a decree was passed on June 6, 1978 holding Miss Bijeli Monica Sircar as the owner of the property. She executed a will on September 19, 1967 in favour of the petitioner and two others namely Shri Enoch Sircar and Miss Leela Sircar, children of Shri P. K. Sircar. Under this will, the petitioner became entitled to half share of the property and the remaining half

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share went to the other two. The petitioner and the two others, owners, used to reside outside Gurdaspur. In their absence in the year 1979, the property in dispute was illegally occupied by officers of the State of Punjab. A number of representations were made to the Deputy Commissioner, Gurdaspur, respondent No. 1, as well as to the Superintendent of Police but to no effect. Ultimately, a notice under section 80 of the Code of Civil Procedure was also issued and subsequently a civil suit was filed for possession of the house and the vacant site in the civil Court at Gurdaspur on August 2, 1985. The suit was hotly contested. Suffice it to say that it was decreed on October 14, 1987 by the Civil Court, Gurdaspur *inter alia* holding the petitioner to be the owner and respondents in illegal possession. It was also held that the respondents did not occupy the building for any public purpose. Annexure P.1 is the copy of the judgment.

(3) Feeling not satisfied with the judgment aforesaid an appeal was preferred which was dismissed by Additional District Judge, Gurdaspur on September 8, 1988, copy of judgment is Annexure P.2. Apart from confirming the findings of the trial Court, strictures were passed about the high handedness displayed by the State Government in the matter. In spite of the decree having been obtained, which had become final, the petitioner was led to file execution in October, 1988. An application was filed on behalf of the respondents on October 4, 1988 under Order 41, rule 5(2) of the Code of Civil Procedure for staying operation of the judgment and decree which were sought to be executed. This application was dismissed on October 5, 1988, copy of the application is Annexure P.3 and copy of the order passed thereon is Annexure P.4. In order to by pass the decree passed in favour of the petitioner, respondent No. 1 took resort to the provisions of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1952 as amended. He passed an order under section 3 on October 5, 1988 i.e. the date on which executing Court had dismissed the application, copy Annexure P.4. Copy of the order passed by respondent No. 1 is Annexure P.5. This order is under challenge in this writ petition on various grounds.

(4) The stand of the respondents is that though in the Jama-bandi of the year 1975-76 Miss G. Sircar was mentioned as owner, she died without any heir and the Government became the owner by way of escheat. The building was needed for public purpose i.e. the Election Office and storage of election material. It was admitted

that the civil suit was filed by the petitioner which was decreed. However, it was denied that the possession of the building was taken forcibly. It was asserted that it was occupied, when it was lying vacant, for a public purpose and the State had become owner by way of escheat. It was necessary to keep the building as elections to the Parliament or State Assemblies were expected to be held. It was keeping in view the above public purpose that the proceedings under the said Act were taken and order, Annexure R.1 (P.5), was passed on October 5, 1988 to requisition the building for a period of ten years. Final order was passed on November 10, 1988, copy Annexure R.2, since no objections were filed on behalf of the owners.

(5) It has been argued on behalf of the petitioner and rightly so that in the facts and circumstances of the present case, the act of respondent No. 1 to requisition the building which was already in possession of the State amounts to legal malice as the object of passing the order is to nullify the decree passed by the Civil Court. The fact that the Civil Court had decreed the suit in favour of the petitioner was noticed while passing the orders, Annexures R.1 (P.5) and R.2. The object of the respondents to retain the building may be for a laudable purpose, however, the action taken to achieve the same is not in accordance with law. The judgment and decree of the Additional District Judge had become final as no further appeal was taken to the High Court. It was at the execution stage that an attempt was made to get the execution of the decree stayed which proved futile as on October 5, 1988, an application of the respondents in that respect was dismissed. It was on that very order, Annexure R. 1 (P. 5). was passed. Section 3(1) of the said Act reads as under :—

“3. *Power to requisition immovable property.*—(1)Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned, the competent authority—

- (a) shall call upon the owner or any other person who may be in possession of the property by notice in writing (specifying therein the purpose of the requisition) to show cause within fifteen days of the date of the service of such notice on him, why the property should not be requisitioned; and

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(b) may, by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority, dispose of, or structurally alter, the property or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order."

(6) No manner of doubt is left while going through the above provision that it is only such property which is not in possession of the Government that can be requisitioned and after notice under section 3 is issued, the owner or occupier could be restrained from transferring or alienating the property without permission of the competent authority. The facts of the case, as they are, indicate that the State was already in possession of this property when notice under section 3 was ordered to be issued,—*vide* order, Annexure P. 5. To the properties which are already in possession of the State Government, provisions of section 3 of the Act are not at all attracted. The insistence on the part of the respondents to take up the plea in the written statement that the petitioner is not the owner and the property had vested in the State by way of escheat is not at all justified in view of the judgments of the civil Court, Annexures P. 2 and P. 4.

(7) The action of respondent No. 1 to retain possession of the property in dispute in spite of the decisions of the civil court is not only arbitrary but is without the authority of law. For all these years, the respondents have illegally encroached upon the property of the petitioner. The least what is expected of the respondents is to promptly deliver back possession of the property in dispute to the petitioner and also to pay compensation for illegal use and occupation of the property in dispute for so many years. At this stage, it is left to respondent No. 1 to himself assess reasonable compensation and pay the same to the petitioner so that he is not forced to approach the Court again in this respect. In case the petitioner is not satisfied with the amount of compensation offered, of course he is left to take appropriate remedy known to law. The aforesaid directions are ordered to be complied within a period of two months.

(8) With these directions, the writ petition is disposed of. The petitioner will have costs which are quantified at Rs. 2,000.

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P.C.G.