

Jiwani Kumari Parekh vs Satyabrata Chakravorty, Managing ... on 10 October, 1990

Equivalent citations: 1991 AIR 326, 1990 SCR SUPL. (2) 246, AIR 1991 SUPREME COURT 326, 1990 (4) SCC 737, 1990 (4) JT 174, 1990 (2) UJ (SC) 717, 1991 IJR 166, (1991) 1 BLJ 17, (1991) 1 CIVLJ 616, (1991) 1 LANDLR 135, (1991) 1 RENCJ 136, (1991) 1 RENC R 24, (1990) 2 RECCRIR 693, (1990) 2 RRR 590, (1990) 2 SIM LC 329

Author: M.H. Kania

Bench: M.H. Kania, R.M. Sahai

PETITIONER:
JIWANI KUMARI PAREKH

Vs.

RESPONDENT:
SATYABRATA CHAKRAVORTY, MANAGING DIRECTOR AND CHIEF EXECUTIVE

DATE OF JUDGMENT 10/10/1990

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
SAHAI, R.M. (J)

CITATION:
1991 AIR 326 1990 SCR Supl. (2) 246
1990 SCC (4) 737 JT 1990 (4) 174
1990 SCALE (2) 833

ACT:
Contempt of Courts Act, 1971 S.
2(b) -- Contempt -- Committal for -- Wilful or deliberate disobedience of Court's orders -- Necessity for.

HEADNOTE:

By its order dated January 16, 1990 in the writ petition, the Court had directed respondent No. 4 to hand over possession of the premises requisitioned under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, within nine weeks subject to their obtain-

ing any order from the High Court or acquiring any independent right within that period to retain possession.

In the meantime, the Land Acquisition (West, Bengal Amendment) Act, 1986, which inserted s. 49A in the Land Acquisition Act, 1894 as applicable to the State, came into force on February 14, 1990 permitting acquisition of a part of a house. A week thereafter the State Government initiated acquisition process in respect of the said premises. Notifications under ss. 4 and 6 of the Land Acquisition Act were issued, and the Land Acquisition Collector authorised to take possession under s. 17(1) of the Act. However, on March 20, 1990 in a writ challenging the validity of the acquisition proceedings the High Court directed the status quo to be maintained regarding possession.

In this contempt petition, the petitioner alleged that the respondent had deliberately failed to hand over possession in terms of the order dated January 16, 1990. The acquisition was also assailed as being patently bad in law.

HELD: 1. Before a party can be committed for contempt, then must be a wilful or deliberate disobedience of the orders of the Court. In the instant case, no such wilful or deliberate or reckless disobedient, of the order dated January 16, 1990 has been committed by the respondent to the contempt petition. [249F]

2. The question whether the acquisition is valid or not is pending

247

for decision in the High Court. In case the petitioner succeeds the respondent would have remained in possession of the said premises for a long time after they should have handed-over the possession. They are, therefore, directed to deposit an amount of Rs. 10,000 per month commencing from 1st October, 1990 in the Court in addition to Rs. 15,000 per month they are already paying under the earlier directions. [250A-C]

JUDGMENT:

CIVIL, APPELLATE JURISDICTION: Contempt Petition No. 71 of 1990.

AND Interlocutory Application No. 1 of 1990. IN Writ Petition (Civil) No. 1 1222 of 1983. (Under Article 32 of the Constitution of India). Shanti Bhushan, Bashant Bhushan, Bohla Prasad Singh for the Petitioner.

Kapil Sibal, Additional Solicitor General, Ashok H. Desai, Solicitor General, Tapas Roy, Ratin Das and D.K. Sinha for the Respondent.

The Judgment of the Court was delivered by KANIA, J. Seth Mannalal Surana Memorial Trust is the owner of a building situate at 7/ID, Lindsay Street, Calcutta, one of the busiest streets in Calcutta

where the New Market is situated. The petitioner is the lessee of the said building from the said Trust. On February 25, 1958, a portion of the ground-floor premises in the said building admeasuring 4198 Sq. ft. (referred to hereinafter as "the said premises") was requisitioned by the Government of West Bengal under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, (hereinafter referred to as "the West Bengal Act"). The purpose for which the said premises were requisitioned was establishing the main showroom of West Bengal Handicraft Development Corporation Limited, a West Bengal Government Undertaking. The said show room is called "Manjusha" and has become a landmark in Calcutta. In *H.D. Vora v. State of Maharashtra and Others*, [1984] 2 SCC 337 this Court held that the provisions for, requisition could be resorted to only where premises were required for a temporary purpose but not where they were required for a permanent purpose. If premises were required for a permanent purpose, they have to be acquired in accordance with law. Following upon this decision, the petitioner filed the aforesaid Writ Petition No. 11222 of 1983 in this Court praying for a mandatory order directing that the premises should be derequisitioned and handed over to the petitioner. Certain interim applications were made in this Court and orders were passed thereon to which it is not necessary to refer in this Judgment.

By an order dated January 16, 1990, certain directions were given to respondent No. 4 in the writ petition. The relevant portion of the said order runs as follows:

"In view of the earlier orders, we direct respondent No. 4 to hand over the possession of the premises in question to the petitioner within nine weeks from today subject to their obtaining any order from the Calcutta High Court in the appeal pending in that Court against the decision of a learned Single Judge in W.P. No. 2063 of 1987 or acquiring any independent right to retain possession of the suit premises within that period.

It is contended by Shri Shanti Bhushan, learned counsel for the petitioner that as the respondents have not succeeded in obtaining any order from the Calcutta High Court in the said appeal or in acquiring any independent right to retain possession of the said premises within the period of nine weeks from January 16, 1990, as set out in the said order, they were bound to hand over the possession of the said premises to the petitioner and have committed contempt as they have deliberately failed to do so.

We find that it is not possible to accept the submission set out hereinabove. On February 21, 1990, the Government of West Bengal issued a notification under section 4 of the Land Acquisition Act as applicable to the State of West Bengal, declaring its intention to acquire the said premises. On February 27, 1990, the said declaration was duly published. By the beginning of March 1990 the declaration under section 6 of the Land Acquisition Act in respect of the said premises was duly made and published and on 1st of March, 1990 the Government of West Bengal authorised the First Land Acquisition Collector to take possession of the said premises under section 17(1) of the Land Acquisition Act. Public notices were given on 9th March, 1990. A few days later, the trustees of the said trust which owned the said building filed a writ petition in the Calcutta High Court challenging the validity of

the acquisition proceedings in respect of the said premises which had been initiated consequent upon the amendment of the Land Acquisition Act as applicable to the State of West Bengal and on 20th March, 1990, the Calcutta High Court directed the status quo to be maintained regarding possession. It is clear that unless the said order dated March 20, 1990, is vacated, it is not possible for the respondents to proceed with the acquisition and acquire title to the premises. The contention of the learned counsel for the petitioner is that the acquisition is patently bad in law as it is not open to the Government to acquire the said premises on the ground-floor of the said building without acquiring the corresponding area on the upper floors. It was submitted by him that such acquisition would be clearly bad in law in spite of the amendment carried out to the provisions of Land Acquisition Act as applicable to the State of West Bengal by the insertion of Section 49 A therein by Land Acquisition (West Bengal Amendment) Act, 1986, which came into force on February 14, 1990, after obtaining the consent of the President of India. Section 49A permits acquisition of a part of a house. In our view, the question whether the acquisition is valid or not is pending for decision in the Calcutta High Court in the said writ petition filed by the said trust as owner of the building challenging the validity of the said amendment.

In our opinion, before a party can be committed for contempt, there must be a wilful or deliberate disobedience of the orders of the Court. In the present case, we do not find that any such wilful or deliberate or reckless disobedience of our order dated January. 16, 1990, has been committed by the respondent to the contempt petition. Hence, the contempt petition is dismissed. There will be no order as to costs.

We hope that the Calcutta High Court will be able to dispose of the said writ petition challenging the validity of the said amendment as early as possible.

Interlocutory Application No. 1 of 1990 in writ petition No. 11222 of 1983 is not pressed and is allowed to be withdrawn with liberty to renew the same if any occasion arises. Although we are of the view that the respondent has not committed

contempt, we do realise that in case the petitioner succeeds in the writ petition, the respondent would have remained in possession of the said premises for a long time after they should have handed over the possession of the same to the petitioner. We find that the respondent has already been directed to pay compensation for the use of the said premises at the rate of Rs. 15,000 per month by an order of this Court passed over two years earlier. We direct that the respondent shall deposit, in addition, an amount of Rs. 10,000 per month commencing from 1st October, 1990, in the Court, the first of such deposits to be made on or before 20th October, 1990, and deposits for each succeeding month to be made by 15th day of each succeeding month. The amounts deposited shall be invested by the Registrar-General at suitable intervals in a nationalised bank in fixed deposit after consulting the parties.

P.S.S.