

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 5th May, 2015

+ LPA 230/2015 & C.Ms.No.6943/2015 (for condonation of delay in filing the appeal), 6942/2015 (for stay), 6945/2015 (for filing addl. docs.), 6947/2015 (for condonation of delay in re-filing).

**GENERAL MANAGER NORTHERN
RAILWAY & ANR**

..... Appellants

Through: Mr. Om Prakash & Mr. M.V. Singh,
Advs.

Versus

SHALAV RASTOGI & ORS

..... Respondents

Through: Mr. A.S. Chandhiok, Sr. Adv. with
Mr. Attin Chankar Rastogi, Adv.
Mr. Rakesh Mitta & Mr. Kamlesh
Anand, Adv. for R-2,3,5,6&7.
Mr. Yeeshu Jain, Adv. for R-3.
Ms. Manisha Agrawal Narain, Adv.
for R-4.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

Caveats No.361 & 362 of 2015

1. The counsel for caveator/respondent no.1 has appeared. The caveats stand discharged.

C.M.No.6944 & 6946 of 2015 (for exemptions).

2. Exemptions allowed subject to all just exceptions.
3. The CMs stand disposed of.

LPA No.230/2015.

4. This intra-court appeal impugns the judgment dated 27th January, 2015 of the learned Single Judge in W.P.(C) No.5744/2014 filed by the respondent no.1.

5. The respondent no.1 appears on caveat and the counsels for the respondents no.2,3,5,6 &7 Govt. of National Capital Territory of Delhi (GNCTD) and its officials, respondent no.4 Land & Development Officer, Union of India appear on advance notice and we, with the consent of the counsels condone the delay in filing and re-filing of the appeal and have heard the appeal finally.

6. The respondent no.1 filed the writ petition from which this appeal arises pleading/contending, (i) that his grandfather Shri Niadar Mal was the owner of property No.97, Daryaganj, Delhi which was requisitioned under Section 75-A of the Defence of India Rules, 1939 vide Order dated 9th June, 1945 and handed over to the Northern Railways; (ii) that though on

representations of his predecessors, the Collector, Delhi as far back as on 3rd August, 1956 asked the Northern Railways to take action regarding de-requisitioning of the property but the property was not de-requisitioned; (iii) on the contrary the Notifications dated 6th March, 1987, 10th March, 1987 and 12th March, 1987 under Section 4 of the Land Acquisition Act, 1894 were issued for acquiring the said property; (iv) he filed W.P.(C) No.900/1987 and vide judgment dated 27th May, 2004 wherein the said Notifications were quashed; (v) that he continued to represent to the Railways to vacate the said property; and, (vi) that the property stood released from requisitioning vide Section 6 (IA) of the Requisitioning and Acquisition of Immovable Property Act, 1952 (The 1952 Act) but still had not been vacated.

Accordingly, the reliefs of a mandamus directing appellants and the other Governmental Agencies impleaded as respondents no.2 to 7 herein, to forthwith release the property from requisitioning and hand over possession thereof to the respondent no.1 / writ petitioner and of appointment of an Arbitrator to determine the damages and compensation for unauthorized and illegal occupation of the property, were claimed.

7. The appellant Railways filed a counter affidavit to the writ petition pleading, (i) that the property was never requisitioned by Railways and

Railways was occupying the subject property for residential purpose of its staff, in the capacity of a lessee under the Delhi Administration; (ii) that the Railways had given on lease property No.1 Rajpur Road, New Delhi to Delhi Administration in the year 1945; iii) since the Delhi Administration was using property No. 1 Rajpur Road, New Delhi of the appellant Railways, it requisitioned the subject property and handed it over to the Railways; (iv) that the rent of the subject property payable by the Railways to Delhi Administration was set off against the rental of property no. 1 Rajpur Road, New Delhi payable by the Delhi Administration to the Railways; (v) that Railways had always been ready and willing to handover the possession of the subject property to the Delhi Administration but Delhi Administration had never come forward to handover possession of the property at 1 Rajpur Road, New Delhi to the Railways; (vi) that Railways shall abide by the orders of the Court for swapping of the properties; and, (vi) that thus the Railways were not, responsible for any suffering caused to the respondent no.1/writ petitioner, or concerned with the requisitioning or de-requisitioning of the property.

8. The Delhi Administration also filed a short affidavit in response to the writ petition pleading, (i) that the allegations in the writ petition were against

the Railways and the Railways was also in possession of the property; (ii) that the record pertaining to the property being old was not available; (iii) that though Railways on request had furnished documents to show that the subject property was handed over to Railways in lieu of the property at 1 Rajpur Road, New Delhi but it was not so clear therefrom; and, (iv) that the Rajpur Road property had been leased to Delhi Administration way back in the year 1939.

9. It appears that under directions of the learned Single Judge, Delhi Administration and Railways tried to settle their claims with respect to the two properties but without any success. The appellant Railways filed another affidavit before the learned Single Judge seeking composite order for vacation of Rajpur Road property against the order of vacation of the subject property.

10. In the aforesaid state of affairs, the learned Single Judge has vide the impugned judgment directed the appellant Railways to handover peaceful and vacant possession of the subject property to the respondent no.1/writ petitioner within six months. However qua the relief of appointment of Arbitrator to determine damages for use and occupation, liberty has been

given to the respondent no.1/writ petitioner to seek remedy before appropriate Forum in appropriate proceedings.

11. The appellant Railways, in the memorandum of appeal have contended, (a) that the appellant Railways cannot be directed to hand over possession of the subject property to the respondent No.1 / writ petitioner inasmuch as the appellant Railways having been put into possession of the subject property by the Delhi Administration, can at best be directed to put back Delhi Administration into possession of the property; (b) that before the appellant Railways can be directed to so put back Delhi Administration into possession of the property, Delhi Administration also ought to be directed to put back the appellant Railways into possession of its property at Rajpur Road; (c) that the lease of the land underneath the property, as per the copy thereof filed by the respondent No.1 / writ petitioner himself, is in the name of L. Jwala Prashad, Son of R. Girvar Lal Vaish and not in the name of Sh. L. Sohan Lal Niader Mal as claimed by the respondent No.1; (d) that without it being determined as to who presently is the lawfully declared legal heir of the subject property and to whom the Delhi Administration is under a lawful duty and obligation to return possession of the property, there can be no direction for delivery of possession of the property to the

respondent No.1 / writ petitioner; (e) that without the respondent No.1 / writ petitioner establishing that he is the sole surviving legal successor of the owner of the property from whom the property was requisitioned, he is not entitled to be put back into possession of the property.

12. We have heard the counsel for the appellant Railways and the senior counsel for the respondent No.1 / writ petitioner.

13. The respondent No.1 writ petitioner along with the petition has filed (i) a true copy of the requisitioning order dated 9th June, 1945 for “97, Darya Ganj, Delhi owned by L. Sohan Lal Niader Mal and issued by the Collector”, requisitioning the said property under Section 75-A of the Defence of India Rules and directing that its possession be rendered to the Divisional Superintendent, Northern Railway and forbidding the owners from alienating the property in any manner whatsoever; (ii) a copy of the letter dated 17th November, 1971 of the Officer Incharge (Requisition) in the office of the Collector, Delhi to one Sh. Jagdish Kumar Rastogi on the subject of “de-requisitioning of house No.97, Darya Ganj” and informing that the General Manager (Engineering), Northern Railways has been requested to return possession of the subject property and that necessary action for de-requisitioning of the property will be taken as soon as the

vacant possession of the subject property is given by the railway authority;

(iii) a copy of the order dated 12th May, 2014 in W.P.(C) No.2982/2014 earlier filed by him seeking release of the subject property from requisitioning and which petition was disposed of with the direction to the Union of India, Ministry of Railways to dispose of the representation of the respondent No.1 / writ petitioner.

14. The plea of the respondent No.1 / writ petitioner supported by the documents aforesaid is of the property having been requisitioned as aforesaid. The Delhi Administration in the affidavit dated 21st October, 2014 of its Sub-divisional Magistrate, Civil Lines, filed in response to the writ petition stated that the records of the property in question were not available but from the documents made available by the respondent No.1 / writ petitioner, it transpired that the property had been requisitioned as aforesaid. The appellant Railways in its counter affidavit to the writ petition however admitted requisitioning of the property on 9th June, 1945.

15. It has thus been established that the property was requisitioned on 9th June, 1945 under Section 75-A of the Defence of India Rules.

16. The Parliament enacted the 1952 Act to provide *inter alia* for requisitioning of immovable property for the purpose of the Union. The said Act, vide Section 24 thereof repealed the Requisitioned Land (Continuance of Powers) Act, 1947, the Delhi Premises (Requisition and Eviction) Act, 1947 and the Requisitioning and Acquisition of Immovable Property Ordinance, 1952. Section 23 of the Act provides that all immovable property which purports to have been requisitioned by a State Government for any public purpose, being a purpose of the Union, under any Provincial or State Act and which immediately before the 25th January, 1952, was used or occupied by the Central Government shall, as from that date, be deemed to be property duly requisitioned under Section 3 of the said Act. It has been held in ***Harinarayan Vs. Union of India*** AIR 1961 Pat. 463 and ***Ramkumar Liladhar, Firm Vs. State of Orissa*** AIR 1967 Orissa 142 that property requisitioned under Rule 75-A of the Defence of India Rules, owing to Sections 23 and 24 is deemed to have been requisitioned under the said Act.

17. Though we asked the counsel appearing for Delhi Administration today also whether they admit that the subject property was so requisitioned, but they could not reply. Thus we have to proceed on the premises that the subject property is a requisitioned property under the 1952 Act.

18. Once it is so, then as per Section 6(1A) of the said Act, the same being a property requisitioned before the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970, the requisitioning thereof came to an end on 10th March, 1987. There can thus be no justification for holding on to the possession of the property thereafter.

19. We do not find any merit in the second of the aforesaid three grounds in the memorandum of appeal i.e. of the appellant Railways being not required to deliver possession of the property without the property of the appellant Railways stated to be in possession of the Delhi Administration being returned to the appellant Railways. That matter is extraneous to the claim for delivery of possession of the property upon de-requisitioning thereof coming to an end and cannot be linked to delivery of possession of the subject property. The appellant Railways, if at all considers itself entitled to possession of its property, then has to take appropriate steps in that regard and cannot on the said ground delay or continue to hold the possession of the property.

20. We however find merit in the first and the third grounds urged by the appellant Railways and to that extent we find the impugned judgment to be

unsustainable. The appellant Railways have no privity with the respondent No.1 / writ petitioner and as per the respondent No.1 / writ petitioner, the property was not requisitioned by the appellant Railways. The appellant Railways cannot thus be directed to deliver back the possession of the property to the respondent No.1 / writ petitioner. The liability of the appellant Railways to deliver back the possession can only be qua Delhi Administration which had requisitioned the property.

21. As far as the Delhi Administration is concerned, Section 6(2) of the 1952 Act provides that where any property is to be released from requisition, “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. It is only such delivery of possession which under Section 6(3) shall discharge the Delhi Administration from all liability in respect of the property. Unless the said procedure is followed, in the event of any other person making a claim with respect to the property, Delhi Administration shall be liable therefor even if were to hand over

possession to the respondent No.1 / writ petitioner under directions of this Court as has been directed by the learned Single Judge.

22. We, neither in the pleadings nor in the documents find any case to have been made out of the person from whom the possession of the subject property at the time of requisition was taken or of the respondent No.1 / writ petitioner being the sole successor in interest of such person, to be entitled to a direction to be put back into possession. Moreover, the said decision has to be of the competent authority under the 1952 Act and not of the Court. No proceedings in this respect have been sought or are pleaded to have been taken and the Court ought not to in the first instance enter into the said inquiry. Competent authority under Section 2(b) of the 1952 Act has been defined as a person or authority authorised by the Central Government by notification in the Official Gazette to perform the functions of the competent authority under the Act.

23. However when we put so to the senior counsel for the respondent No.1 / writ petitioner, he stated that none else has come forward to claim possession of the property and there is no dispute as to who is entitled to possession and it is the respondent No.1 / writ petitioner alone who has been

pursuing the matter and therefore the aforesaid provisions of 1952 Act quoted by us hereinabove are not applicable.

24. We are unable to agree. First of all, as aforesaid, the decision in this regard has to be taken by the competent authority under the 1952 Act and this Court would not substitute itself for the competent authority.

25. Secondly, merely because the respondent No.1 / writ petitioner has been pursuing the matter would not mean that he alone is the sole successor in interest of the person from whom possession of the property at the time of requisition was taken. It is well nigh possible that the actual / real successors in interest of the person from whom the possession was taken, or if there are other successors in interest besides the respondent No.1 / writ petitioner have not taken any step. However that would not extinguish their rights. It is generally seen that all such persons become aware / come alive when possession of the property is returned and unless the procedure prescribed in the 1952 Act for return of possession of the requisitioned property is followed, the Delhi Administration would remain liable for damages / compensation to such persons who may be actually entitled to the possession, for wrongfully delivering the possession to the respondent No.1 / writ petitioner, even if under direction of Court.

26. This Court in *Mushtaq Ahmed Vs. Union of India* AIR 1972 Delhi 20 has held that Section 6(2) of 1952 Act enjoins a duty on the Competent Authority to deliver possession of the de-requisitioned property as far as practicable to the person from whom the same was taken at the time of requisition or to the successor-in-interest of such person. It was further held that the intention of these provisions is that on derequisition the status-quo ante as it existed on the date of requisition should be restored.

27. We are thus of the opinion that the property having stood released from requisitioning, though possession thereof has to be delivered but only by following the procedure prescribed under the Act and not in the manner directed by the learned Single Judge.

28. The senior counsel for the respondent No.1 / writ petitioner states that the respondent No.1 / writ petitioner has already been deprived of the property for long despite requisition thereof having come to an end way back in the year 1987 and if an inquiry is ordered that may further delay the return of possession.

29. All that we can say is that it is the respondent No.1 / writ petitioner who has not followed the correct procedure. He kept on claiming back the

possession from the appellant Railways rather than approaching the competent authority under the 1952 Act for being put back into possession on the requisition of the property having come to an end. Moreover, the learned Single Judge has already granted time till 26th July, 2015 to the appellant Railways to vacate the property and we are confident that the proceedings for determining the person to whom possession of the property is to be returned can be completed before that date.

30. The senior counsel for the respondent No.1 / writ petitioner has repeatedly urged that the appellant Railways be directed to hand over the possession to Delhi Administration and the respondent No.1 / writ petitioner will take back the possession of the property from Delhi Administration. We are afraid, the Delhi Administration even if it wants, cannot adopt the aforesaid procedure without complying with the procedure prescribed under the 1952 Act. We are also of the view that no purpose would be served in directing the appellant Railways to deliver back the possession to the Delhi Administration even if the inquiry into the person who is to be put back into possession is to take some time. It is often found that the property when lying vacant, becomes subject of encroachment etc.

31. We therefore partly allow this appeal and modify the impugned judgment dated 27th January, 2015 by directing the Competent Authority under the 1952 Act of the Delhi Administration to immediately commence proceedings for determining the person to whom the possession of the property No.97, Darya Ganj, New Delhi, requisition whereof has lapsed, is to be handed over and by further directing that after determining the aforesaid, the possession of the property be handed over by the appellant Railways to Delhi Administration and on the same day by the Delhi Administration to the person so found entitled to receive possession of the property. The said inquiry be done preferably on or before 26th July, 2015.

The appeal is disposed of. No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MAY 05, 2015
'pp/gsr'