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

+ **W.P.(C) 4256/2015 and CM APPL. 15937/2015 (interim direction)**

RAKESH SEKSARIA & ORS.

..... Petitioners

Through: Mr.P.S.Patwalia, Sr.Advocate with
Mr.Rajshekhar Rao and Mr.Jai Sahai
Endlaw, Advocates.

versus

THE UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Ajay Digpaul, CGSC with
Mr.Soumaua Karmakar, Advocate for
UOI.
Mr.Kapil Sibal, Sr.Advocate with
Mr.Karan Bharihoke, Ms.Anusha
Nagarajan and Ms.Zehra Khan,
Advocates for R3.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

JUDGMENT

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31.07.2019

Dr. S. Muralidhar, J.:

1. The four children of late Shri Radheshyam Makhanilal Seksaria have filed this writ petition praying *inter alia* that a direction should be issued to the Union of India and the Ministry of Urban Development ('MOUD') (Respondent No.1) to derequisition the immovable property at No.3, Man Singh road, New Delhi (hereafter 'the property in question') under Section 6 (2) of the Requisitioning and Acquisition of Immovable Property Act, 1952

(‘the 1952 Act’) and hand over its possession to the Petitioners. The further prayer is for a direction to the Respondents to determine and pay compensation with interest under Section 9 of the 1952 Act till 10th March, 1987 and mesne profits with effect from 11th March, 1987 till the date of handing over of possession.

2. It must be noted at this stage that pursuant to an order dated 4th April, 2016 passed by this Court, the State of Punjab was impleaded as Respondent No.3 to the present petition. Respondent No.2 is the Director of Estates in the MOUD.

3. The background facts are that the predecessor-in-interest of the Petitioners late Shri Radheshyam Makhanilal Seksaria is stated to have purchased the property in question from the late Maharaja Paramjit Singh, a former Ruler of the Kapurthala State, by a registered sale deed dated 10th January, 1950 for a consideration of Rs.1.5 lakhs. Kapurthala was a sovereign state till its merger with the Patiala and East Punjab States Union (‘PEPSU’) and the subsequent merger of PEPSU into the Dominion of India.

4. Soon after the aforementioned purchase took place, a notice of requisition dated 29th March, 1950 was issued under the Delhi Premises (Requisition and Acquisition) Act, 1947 (hereafter ‘the 1947 Act’). Subsequently on 17th June, 1950 an order was passed under Section 3 of the 1947 Act requisitioning the property in question. It is not in dispute that on 4th December, 1950 the Government of India took possession of the property in question from late Shri Seksaria.

5. The 1947 Act was repealed by the 1952 Act. Under Section 24 of the 1952 Act, properties that had been requisitioned under the 1947 Act were deemed to have been requisitioned under the 1952 Act.

6. According to the Petitioners, when negotiations for payment of rent were going on between the Government of India and late Shri Seksaria, the Government of India claimed that the property belonged to the State of PEPSU, later State of Punjab, and refused to pay rent to late Shri Seksaria for use of the property. This led late Shri Seksaria to file a suit in the District Court, Delhi on 11th May 1960 for declaration of his title to the property. The aforementioned suit was subsequently transferred to this Court and renumbered as Suit No. 654 of 1967.

7. During the pendency of the aforesaid suit, Shri Seksaria expired and the present Petitioners were substituted as Plaintiffs in their capacity as his legal representatives. In terms of Section 6 (1A) of the 1952 Act, a property requisitioned thereunder before the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970, shall be released by the Government of India from requisition 'on or before the expiry of a period of 17 years from such commencement.' In terms thereof, on 10th March, 1987 the requisitioning of the property came to an end. The case of the Petitioners is that in terms of Section 6 (2) of the 1952 Act, upon release of the property from requisition, possession thereof had to be handed over 'as far as practicable' to the 'persons from whom possession was taken' at the time of requisition or 'to the successors-in-interest of such persons.' According to the Petitioners, instead of restoring possession of the property

in question to them, Respondent No.1 allotted it to the State of Punjab on payment of a token rent of Rs.1 per month.

8. In the above circumstances, Smt. Draupadi Devi the mother of the present Petitioners and the widow of late Shri Seksaria along with the present Petitioners filed a writ petition being CWP No. 1612 of 1987, in this Court for a mandamus to Respondents to hand over possession of the property in question to the Petitioners. Meanwhile, on 12th April, 1989 a learned Single Judge of this Court decreed the Suit No. 654 of 1967 in favour of the Plaintiffs. It was held that possession of the property in question should be handed over only to the Plaintiffs, upon the property being derequisitioned by the Government of India.

9. Aggrieved by the aforementioned judgment dated 12th April, 1989 the State of Punjab filed an appeal being RFA (OS) No. 19 of 1989 on 1st July, 1989 in this Court. This appeal was heard along with CWP No. 1612 of 1987 by a Division Bench (DB) of this Court. The DB pronounced its judgment on 8th December, 2000 allowing the appeal of the State of Punjab. The DB held that the Plaintiffs had no right at all in the property in question.

10. On the same date, CWP No. 1612 of 1987 was dismissed by the DB by a separate order which reads as under:

“In the Writ petition the widow, son and daughters of Radheyshyam Makhanlal Seksaria, the plaintiff in the suit, prayed for the following reliefs:

‘1) Issue a writ of mandamus or such other writ direction or

order as may be deemed fit directing and commanding the respondents to give vacant possession of the said property No.3 Man Singh Road, New Delhi popularly known as Kapurthala House, New Delhi to the petitioners forthwith and without any delay:

2) Issue a writ of mandamus and or such other appropriate writ or direction commanding the respondents to determine and pay the upto date compensation for requisition of the said property to the petitioners immediately and forthwith along with compound interest @18% per annum:

3) Issue a writ of prohibition or such other writ/orders/direction as may deemed fit restraining the respondents from giving the possession vacant and/or legal of the said property to any other person/persons except to the petitioners:

4) Issue a writ of mandamus or such other appropriate writ/order/direction commanding the Respondents to pay to the petitioners or deposit in the court the compensation for retaining possession of the said property after 10.3.1987 at the rate of Rs.10,25,500/- per month and till the date of giving possession to the petitioners:

5) Issue such other writ direction or order as this Hon'ble Court deems fit in the facts and circumstances of the case:

6) Award costs of the petition to the petitioners."

2. The writ petition was presented on 18.5.1987.

3. The learned senior counsel Mr.Anil B. Diwan submitted that if this Court accepts the case of the Plaintiff (respondents in the appeal) the petitioners would be entitled to the reliefs prayed for in the writ petition.

4. In the light of the findings rendered by us in RFA (OS)

19/89 the plaintiff has no right at all in the suit property, the petitioners as legal representatives of the plaintiff in the suit, have absolutely no right to pray for issuance of writ of mandamus and other reliefs.

5. On the short ground, the writ petition is liable to be dismissed.

6. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs.”

11. Subsequently, on 9th February 2001 an application being CM No. 6039 of 2001 was filed in the dismissed writ petition where with reference to what is stated in para 3 of the above order dated 8th December 2000, the Petitioners expressed an apprehension that it might convey an erroneous impression as if it was a submission of counsel for the Petitioners that if the Petitioners failed in the suit then the writ petition also failed. The Petitioners contended that it was never their case that ‘the judgment in the suit and in the appeal arising therefrom would have any relevance on the questions involved in the writ petition.’ It was contended that the case of the Petitioners was that since possession of the requisitioned property was taken from them, they alone were entitled to receive possession as well as compensation, irrespective of the decision of the Court on the question of title to the property in question. It was stated in the application that the Petitioners were advised ‘to bring the aforesaid fact to the notice of the Hon’ble Court for appropriate orders.’

12. The above application was heard by the DB on 1st June, 2001 and was disposed of by the following order:

“CM 6039/2001 in CW 1612/87

The averments in the application as regards the stand of the learned counsel for petitioner/applicant are taken on record, which are in consonance with the written submissions submitted on behalf of the petitioner/ applicant.

No further order is required.

The application stands disposed of.”

13. The Petitioners challenged both the above orders dated 8th December 2000 of the DB allowing the appeal of the State of Punjab and dismissing the writ petition filed by the Petitioners by filing Civil Appeal Nos. 3861 of 2001 and 3862 of 2001 in the Supreme Court of India. Both appeals were dismissed by the Supreme Court by a common judgment dated 9th September, 2004 thus affirming the judgment of the DB.

14. In particular, the Supreme Court concurred with the DB of this Court that:

(i) the suit was barred under Article 363 of the Constitution and was accordingly not maintainable;

(ii) the decision of the Government of India not to recognise the suit property as private property of the Maharaja was taken some time in 1951 and yet the suit was filed only in May 1960. Under Article 120 of the Limitation Act, 1908 the suit was clearly barred by limitation.

(iii) At no point of time had the Maharaja put forward a claim to the Government of India that the property in question had ceased to be State

property and become his private property by reason of his Commands dated 1st February, 1940 and 11th August 1948. The Plaintiffs had failed to prove the two Commands relied upon to prove his title to the property in question, in accordance with law.

15. The Supreme Court in the same judgment separately dealt with the appeal against the dismissal of the writ petition and concluded that the decision of the DB to dismiss it ‘can hardly be faulted.’

16. The Petitioners filed two review petitions being Review Petition (C) 1886 of 2004 and 1915 of 2004, both of which were dismissed by the Supreme Court on 3rd November, 2004. Thereafter the Petitioners preferred curative petitions which were dismissed by the Supreme Court on 21st July, 2005.

17. The Petitioners contend that since no action was taken by Respondent No.1 to pass an order under Section 6 (1A) of the 1952 Act derequisitioning the property, they filed applications under the Right to Information Act, 2005 (‘RTI Act’). The Petitioners also claim that they had inspected the various available files of the Respondents at the different offices. It is claimed that the notings on the files indicated that even the Ministry of Law had in 1989 advised that in the event of derequisitioning the property in question its possession would have to be handed over to the persons from whom possession had been taken.

18. According to the Petitioners, armed with the information gathered by

them under the RTI Act they sent a representation on 17th November, 2014 to the Respondents, asking them to immediately comply with the provisions of the 1952 Act and hand back possession of the property in question. A reminder was sent on 17th December, 2014. The Petitioners have in the present petition set out the notings on the file of 1950 and an opinion of 1956. They contend that the Respondents were obliged to pass a statutory order in terms of Section 6 (1A) and Section 6 (2) of the 1952 Act.

19. As noticed earlier, initially only the MOUD and the Director of Estates were impleaded in the petition as Respondent Nos.1 and 2 respectively. Subsequently, by an order dated 4th April, 2016, the State of Punjab was added as the third Respondent. Pursuant thereto, the State of Punjab has filed a separate counter-affidavit opposing the reliefs prayed for in the petition.

20. This Court has heard the submissions of Mr. P.S. Patwalia, learned Senior Counsel appearing for the Petitioners, Mr. Kapil Sibal, learned Senior Counsel appearing for the State of Punjab and Mr. Ajay Digpaul, learned Central Government Standing Counsel appearing for Respondent Nos.1 and 2.

21. It is submitted by Mr. Patwalia that it is obligatory on the Government of India to release the property from requisitioning in terms of Section 6 (1A) of the 1952 Act on the expiry of the period of 17 years from the commencement of the requisitioning. Further, according to him, under Section 6 (2) of the 1952 Act possession of the property in question had

necessarily to be restored, upon its derequisitioning, to the Petitioners since possession was taken from their predecessor-in-interest.

22. It is pointed out by Mr. Sibal appearing for the State of Punjab that Section 6 (2) of the 1952 Act uses the words ‘as far as practicable.’ Rule 7 of the Requisitioning and Acquisition of Immovable Property Rules, 1953 (‘Rules’), sets out the procedure to be followed by the competent authority for the purposes of exercising the powers under Section 6 (2) of the 1952 Act. The factors required to be taken into consideration subsequent to the requisitioning include the change of ownership of the property. It is further submitted that there could be no recognition of private rights of the predecessor-in-interest of the Plaintiffs at the time of requisitioning of the property, which can be enforced under Section 6 (2) of the 1952 Act.

23. Mr. Digpaul, learned counsel for the Union of India supported the stand of the State of Punjab. He reiterated the averments in the counter-affidavit filed by the Union of India that by virtue of sovereign power under Article 363 of the Constitution, the Union Government had decided that the State of Punjab was the rightful owner of the property and that this was noted both in judgment of the DB as well as that of the Supreme Court.

24. The above submissions have been considered. The undisputed fact is that the Petitioners’ attempt at proving the title of their predecessor-in-interest to the property in question failed. The decision of the DB of this Court allowing the appeal filed by the State of Punjab and setting aside the decree of the learned Single Judge was affirmed by the Supreme Court. The finding

that the property in question was not the individual property of the Maharaja of Kapurthala, but the property of the Kapurthala State, which had upon becoming part of the Dominion of India devolved upon the State of Punjab and that, therefore, the State of Punjab was the owner of the suit property was declared conclusively by the DB of this Court and affirmed by the Supreme Court.

25. The Supreme Court, in particular, discussed Article 363 of the Constitution and took note of the fact that it was the sole prerogative of the Government of India to decide whether the disputed property was the private property of the Maharaja of Kapurthala or the property of the State of Kapurthala. The decision of the Government of India to the effect that it was the property of the State was held to be beyond the purview of challenge in any Court of law. The Supreme Court held as under:

“.... We are of the view that the issue as to whether the Government of India was obliged to recognize the private property of the ruler of Kapurthala, and whether, under the terms of the covenant (Article XII of the covenant), the ruler of Kapurthala was entitled to have it thus recognized are disputes which are clearly barred by Article 363 and the court had no Jurisdiction to decide the said issues”.

26. If the Maharaja of Kapurthala had no title to the property, then he could not have conferred valid title on the predecessor-in-interest of the Petitioners. The lack of title of the Petitioners to the property in question would obviously relate back to the date of the original sale deed under which such claim is being made. It was for this reason that the DB in its judgment dated 8th December, 2000 dismissing the writ petition observed that in view

of the finding rendered in the appeal ‘the Plaintiff has no right at all in the suit property, the Petitioners are legal representatives of the Plaintiff in the suit, have absolutely no right to pray for issuance of writ of mandamus and other reliefs.’ This finding too was affirmed by the Supreme Court.

27. It may be noted here that the prayers in CWP No. 1612 of 1987 of a mandamus to the Respondents to derequisition the property and hand over its possession to the Petitioners is repeated in the present petition. The objection raised by the State of Punjab that the principles of res-judicata would prevent the Petitioner from seeking the same relief after the earlier round of litigation is well founded. Nevertheless, on examining the issues raised by the Petitioners again, this Court for reasons stated below finds no merit in them.

28. Section 6 (2) of the 1952 Act reads thus:

“(2) Where any property is to be released from requisition, under sub-section (1) or under sub-section (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.”

29. This has to be read with Rule 7 (1) of the Rules, the relevant portion of which reads thus:

“7 (1) For the purpose of sub-section (2) of section 6 of the Act the competent authority may, if it considers it necessary so

to do, make or cause to be made by an officer empowered in this behalf by it, an enquiry to obtain information in respect of the following matters, namely:

(i) the name and address of the person from whom the property was requisitioned;

...

(vi) whether the owner of the property on whom the requisitioning order was first served, had sold the property and if so to whom;

(vii) in case the property has been sold whether the owner has sold all rights in respect of the property;

(viii) whether there is any objection to the property being de-requisitioned in favour of the owner from whom the property was requisitioned;

.....

(xi) the condition of the property at the time of requisition and whether the property is in as good a condition as it was when possession thereof was taken subject to change caused by reasonable wear and tear or irresistible force;

.....

(xiii) any other matter that the competent authority may consider necessary for the purpose of specifying the person to whom possession of the property may be given.”

30. The expression ‘as far as practicable’ in Section 6 (2) of the 1952 Act indicates that it is not mandatory that possession of the derequisitioned property should be restored only to the person from whom it was taken or the successors-in-interest of such person. The inquiry *inter alia* to be made by the Central Government in terms of Section 6 (2) read with Rule 7 of the Rules has necessarily to account for the developments touching on the status of ownership of the property subsequent to the Central Government taking

possession of the property. Rule 7 (xiii) of the Rules is intended to cover a situation like the present where after possession was taken of the property in question from late Shri Seksaria, his lack of title to the property has been conclusively decided by court orders.

31. With the lack of title of late Shri Seksaria, the predecessor-in-interest of the Petitioners, to the property in question being conclusively settled by the Supreme Court, the question of restoring possession of the said property to the Petitioners, upon its derequisitioning does not arise. The Central Government having recognised that the property belongs to the State of Punjab and with the State of Punjab being in occupation of such property, there is equally no question of that position being altered by an order of this Court. In other words, in the above circumstances, there is no question of this Court, at the instance of the Petitioners, issuing any mandamus to the Union of India to exercise its powers under Section 6 (1A) read with Section 6 (2) of the 1952 Act to derequisition the property and hand over its possession to the Petitioners.

32. Mr. Patwalia's plea that the notings on file supported the case of the Petitioners has only to be noted to be rejected. It is well settled that mere notings on file do not represent the final decision of the concerned authority; and that unless the decision taken is approved and communicated in a manner recognised by law, it is not actionable. In this context, the following observations of the Supreme Court in *Pimpri Chinchwad New Township Development Authority v. Vishnudev Cooperative Society (2018) 8 SCC 215* are relevant:

“36. A mere noting in the official files of the Government while dealing with any matter pertaining to any person is essentially an internal matter of the Government and carries with it no legal sanctity; Second, once the decision on such issue is taken and approved by the competent authority empowered by the Government in that behalf, it is required to be communicated to the person concerned by the State Government. In other words, so long as the decision based on such internal deliberation is not approved and communicated by the competent authority as per the procedure prescribed in that behalf to the person concerned, such noting does not create any right in favour of the person concerned nor it partake the nature of any legal order so as to enable the person concerned to claim any benefit of any such internal deliberation. Such noting(s) or/and deliberation(s) are always capable of being changed or/and amended or/and withdrawn by the competent authority.”

33. For the aforementioned reasons, the Court finds that the prayers in the present petition cannot be granted. The petition is dismissed but, in the circumstances, with no order as to costs. The pending application also stands disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 31, 2019

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