REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1460/2010

B. K. RAVICHANDRA & ORS. **...APPELLANT(S)**

VERSUS

UNION OF INDIA & ORS. **...RESPONDENT(S)**

J U D G M E N T

S. RAVINDRA BHAT, J.

1. This appeal by special leave questions a judgment of the Karnataka High Court[1]. The High Court rejected the appellants' claim to direct the respondent (hereafter called "the Union") to vacate their lands, leaving it open to the latter to initiate appropriate proceedings for acquisition of certain lands (which belonged to the appellants).

2. Parliament, in exercise of the powers conferred upon the Union, enacted the Requisitioning and Acquisition of Immovable properties Act, 1952 (hereafter called "the Requisitioning Act"). It was brought into force on 15.03.1952.[2] The object of the Act was to enable the Union to requisition or acquire immovable property if the competent authority was of the opinion that any property was necessary for a public purpose. By Section 1(3), the Requisitioning Act was to be

[1] Dated 11.01.2008 in W.P. 8340/2006

[2] By virtue of Section 1(3), the Act was initially temporary, and to remain in force for six years.

in force for six years. Section 3 clothed the Union with the power to requisition properties for any public purpose; Section 7 provided the procedure to requisition (or acquire) lands. It also spelt-out the condition precedents for exercise of the power. Section 8 provided for compensation with regard to property. Section 8(2) laid out the principles applicable for determination of compensation for the property as a recurring one[3]. On 27.02.1958, the Requisitioning Act was amended and the period of its operation extended. In the meanwhile, the Defence of India Act, 1962 (hereafter referred to as "the DIA") was enacted by Parliament empowering the Central Government with powers akin to those enacted under the Requisitioning Act. The Union invoked its powers under the DIA and requisitioned the three described properties which belonged to the predecessor of the appellants (hereafter referred to as "the suit lands"). These comprised of Survey Nos. 101/1 & 101/2 - the two survey numbers aggregating 2 acres 39 guntas and Survey No.104 (2 acre 8 guntas) in Byppanahalli, Bangalore South Taluk. The then owner, i.e. late B.M. Krishnamurthy, the appellants' predecessor handed over the possession of the suit lands under protest; these were taken over under Section 30 of the DIA. The competent authority fixed the compensation for these lands by order dated

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[3] Section 8(2) (a) provided *inter alia,* as follows:

"a recurring payment in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for the period."

Section 8 (2) (b) provided for payment of

(b) such sum or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely:

(i) pecuniary loss due to requisitioning;

(ii) expenses on account of vacating the requisitioned premises;

(iii) expenses on account of reoccupying the premises upon release from requisition; and

(iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.

18.12.1964. The approval for this compensation fixation was given much later - in 1968.

3. By Act 48 of 1963, Section 1(3) of the Requisitioning Act was amended, and the period of operation of the Requisitioning Act was extended till 14.03.1970. In the meanwhile, the DIA lapsed with effect from 10.01.1968. The Requisitioning Act was amended, incorporating Section 25, which enacted that the immovable property requisitioned under the DIA, which had not been released as on 10.01.1968 was deemed to have been requisitioned under the Requisition Act. It also continued the *status quo* with respect to determination of compensation completed under the DIA. This Amendment Ordinance was replaced by an actual amendment, to the Requisitioning Act. The Requisitioning Act was again amended in 1970[4], to delete Section 1(3) of the main Act. The Amendment Act also enabled requisitioning of property and stated that requisitions were to be continued and were to be released after 12 years (subsequently the period of 12 years was extended to 17 years)[5].

4. In late 1972, the predecessor of the appellants felt that the compensation fixed for the suit lands was inadequate and applied for enhancement. This was in

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[4] Act 1 of 1970. The effect of this amendment Act was to change the temporary character of the legislation.

[5] Section 6(1A) reads as follows:

" 6. Release from requisitioning.—(1) The Central Government may at any time release from requisition any property requisitioned under this Act and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force:

Provided that where the purposes for which any requisitioned property was being used cease to exist, the Central Government shall, unless the property is acquired under section 7, release that property, as soon as may be, from requisition.

[(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 (1 of 1970), on or before the expiry of a period of [seventeen years] from such commencement;"

terms of the amendment of 1970 (because the land requisitioned in 1963 was deemed to have been continued by the Act of 1968). As required by Section 8 of the Requisitioning Act, this dispute was referred to an arbitrator under Section 8(2). The reference made was in respect of the amount of compensation payable, the recurring payments in respect of the periods of requisition and the sums equal to the rent that would have been payable for the occupation and use of the property and other sums towards 4 years of losses, i.e. pecuniary loss expense on account of the vacating of the requisitioned premises, expenses on account of re-occupying of premises after release from acquisition and damages other than normal repairs. At that point in time, Section 6(1A) contemplated retention of property for a total period of 3 years. Therefore, the recurring payment was in respect of a short duration. The period of requisition under Section 8(2A)[6] for the

[6] "Section 8(2A) reads as follows:

The recurring payment, referred to in clause (a) of sub-section (2), in respect of any property shall, unless the property is sooner released from requisition under Section 6 or acquired under Section 7, be revised in accordance with the provisions of sub-section (2-B)—

(a) in a case where such property has been subject to requisition under this Act for the period of five years or a longer period immediately preceding the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1975—

(i) first with effect from the date of such commencement, and

[(ii) secondly with effect from the expiry of five years, and thirdly with effect from the expiry of ten years, from such commencement;]

(b) in a case where such property has been subject to requisition under this Act immediately before such commencement for a period shorter than five years and the maximum period within which such property shall, in accordance with the provisions of sub-section (1-A) of Section 6, be released from requisition or acquired, extends beyond five years from such commencement,—

(i) first with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under Section 4, and

[(ii) secondly with effect from the date of expiry of five years, and thirdly with effect from the date of expiry of ten years, from the date on which the revision made under sub-clause (i) takes effect;]

[(c) in any other case,—

(i) first with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under Section 4, and

(ii) secondly with effect from the date of expiry of five years, and thirdly with effect from the date of expiry of ten years, from the date on which the revision under sub-clause (i) takes effect.]

purpose of compensation determination was, during the pendency of the reference, increased to five years.

5. The reference was notified in a Gazette notification published by the Central Government. On 17.07.1975, the Arbitrator pronounced an Award which determined compensation as 6% per annum on the capital value of land, assessed at ₹ 3 per square foot accepting the land requisitioned to be in Survey nos.103/2 and 104 in Byppanahalli. The Central Government had, in the arbitration proceeding, contended that the suit lands had also been acquired by virtue of a prior notification. The arbitrator considered this contention too and after examining the award of the LAC held:

> *"From the evidence of RW-2 and also from the copy of the Ex-R-13 and possession certificate as per Ex.R-14, it is established that 24 guntas and 29 sq. yards of land in S. No.103/2 and 8 guntas of land and 22 yards of land in S. No.104 of Byyappanahali were acquired for the purpose of NGEF and possession was taken by NGEF deducting the said acquired portion of the land in S. No.103/2 and 104 of Byyappanahalli the claimant would be the owner of the said lands in ARE No.72-73."*

6. In view of the evidence it was also held that the appellants' predecessor was entitled to receive compensation in respect of Survey No.104, deducting the portion of land acquired for the purposes of NGEF. This Award was made on 17.07.1975.

7. The Requisitioning Act underwent a further amendment[7]. Section 8(2B) stated that recurring payment would be revised by re-determining the amount[8].

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[7] Act 2 of 1975, which amended Section 6(1A) and substituted 10 years for the existing period for compensation determination. It also added Section 8(2A) by creating a deeming fiction that unless the property was released from requisition under Section 6 or duly acquired under Section 7, the recurring payment would be revised under provision of newly added sub-section (2B).

[8] Section 8(2B) reads as follows:

"(2B) The recurring payment in respect of any property shall be revised by re-determining such payment in the manner and in accordance with the principles set out in sub-section (1), read with clause (a) of sub-section (2),

As a consequence of this amendment of 1975, the recurring payment required to be determined and fixed under Section 8(2) had to be first decided and fixed with effect from the date of commencement of the Act and again with effect from the expiry of five years from the commencement of the amending Act. The amending Act came into force on 07.03.1975.

8. To continue the narrative, the arbitrator's award was appealed against by the UOI. The award had determined compensation in terms of the DIA and later – since it lapsed in 1968, also having regard to the principles spelt-out in Section 8 of the Requisitioning Act as amended. On 21.07.1978, the Central Government's appeal was disposed of in terms of a joint memo filed by the parties by which it was agreed that the matter with respect to determination of compensation would be remanded/remitted for fresh adjudication; however, the compensation fixation of 10.01.1968 was agreed to be final and binding. The only caveat added was that the question of maintainability of appeals under Section 11 of the Requisitioning Act was pending before this Court in certain proceedings. However, the parties agreed that till disposal of appeal by the arbitrator, the compensation fixed @ ₹ 3 per square foot would be operative. It was further agreed that in case the appeals were not held to be maintainable, the compensation fixed by the award was to be treated as final. But on the other hand, if the appeal was held to be maintainable, the arbitrator had to decide the fixation of compensation for the period prior to 10.01.1968.

9. By a judgment of this Court[9], it was held that an award covering the period of requisition can be challenged in appeal and that the award made under DIA was not appealable. Thus, the compensation fixation for the period upto

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as if such property had been requisitioned under this act on the date with effect from which the revision has to be made under such sub-section (2A)"

[9] *Special Military Estates Officer v. Munivenkataramiah and Anr.* 1990 (1) SCR 4

10.01.1968 in this case (when the requisition of suit lands was made under DIA) became final.

10. On 28.01.1985, in the second arbitration proceeding, based on the fixation of compensation till 10.01.1968, it was held that the fixation of compensation till 10.01.1968 had to be accepted and basic fixation of rent was to be increased for over 5 years thereafter. The arbitrator then proceeded to fix the rental compensation payable per square foot for 3 distinct periods, i.e. 10.01.1968 to 10.01.1973 (@ ₹ 4.10 per square foot); 10.01.1973 to 10.01.1975 (@ ₹ 5.40 per square foot) and 10.01.1978 to 10.01.1985 (₹ Rs.10.20 per square foot). The parties appealed against this judgment. By common judgment and order[10] in MFA 1405/1985, decided on 24.11.1994, a Division Bench of the Karnataka High Court noted that the issue as to the extent of land for which compensation had to be determined was one that required decision by the arbitrator. The High Court noted that there was no evidence to deduce whether notice under the Land Acquisition Act had been served, and that there was nothing to show when the award was made by the Collector, to support the Union's contention about the acquisition of certain portions of the suit land. These were, therefore, left for enquiry and fresh decision. The Court proceeded to decide on the issue of compensation and held that the agreed compensation in terms of the previous joint memo, i.e. for the period up to 10.01.1968 was final. The Division Bench further noted that the arbitrator was not bound to treat the amounts fixed for the period as on 10.01.1968 as the basic figure and proceed to increase the rent periodically. It was noted that the question of fixation for a period of five years arose after Section 8(2A) was introduced to the Requisitioning Act– thus the recurring compensation question had to be decided from 10.01.1968 and then

[10] Reported as *Union of India v B.M. Krishnamurthy* 1995 (4) KarLJ 607.

from the commencement of the Amendment Act and again from the expiry of that Act. It, therefore, held, upon a reading of Section 8(2A) that

> "*recurring compensation payable in this case from 10.01.1968 to the commencement of the amendment Act 2 of 1975 upto 07.03.1975 shall be fixed and for the period 07.03.1975 it should be done as indicated in Section 8(2A).* "

11. The award, therefore, was set aside and the matter was remitted for fresh consideration by the arbitrator. In this fresh (third) round, the arbitrator published two awards – one dealing with the extent of land, and the other the compensation payable. After examining all the evidence, including the documentary evidence, presented by the parties, as well as the oral testimony, i.e. the oral deposition on behalf of the UOI, it was held that Survey nos. 103/1 and 103/2 were not validly acquired by the Central Government and that Survey No.104 was validly acquired. The other award determined the land value and recurring annual value at different rates, which is set out below in a tabular form:

Sl. No.	Period	Rate (Capital value) (to be calculated for 2 acres 39 *guntas*)	Annual recurring rate
1.	10.1.1968 to 07.03.1975	₹ 1 per square foot	6% p.a.
2.	07.03.1975 to 07.03.1980	₹ 1.5 per square foot	6% p.a.
3.	07.03.1980-07.03.1985	₹ 5 per square foot	6% p.a.
4.	07.03.1985-07.03.1990	₹ 25 per square foot	6% p.a.
5.	07.03.1990-07.03.1995	₹ 45 per square foot	6.5% p.a.
6.	07.03.1995-07.03.2000	₹ 100 per square foot	6% p.a.

12. Aggrieved by the two awards, both dated 28.02.2000, the Union preferred an appeal (MFA 2220/2002) before the Karnataka High Court. During its pendency, the widow of the late BM Krishnamurthy and the present appellants, her children, filed a writ petition (WP 8340/2006) claiming that since the period of requisition had ended and the suit lands had not been acquired, the possession of the Union after 1987 was untenable in law. In a judgment delivered on 11.01.2008 (i.e. the same day when the impugned judgment was pronounced) the Division Bench of the Karnataka High Court rejected the contentions of the Union vis-a-vis its acquisition of suit lands, or any part thereof, and noted that the court was concerned *"only with Sy. Nos. 103/1 and 103/2 for the period between 1968 and 2000 and so far as Sy. No. 104 is concerned, between the period 1968 and 1977, as the portion of the land measuring 11985.24 square feet undisputedly came to be acquired".* It upheld the awards of the arbitrator fixing the compensation in 2000 and held that:

> *"Accordingly, in view of the discussion and reasoning stated above, we confirm the fact that neither Sy. No. 103/1 nor Sy. No. 103/2 ever came to be validly acquired by the authorities for the benefit of appellant herein. We hold the rental compensation computed by the arbitrator is just and proper."*

13. The Union sought special leave to appeal under Article 136 of the Constitution, against the said judgment dismissing its appeal[11]. By order dated 10.09.2010, that special leave petition was dismissed, keeping it open for the Union to acquire the property, in accordance with law. Thus, as regards the question of ownership and the rental payable till the period 07.03.2000, the issue attained finality. By the impugned judgment delivered 11.01.2008, the Division

[11] SLP (C) CC No. 12634/2008.

Bench after considering the records, dismissed the appellants' writ petition and held that

> *"It is also noticed from the records, originally the land in question came to be handed over to the defence authorities It is also noticed from the records, originally the land in question came to be handed over to the defence authorities by invoking the provisions of defence of India Act 1962 which act came to be repealed on 10.01.1968. By virtue of Section 25 of the Requisitioning Act, 1952, whatever has been done under the Defence Act of India, is presumed to have been done under the Requisitioning Act, therefore, u/s 6 of the Requisitioning Act, the authorities could not have held the property beyond 08.03.1987 at any cost. We say so because withing the said period, of 07.03.1987, apparently, there was no valid acquisition of properties by the concerned authorities as noted above.*
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> *It is also brought to our notice that though portions of land in different Sy. Numbers adjacent to these lands came to be acquired in the year 1972 and also on earlier occasions, such acquisitions never came to be challenged by the respective owners and the defence authorities continued to be in possession of those properties as beneficiaries after acquiring the said lands by the competent authority. We notice that from the contentions of the defence authorities right from 1941 till date, about 600 acres is in possession of them and some of the lands are acquired other than the lands in question. This Sy. No. 103 seems to be in the centre of that 600 acres on this vast area of 600 acres which is enclosed by a fence by the authorities. They have put up firing range, buildings, parade ground etc.*
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> *In that view of the matter, as we noted above already, at this late hour of the day, it would not be just and proper to direct the respondents to hand over the possession of those properties. In the connected MFA No. 2220/02, we have already approved the computation of rental compensation awarded by the arbitrator upto 07.03.2000. The petitioners are entitled to seek compensation for the subsequent period in accordance with law.*
>
> *The Respondents - defence authorities and the State Government are at liberty to initiate acquisition proceedings so far as these lands are concerned if they need in respect of property in Sy. No. 102/1 and 103/2 as well, for the benefit of the defence authorities."*

The contentions

14. Mr. Mohan Parasaran, the appellant's senior counsel, argued that having upheld the main contentions with respect to the ownership and title of the suit lands, the impugned judgment erred in law, in refusing to grant the reliefs claimed in the writ proceedings. It was argued that even if *arguendo* any acquisition notification had covered any period upto 1975, with the coming into force of the 1984 amendments to the Land Acquisition Act, a period of 2 years was statutorily granted by Parliament to complete the acquisition, i.e. to issue the award. Since concededly there was no award valid ever made by virtue of the operation of law, i.e. Section 11A[12], the question of ownership, which was decided by the arbitrator in the first and third award, became conclusive and binding. It was also urged that the directions of the earlier Division Bench ruling in *B.M. Krishamurthy*[13] were specifically to determine the extent of land acquired; in compliance, the arbitrator, in the third arbitration proceedings, by the first award, decided the extent of acquired land. Those findings of the arbitrator, rendered by virtue of the earlier remand, became final because the Union's appeal was rejected by the Division Bench. Further, the special leave petition against that judgment was rejected by this court.

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[12] Section 11A reads as follows:

"11A. Period shall be which an award within made. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

[13] Supra n. 10

15. It was argued that once the issue of ownership stood settled conclusively, the Union had to vacate the suit property, because its possession was not justified or authorized by law. Learned counsel relied on the ruling of this court[14] which held, recollecting an earlier judgment in *State of Haryana v Mukesh Kumar*[15] that the right to property is *"not only a constitutional or statutory right, but a human right".* This court quoted with approval earlier judgments, which had ruled that deprivation of possession of one's property without a law was untenable. It was argued that the determination of compensation was up to the period ending in 2000, i.e. 20 years ago. In the meanwhile, the value of property, as well as recurring value of compensation had risen astronomically as the suit lands had great commercial potential.

16. Mr. K.M. Natraj, learned Additional Solicitor General, urged this court not to interfere with the impugned judgment. According to him, the High Court correctly denied the claim to release of lands, since it was a dispute which had to be decided by the civil court. The learned ASG sought to argue that the findings with regard to extent of ownership were ambiguous and the courts committed errors in ignoring that the suit lands were acquired through notifications in 1941. Mr. Natraj contested the submission that the lands were unlawfully occupied, pointing out that the properties were requisitioned validly and that those orders were never questioned by either the predecessor of the appellants or them, in any properly instituted proceedings.

Analysis and findings

17. From the narration of events, it is clear that first, the suit properties were requisitioned in 1963, under the DIA. The amendment to the Requisition Act,

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[14] *Vidya Devi* v. *State of H.P.*2020 (2) SCC 569.

[15] 2013 (1) SCC 353

which enacted Section 25 in 1968, had the effect of creating a deeming fiction that requisitions under the DIA were deemed to be under the Requisitioning Act. Thereafter, due to successive amendments to the Requisitioning Act, the period of requisition continued; it finally ended in 1987. In the meanwhile, the original landowner, late Krishnamurthy, sought and was granted a reference to arbitration, on the issue of compensation payable. The first award made in 1975, decided both the question of extent of land requisitioned (and also the land owned by the landowner). The award was questioned, but the appeal was disposed of by the High Court on 21.07.1978, on the basis of a joint memo. The fresh determination which was made through the award dated 28.01.1985, again re-determined the compensation payable for the period after 1.10.1968, using the capital value fixed earlier as the basis. This led to the judgment of the High Court[16] which held that there was no evidence to support the Union's contention that some part of the suit lands had been acquired. However, on that question as well as the issue of basis for the recurring compensation (as well as its computation), the dispute was remitted. This time, the arbitrator rendered two awards- one, deciding the question of ownership or its extent and the second, on the question of compensation determination. The Union appealed to the High Court; that appeal[17] was dismissed by a judgment, delivered on the same day as the impugned judgment. The Union's special leave petition was dismissed 10 years ago (on 10.9.2010). This court left it open to the Union to take steps in accordance with law, with respect to the property. The impugned judgment too, held that the question of ownership had attained finality – and in favour of the appellants. That part of the judgment has not been appealed against by the Union.

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[16] Dated 24.11.1994

[17] MFA 2220/2002

18. The legal effect of requisitioning immovable property, it goes without saying, is that temporarily- i.e. for the period the requisition order is in operation, the owner loses her possessory rights, even though the title remains undisturbed. Since the deprivation of possession is through authority of law, in keeping with fair procedure, the law (in this case, the Requisitioning Act) provides for payment of compensation in accordance with predetermined principles. Yet, the taking of property by definition is finite: it cannot result in expropriation or deprivation of title altogether, unless another process for acquiring it, is initiated.

19. Whilst dealing with a similar enactment[18] this court, in *Grahak Sanstha Manch v. State of Maharashtra*[19] held through a Constitution Bench, that requisition, by its nature, is temporary and that the landowner's right to property cannot remain suspended indefinitely, at the wishes of the state or its agencies:

> ***"16.*** *We find ourselves in agreement with the view taken in the cases of Collector of Akola [(1968) 1 SCR 401 : AIR 1968 SC 244] and Jiwani Kumar Paraki [Jiwani Kumar Paraki v. First Land Acquisition Collector, (1984) 4 SCC 612] that the purpose of a requisition order may be permanent. But that is not to say that an order of requisitioning can be continued indefinitely or for a period of time longer than that which is, in the facts and circumstances of the particular case, reasonable. We note and approve in this regard, as did this Court in Jiwani Kumar Paraki case [Jiwani Kumar Paraki v. First Land Acquisition Collector, (1984) 4 SCC 612] , the observations of the Nagpur High Court in the case of Mangilal Karwa v. State of M.P. [ILR 1955 Nag 34 : AIR 1955 Nag 153] which have been reproduced above. That the concept of requisitioning is temporary is also indicated by the Law Commission in its Tenth Report and, as pointed out earlier, by the terms of the said Act itself, as it originally stood and as amended from time to time. There is no contradiction in concluding that while a requisition order can be issued for a permanent public purpose, it cannot be continued indefinitely. Requisitioning might have to be resorted to for a*

[18] The Bombay Land Requisition Act, 1948

[19] (1994) 4 SCC 192 at page 204

permanent public purpose, to give an example, to tide over the period of time required for making permanent premises available for it. The concepts of acquisition and requisition are altogether different as are the consequences that flow therefrom. A landlord cannot, in effect and substance, be deprived of his rights and title to property without being paid due compensation, and this is the effect of prolonged requisitioning. Requisitioning may be continued only for a reasonable period; what that period should be would depend upon the facts and circumstances of each case and it would ordinarily, be for the Government to decide."

20. When this court had to adjudicate, in *Rajendra Kumar Gupta v. State of U.P*[20] on somewhat similar facts, i.e. the requisition having been resorted to during a national emergency under the DIA, and its continuance under the Requisitioning Act, the question which arose was the continued possession by the state. The court held that such possession, long after the requisition period had ceased, was contrary to law and observed that:

"14. We, therefore, will have to examine the efficacy of the impugned order from the point of view of its prolonged duration uptil now which as seen earlier has been spread over more than two decades from the date on which it got its birth on 29-10-1976. For deciding this question we will assume with the respondents, for the sake of argument, that on the day on which it was passed it was validly passed under the provisions of Section 23. Even then the moot question still remains whether such an emergency order of requisition which might be justified in those days when it was passed could now be permitted to continue indefinitely. For answering this question we may usefully refer to the decision of the Constitution Bench of this Court in the case of Grahak Sanstha Manch [(1994) 4 SCC 192] . The Constitution Bench has in terms laid down that even though a requisition order can be issued for a permanent public purpose under the provisions of the Bombay Land Requisition Act, 1948 it cannot be continued indefinitely. We may usefully refer to the relevant observations made in this connection by Bharucha, J. speaking for the

[20] (1997) 4 SCC 511 at page 525

majority of the Constitution Bench, in paragraphs 16 and 17 of the Report: (SCC p. 204)

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We have already shown that in the context of the emergency provisions of the Act in question the powers which could be exercised for requisitioning properties under Section 23 by their very nature could not be utilised for requisitioning immovable properties for an indefinite period. Such requisition virtually amounts to acquisition. In the facts and circumstances of this case it must be held that when years back the parent Act had ceased to operate and the internal and external emergency declarations had stood withdrawn, now obviously there is no rhyme or reason why such a requisition order, which by efflux of time has become stale and its very purpose has become obsolete, should be permitted to be continued any further and the appellants' properties should be still permitted to remain requisitioned and in possession of the respondents. In the facts and circumstances of the case, therefore, it must be held that continued requisition of the appellants' leasehold premises by now at least must be treated to have become unreasonable and it would necessarily indicate abuse of power and a colourable exercise thereof. It must be held that the impugned requisition order even assuming that it was valid and kicking and was not stillborn when it was passed in 1976, by now it has lost its efficacy and has become a dead letter, in the present set of circumstances obtaining today. Even on this ground the continuance of the impugned requisition order cannot be sustained and has to be put an end to. The third point is also, therefore, answered in the affirmative in favour of the appellants and against the respondents.

15. In this connection we may also note that it is not the case of the respondents that now they require to acquisition the requisitioned premises on a permanent basis for the purpose for which they were initially requisitioned, by exercise of powers under Section 30 of the Act. In fact the said provision could have been pressed in service by Respondent 3, if at all, during the currency of the Act which provision is obviously not available to them now. Non-exercise of powers under Section 30 for acquiring these requisitioned properties during the time the Act was in force itself shows that even according to the respondents the Government did not require the said requisitioned land to be acquired for its purposes or that it was felt that the cost of restoration of the requisitioned property by the Government would be

excessive. During the pendency of these proceedings this Court had earlier directed by order dated 21-9-1984 that status quo will remain so far as the construction in any part of the open space is concerned. That status quo was continued by an order of 29-10-1984. However by a latter order dated 9-2-1987 while granting special leave this Court had refused to grant stay but had made it clear that the respondents will not be entitled to claim the benefit of Section 30 of the Defence and Internal Security of India Act, 1971 in the event of the appeal being allowed. Any further construction effected by the respondents will not be pleaded as defence during the hearing of the appeal. Under these circumstances, therefore, there cannot remain any valid defence for the respondents against the restoration of possession of the requisitioned premises to the appellants once the impugned order of requisition is found to be invalid in view of our findings on the aforesaid points for determination.

16. In the result the appeal is allowed. The judgment and order of the High Court are set aside. The writ petition filed by the appellants before the High Court is allowed. The impugned order of requisition of the premises in question dated 29-10-1976 is quashed and set aside. The respondents are directed to restore the possession of these requisitioned properties forthwith to the appellants by clearing off whatever construction may be existing on the spot and making available the requisitioned properties in their original form and shape to the appellants. The respondents are directed to comply with this order within eight weeks from the date of receipt of copy of this order at their end. In the facts and circumstances of the case there will be no order as to costs."

21. Although the right to property is not a fundamental right protected under Part III of the Constitution of India[21], it remains a valuable *constitutional right.* The importance of this right has been emphasized and iterated several times by this court. In *Delhi Airtech Services Pvt Ltd v. State of U.P*[22] for instance, this court underlined the issue as follows:

[21] By reason of deletion of Article 19 (1) (f) and Article 31 with sub heading "Right to Property" which were omitted by the Constitution 44th Amendment Act, 1978. Article 31(1) was in effect, enacted as Article 300A – through an insertion in Chapter IV Part XII of the Constitution.

[22] (2011) 9 SCC 354

> *"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property." Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."*

Earlier, in *State of Rajasthan* v. *Basant Nahata*[23] , this court highlighted that a property owner's rights cannot be deprived, stating that:

> *"**59.** ..In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A 300-A of the Constitution."*

The decision in *K.T. Plantation Pvt. Ltd.* v. *State of Karnataka*[24] interpreted Article 300A and held that:

> ***"168.** Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognized by law.*
>
> *169. This Court in State of W.B. v. Vishnunarayan and Associates (P) Ltd.[6], while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights."*

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[23] (2005) 12 SCC 77

[24] (2011) 9 SCC 1

22. Other judgments of this court have also highlighted the importance of the right under Article 300-A, in the context of regulatory laws and enactments, which do not directly result in expropriation or acquisition, but rather, in an oblique and indirect fashion, block the right to enjoyment of properties, underlining that the essential theme of Article 300-A is unauthorized deprivation, which would result in an indefinite suspension of the right to property. The court stressed that the law (of development or town planning, of any other such enactment) should be explicit about the *nature and effect of the deprivation, expressing the intention to do so.* Therefore, in *T. Vijayalakshmi* v. *Town Planning Member*[25] , this court observed that:

> ***"13.*** *Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.*
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> * * *

[25] (2006) 8 SCC 502

> *15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away. ....”*
>
> *(emphasis supplied)*

This court has also recognized that regulatory laws, which have the effect of impacting the right to property, should be strictly construed.[26]

23. In a very recent judgment, *D.B. Basnett v. Land Acquisition Officer,*[27] the court approved the findings of the courts below that the lands were never acquired, because the procedure prescribed was not followed; notice of acquisition had not been given, nor was any amount proved to have been received. The court also turned down the state's plea of adverse possession, and granted relief in the following terms:

> *“20. We are conscious that the land is being used by the respondent State through Respondent 2 Department. That, however, does not give such a licence to the State Government. We had endeavoured to refer the matter for mediation, to find an amicable solution, but that did not fructify. We, however, would like to give some time to the respondent State to analyse the consequences of this judgment, and, in case they so desire, to acquire the land through a proper notification under the said Act, and to take proper recourse in law so as to enable them to keep the land. We grant three (3) months' time from the date of the*

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[26] *State of U.P.* v. *Manohar*, (2005) 2 SCC 126; *Delhi Airtech Services (P) Ltd.* (supra); *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111; *Shrirampur Municipal Council* v. *Satyabhamabai Bhimaji Dawkher*, 2013 (5) SCC 627 : especially the following observation:

> *“Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution.”*

Ref. also to *Shrirampur Municipal Council* v. *Satyabhamabai Bhimaji Dawkher*, (2013) 5 SCC 627 *Chairman, Indore Vikas Pradhikaran* v. *Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705; *Ramchandra Ravindra Waghmare* v. *Indore Municipal Corporation*, (2017) 1 SCC 667; and, more recently in *M.C. Mehta v Union of India* 2020 SCC Online (SC) 658.

[27] (2020) 4 SCC 572 at page 580

> *judgment for the respondent State to make up their mind as to what they want to do. Would they still like to retain the land by issuing a proper notification, or would they like to surrender possession of the land. In either eventuality, the question of payment for use and occupation would still arise, which will have to be determined in accordance with law. Mesne profits would be determined by a Court Commissioner, to be appointed by the trial court, as a relief in that behalf has been sought in the plaint itself."*

24. To sum up the facts, repeatedly the Union asserted that it had acquired at least *some parts* of the suit lands; these were examined by the High Court on two occasions, and in arbitration proceedings under the Requisitioning Act, on three occasions. Each time, the factual findings went against the Union. The Union's occupation ceased to be lawful, with the lapse of the Requisitioning Act, in 1987. Yet, it has implacably refused to hand back possession, each time asserting that it has some manner of rights over it. The High Court, while noticing that the Union's claim had no merits (in both its appeal, which was dismissed, as well as in the impugned judgment, disposing of the writ petition), nevertheless refused to issue any direction for the release of the suit lands. The *rationale* given was that the adjoining areas had been acquired and were used by the Union for defense purposes. What is more the impugned judgment granted indefinite time to the Union to take steps to acquire the suit lands. The Union has not chosen to do so these last 12 years. These facts paint a stark, even sordid picture.

25. The United States of America set up an exclusive court (the United States Court of Federal claims, since 1866, referred to as *"keeper of the nation's conscience"* to enable citizens to claim justice against the Federal government with a poignant motto[28]. By contrast, the Indian experience has been that the

[28] The motto of that court aptly summarizes its task, and the duty of the Federal government:

> *"It is as much the duty of Government to render prompt justice against itself, in favor of citizens, as it is to administer the same, between private individuals."*

governments, taking a cue from the English experience, initially asserted that they are not subject to the law insisting upon the continuation of the royal prerogative (by virtue of Article 372 of the Constitution) which enabled the crown in the UK to assert its right to insist that it was not bound by the law, unless there was express statutory intent[29]. Mercifully, a later judgment[30] overruled that understanding. In *Superintendent and Remembrancer of Legal Affairs* (supra, f.n. 29) this court held that

> *"23. The next question is whether this Court should adopt the rule of construction accepted by the Privy Council in interpreting statute vis-a-vis the Crown. There are many reasons why the said rule of construction is inconsistent with and incongruous. In the present set-up we have no Crown, the archaic rule based on the prerogative and perfection of the Crown has no relevance to a democratic republic; it is inconsistent with the rule of law based on the doctrine of equality...."*

26. It is, therefore, no longer open to the state: in any of its forms (executive, state agencies, or legislature) to claim that the law – or the constitution can be ignored, or *complied at its convenience.* The decisions of this court, and the history of the right to property show that though its pre-eminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. The evolving jurisprudence of this court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The

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[29] In *Director of Rationing and Distribution* v. *Corporation of Calcutta* [(1961) 1 SCR 158] where this Court held *that the State was not bound by the provisions of a state law* and was not liable to prosecution for its contravention. Sinha, C.J., spoke for the majority; Sarkar, J., concurred separately and Wanchoo, J., recorded his dissent. The reasoning of Sinha, C.J., is found in the following passage:

"It is well-established that the common law of England is that the King's prerogative is illustrated by the rule that the Sovereign is not necessarily bound by a statutory law which binds the subject.... That was law applicable to India also, as authoritatively laid down by the Privy Council in the case referred to above [(1946) L. Rule 73 I.A. 271]..... it (law in force under Article 372 of the Constitution) must be interpreted as including the common law of England which was adopted as the law of this country before the Constitution came into force." (At p. 173).

[30] *Superintendent and Remembrancer of Legal Affairs v. Corpn. of Calcutta*, (1967) 2 SCR 170

phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked- they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the state: whether the Union or any state government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction)– whatever be the pretext, is no less than condoning lawlessness. The courts' role is to act as the guarantor and jealous protector of the people's liberties: be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behavior which it then can justify its conduct on the anvil of some loftier purpose, at any future time- aptly described as a *"loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."*[31]

27. For the above reasons, this court holds that the impugned judgment committed an error in refusing relief to the appellants. 33 years (based upon cessation of the Union's legal possession) is a long enough time, even in India, to be kept away from one's property. The respondent Union is directed to hand back possession of the suit lands to the appellants, within three months. Furthermore, it is open to the appellants to seek compensation based on fresh fixation of capital value and recurring annual value, based on the different five-

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[31] The phrase is quoted from Justice Robert Jackson's powerful and timeless dissent in *Korematsu v United States* 323 US 214 (1944). The full text of the relevant extract, where the judge dissented from the majority of the US Supreme Court, which upheld the indefinite internment of American citizens of Japanese origin, is reproduced below:

> *"a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the [military] order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. ... once a judicial opinion rationalises such an order to show that it conforms to the Constitution, or rather rationalises the Constitution to show that the Constitution sanctions such an order, the Court for all times has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."*

year periods for the last 20 years. Such a claim shall be referred to arbitration, within four weeks of receipt of the reference. The arbitrator shall proceed to pronounce the award within six months of receipt of the reference. This is independent of the Union's obligation to vacate and hand over peaceful possession of the suit lands within three months.

28. The appeal is allowed in the above terms; the appellants shall be paid costs, quantified at ₹ 75,000/-.

.....J
[INDIRA BANERJEE]

.....J
[S. RAVINDRA BHAT]

New Delhi,
November 24, 2020.