

SUPREME COURT REITERATES THE IMPORTANCE OF RIGHT TO PROPERTY AS A VALUABLE CONSTITUTIONAL RIGHT

*On 24th November, 2020 the Hon'ble Supreme Court of India in its decision passed by the Bench of Justice Indira Banerjee and Justice Ravindra Bhat in **B.K. Ravichandra & Ors. v. Union of India & Ors. C.A. No. 1460/2010** recapitulated the importance of the constitutional Right to Property provided in Article 300A. The said right was omitted from the list of fundamental rights by the 44th Amendment Act, 1978 though was given a prestigious place under Article 300A of the Indian Constitution thus stating that no person shall be deprived of his property save by authority of law.*

Facts:

In 1962, Indian parliament enacted the Defence of India Act (“DIA”) which empowered the Central Government to requisite and acquire any immovable property necessary for public purposes in accordance with the Requisitioning and Acquisition of Immovable Properties Act, 1952 (“**Requisitioning Act**”). While exercising its powers under Section 30 of the DIA, the Respondents acquired three properties belonging to the Appellant’s predecessors in Bangalore in 1963 which were handed over to the Respondents under protest. In the meantime, the period of operation of the Requisitioning Act kept on extending by carrying out amendments while the DIA ceased to exist from 10th January, 1968. Further, one major amendment to the Requisitioning Act was made in 1970 which stated that requisitions were to be continued and requisitioned property was to be released after 17 years of requisition i.e. till 1987.

In 1972, the Appellant’s predecessors felt aggrieved with the amount of compensation fixed for the suit lands and applied for

enhancement. As required by the Requisitioning Act, the dispute was referred to an arbitrator in compliance with the then amended Section 8(2) of the Requisitioning Act. The Arbitrator pronounced an award on 17th July, 1975 fixing the compensation @ 6% per annum on the capital value of requisitioned land. The Arbitrator’s award was appealed against by the Union of India which was subsequently disposed of by filing of joint memo by the parties agreeing upon fresh adjudication of the matter with respect to determination of compensation; the compensation approved in 1968 was held to be final and binding upon the parties.

In the second arbitration proceeding, the arbitrator proceeded to fix the rental compensation which was again appealed against wherein the award was set aside and fresh adjudication in the matter was ordered. On 28th February, 2000 the arbitrator in the third round of arbitration proceedings published two awards- one, prescribing the validly and invalidly acquired extent of land and other, the amount of compensation payable alongwith recurring annual value respectively. The Union of India challenged

both the awards dated 28th February, 2000 before the Karnataka High Court.

During its pendency, the Appellants instituted a writ petition in the Karnataka High Court claiming rights over the requisitioned land as the period of requisition had expired in 1987 by law. The Karnataka High Court in its impugned judgment delivered on 11th January, 2008 declared the possession of the Respondents on the suit property valid and gave liberty to the Respondents to initiate proceedings in acquiring land for the benefit of defence authorities thus dismissing the Appellants' writ. It is pertinent to note that the establishment of title of the owners was not disputed by the High Court.

Submissions:

The Learned Senior Counsel on behalf of the Appellants submitted that the possession of the Respondents on the Appellants' land is unjust and unauthorised by law and quoted the earlier judgment of the Apex Court in the matter of *State of Haryana v. Mukesh Kumar, 2013 (1) SCC 353* wherein it was stated that the right to property is not only a constitutional or statutory right, but also a human right. 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 authorised by law.

On the other hand, learned Additional Solicitor General appearing on behalf of the Respondents argued that the land was lawfully and validly requisitioned and that

this fact was never questioned by the Appellants' predecessors in any proceeding.

Judgment:

The Apex Court stated that requisitioning immovable property is legal though temporary and is required to be given back to the owner on cessation of the requisition period along with adequate compensation. Throwing light upon the judgment passed by the Apex Court in the matter of *Grahak Sanstha Manch v. State of Maharashtra, (1994) 4 SCC 192* it was held that requisition right is temporary and the owner cannot be deprived of his property indefinitely. "The right to property is not a fundamental right protected under Part III of the Constitution of India, it remains a valuable constitutional right", this connotation stands intact as it has been supported numerous times by this Court in different cases. It was reiterated that depriving any person of his constitutional right to property is unauthorised and would result in indefinite suspension of this right. Article 300A holds a special position in the Constitution and resembles supremely with Article 21 and Article 265.

The Hon'ble Court observed that the acquisition of the suit lands was examined by the High Court on two occasions and in the arbitration proceedings under the Requisitioning Act, on three occasions. The Court noted that each time the factual findings were against the Respondents. It was held that the Respondents' occupation of the Appellants' land even after expiry of the requisition period in 1987 was unlawful and thus the Respondents should have vacated the



Appellants' land after the cessation of the said period. The High Court had no merits for not issuing any directions to that extent.

The Apex Court observed:

“26. ...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. ...”

It was held that the Appellants had been kept away from their property for a long period of 33 years. The Court issued directions to the Respondents to hand back possession of the requisitioned land to the Appellants within a period of three months along with adequate compensation. The claim regarding compensation was referred to the arbitrator who was required to pronounce the award within six months.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.