
(1966) 01 CAL CK 0016
In the Calcutta High Court
Case No : Civil Rule No. 58 (W) of 1963

Amiya Kumar Mukherjee

APPELLANT

Vs

St. of W.B. and Others

RESPONDENT

Date of Decision : 31-01-1966

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 3(1)

Citation : 70 CWN 499

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Prodyat Kumar Banerjee, for the Appellant; N.C. Chakrabarti and Sushil Kumar Banerjee, for the Respondent

Judgement

D. Basu, J.—In this Petition under Article 226 of the Constitution, the validity of the orders of requisition dated 19-1-63, under the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as "the Act"), which are reproduced at Anxs. A-A(1) of the Petition, has been challenged on two grounds. The first is that the statement of the public purpose in the order is vague and shows that the authority concerned did not apply his mind to the matter, inasmuch as the alternative classes of public purpose, which are printed in the form of the order, were not struck out in order to refer to the particular class to which the relevant object of requisition. In order to appreciate this point, it is necessary to refer to the first paragraph of this impugned order at Anx. A, which is as follows :--

Whereas in my opinion it is necessary for the purpose of maintaining Supplies and Services essential to the life of the community providing proper facilities for transport/communication/irrigation/drainage, viz., for Khamargachi Feeder Road, C.D.R. from S.T.K.K. Road (length of 47 cbs.) to requisition the lands described in the Schedule below.

2. The original of the order served on the Petitioner, which was produced before

me on behalf of the Petitioner, also shows that the alternatives of the several purposes, such as transport, communication etc., have not been struck out even in that original. Nevertheless, I cannot hold that the authority did not apply his mind to the specific purpose, because that purpose, namely, the construction of the Khamargachi Road, is clearly stated in the order, with sufficient particulars. In view thereof, the fact that the alternative recitals have not been penned through in the form of the order cannot lead to the conclusion that the statutory authority did not apply his mind to the purpose or that the resultant order was a colourable exercise of his power.

3. My attention has been drawn on behalf of the Petitioner to an unreported decision of Banerjee, J., in *Darjeeling Ropeways v. Land Acquisition Collector*, C.R. 115 (W) of 1962, in support of his contention, But in that case, the Court had before it the concession of the learned Advocate for the Respondents that "in order to make it meaningful, it was necessary to strike out one or more of the alternatives indicated by oblique lines." The question was not gone into on the application of principles. It is now settled that the specific public purpose need not be stated in the notification at all and that it may be established at the hearing by evidence aliunde (cf. *State of Bombay v. Bhanji*, (1955) 1 S.C.R. 77 ; *Babu Barkya Thakur Vs. The State of Bombay and Others*,). In the instant case, the specific purpose, namely, the construction of the road referred to, is not only mentioned in the order itself but has been reiterated in paragraph 11 of the counter-affidavit, filed on behalf of Respondent No. 2 who issued the impugned order. From a reading of the impugned order as a whole, no doubt can be left in the mind of the Petitioner as to the purpose for which the lands were proposed to be requisitioned.

4. In this situation, though the omission to strike out the printed alternatives discloses clerical irregularity or carelessness of the officer who issued the impugned order, the order cannot be quashed as invalid. For the carelessness, of course, costs would be awarded against Respondent No. 2, irrespective of the result of the present proceeding, because it is carelessness of such kind that haul up the democratic Government before the courts resulting an unnecessary drainage of the money which belongs to the general public upon which the entire Government and its machinery rests.

5. The second point urged by Mr. Banerjee on behalf of the Petitioner is that the notice in Anx. A is invalid because it does not bear the personal signature of the Requisitioning authority, namely, the Additional District Magistrate, who is empowered to issue the notice u/s 3 of the Act (vide paragraphs 5 and 7 of the Petition). It has been shown to me that the original notice kept on the Department file bears the signature of the Additional District Magistrate, but in the copy served on the Petitioner, there is no signature of the Magistrate, but it is only stated that he has signed the original: "Sd/- B.R. Chakravarty, Addl. District Magistrate". The endorsement below the notice is--

Copy forwarded to : Hem Nalini Devi.....for information. For Collector,

Hooghly.

6. It appears that the Land Acquisition Officer, who filed the counter-affidavit, had signed the endorsement. His authority to sign the endorsement has not been challenged. If that be so, the endorsement of the copy is in order.

7. It is, however, contended that the text of the copy above the endorsement must be signed by the Additional District Magistrate personally. A similar contention was made before me in C.R. 2313 (W) of 1959, *Huzur Ali v. State of West Bengal*, disposed of on 21-2-63, but that contention was rejected, for the reasons which are reproduced as follows :--

The learned Advocate for the petitioner relies on the observations at page 875 of 65 C.W.N. 869 (*Kamala Bala Dassi v. State of West Bengal*). But on a close perusal of these observations it is not quite clear in what form the copy, which was served, in that case, was made. What appears from the observations is that the copy which was served did not bear the signature of the Collector, who was the only person authorised u/s 3(1) at the time of the decision in 65 C.W.N. 875. The Rule 3(1), as quoted at page 875 of the Report gives the pre-amendment form of the rule. There was at that time no other person authorised under sub-section 3(1). Moreover, it does not appear whether a formal endorsement of the copy was made, as in the present case, and signed by an authorised person.

In the present case, the original order has been made by the Collector who is a duly authorised person. A copy of that order, including the copy of the signature of the Collector, has been duly endorsed by a formal endorsement personally signed by another officer, who is also duly authorised under the Act. If the object of the amendment to insist upon an endorsement by the person duly empowered is to give the copy an authentic character, to my mind that has been fulfilled in the present case. If the Legislature wanted that the copy of the order to be served upon the party should be also signed by the Collector personally, it would have really required the original order to be produced in duplicate, in which case each of such document would have an original character and none would have been a copy of the other. The language used by the Legislature does not suggest any such intention. In my opinion, the cited Judgment is distinguishable on the ground that it is not clear whether in that case there was a formal endorsement of the copy duly signed by a person authorised u/s 3(1).

8. The amended form of rule 3(1), referred to in the above passage may now be seen. The original text of rule 3(1) framed under the Act, which was referred to in (5) *Kamala Bala's* case 65 C.W.N. 869(875) was--

Save as otherwise provided.....an order under sub-section (1) of section 3 shall be served by delivering or tendering a copy thereof endorsed by the Collector to the person on whom the order is to be served.

9. By an amendment of Notification No. 840L.A.--18.1.54, for the word "Collector", the following words have been substituted-- by the person

authorised to make the order or by a Collector.

The amended rule, which was in force at the time of the impugned order, thus, authorises that the endorsement may be signed by a person other than the Collector who is authorised in this behalf. As stated earlier, the authority of the Land Acquisition Collector in this behalf has not been questioned. The contention of the Petitioner on this point, therefore, must fail.

In the result, this Rule is discharged, but without any order as to costs.