

(1980) 02 AHC CK 0060

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2111 of 1973

Brij Kishore and Others

APPELLANT

Vs

Tahsildar and Assistant Collector and Others

RESPONDENT

Date of Decision : 12-02-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Rural Development (Requisitioning of Land) Act, 1948 — Section 2

Uttar Pradesh Rural Development (Requisitioning of Land) Rules, 1948 — Rule 14, 3

Citation : (1980) AWC 246

Hon'ble Judges : K.N. Seth, J;H.N. Seth, J

Bench : Division Bench

Advocate : Birendra Dixit, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Seth, J.—Tahsildar Bhar-thana, district Etawah, by an order dated 31st of August, 1965 requisitioned an area of 0.18 acre of plot No. 145, situated in village Karwa Buzurg, Pargana Bharthana, district Etawah, for the purpose of constructing a drainage channel. Aggrieved the Petitioners approached the Commissioner under Rule 14 of the Rules framed under the U.P. Rural Development (Requisitioning of Land) Act, 1948 (hereinafter referred to as the Act), and prayed for review of the said order. They claimed that the Tahsildar who passed the impugned order had not been properly appointed as the Requisitioning Authority and the order passed by him was without jurisdiction. The Commissioner by his order dated 12th December, 1972 rejected the review application. He held that as per State Government's notification dated 22nd January, 1960 issued u/s 2 of the Act all Tahsildars had been appointed as Requisitioning Authorities under the Act. There was thus no defect in the appointment of the Tahsildar, Bharthana, as a Requisitioning Authority under the Act, and the order passed by him could not be interfered with on this ground. Being aggrieved the Petitioners have approached this Court for relief under Article 226 of the Constitution.

2. Before us the learned Counsel appearing for the Petitioners has impugned the validity of the requisitioning order dated 31-8-1965 on following two grounds:

(1) That Tahsildar, Bharthana, who passed the impugned order, was not a validly appointed Requisitioning Authority and

(2) It was, under the Act, not possible to requisition land for a purpose which was of a permanent nature.

3. Having heard counsel for the Petitioners as also the learned Standing Counsel, we are of the opinion that there is merit in the first submission made by Petitioners' counsel. It is true that the State Government purporting to exercise its powers u/s 2 of the Act has, vide its Notification dated 22nd of January, 1960, appointed all Tahsildars exercising the powers of Assistant Collectors as Requisitioning Authorities within the respective Tahsil to which they may be posted for the time being. (The relevant portion of the notification has been extracted in paragraph 10 (a) of the petition). A perusal of the impugned requisitioning order, copy of which has been filed as Annexure 1 to the writ petition, shows that while exercising the powers of the Requisitioning Authorities the Tahsildar made a reference not only to U.P. Government's notification dated 22nd January, 1960 but also to some order passed by the Collector on 25th of May, 1959.

4. Section 2 of the Act defines "Compensation Officer" and "Requisitioning Authority" thus:

"Compensation Officer" and "Requisitioning Authority" appointed as such by general or special order by the State Government provided that such persons shall be the Collector or an Assistant Collector nominated by the Collector.

5. A perusal of the aforesaid section shows that it is open to the State Government to appoint a Collector as a Requisitioning Authority. It can also by a general or special order, appoint an Assistant Collector who has been nominated by the Collector to perform the functions of the Requisitioning Authority. Under this section the State Government cannot, by a general or special order, appoint an Assistant Collector to be the Requisitioning Authority, unless such an Assistant Collector has been so nominated by the Collector. This position becomes very clear by Rule 3 of the Rules framed under the Act which runs thus:

A Collector may nominate any Assistant Collector subordinate to him to be appointed a Requisitioning Authority or a Compensation Officer for the district, and thereupon the State Government may appoint such officer to be Requisitioning Authority or a Compensation Officer.

6. The position, therefore, that emerges is that it was not open to the State Government to appoint Tahsildar, Bharthana, a Requisitioning Authority Under the Act, unless the Collector had so nominated him for this purpose.

7. The Petitioners in this petition clearly averred that prior to the issuing of the

notification dated 22nd January, 1960 by the State Government generally appointing all Tahsildars exercising the powers of Assistant Collectors as Requisitioning Authorities within their respective Tahsils the Collector, Etawah, had not nominated Tahsildar, Bharthana, for being appointed as such. The Petitioners further made repeated attempts to obtain a copy of the Collector's order dated 25th May, 1959 which might have cleared the position but the Respondents failed to supply the copy to them. In the counter-affidavit filed on their behalf, the Respondents neither took the stand that State Government's notification dated 22nd January,, 1960 followed any nomination made by the Collector, Etawah, for appointing Tahsildar, Bharthana, as a Requisitioning Authority under the Act, nor did they care to produce a copy of the order of Collector, Etawah nominating Tahsildar, Bharthana, for such appointment. In the circumstance, the appointment of Tahsildar, Bharthana, as a Requisitioning Authority vide State Government's notification dated 22-1-1960 appears to be illegal.

8. Learned Counsel appearing for the State urged that the question of nomination of a Tahsildar exercising the powers of an Assistant Collector for being appointed as a Requisitioning Authority could arise only if the State Government was proposing to appoint an individual Tahsildar as a Requisitioning Authority. Such a question could not arise in a case where the State Government, by some general or special order, appointed all Tahsildars exercising the powers of Assistant Collectors as Requisitioning Authorities. We are unable to accept this submission. Section 2 of the Act clearly lays down that an appointment, whether it be by a general or by a special order, of an Assistant Collector, to Act as a Requisitioning Authority, can be made by the State Government only after the Collector has nominated such Assistant Collector for being appointed as such.

9. In view of the aforesaid discussion it appears to us that Tahsildar, Bharthana, had no jurisdiction to act as Requisitioning Authority under the Act and to requisition the Petitioners' plot.

10. It has come to our notice that even though possession over the land was taken not throughout there have been stay orders because of which the object for which the land had been requisitioned has not been achieved so far. In the circumstances, there would be no inequity in quashing the impugned proceedings which are without jurisdiction.

11. In the result, the writ petition succeeds and is allowed with costs. The requisitioning order passed by the Tahsildar, Bharthana, dated 31st August, 1965 as also the order dated 12th December, 1972 passed by the Additional Commissioner are quashed.