

(1981) 05 CAL CK 0001
In the Calcutta High Court

In Re. Bholanath Ghosh and Others

Date of Decision : 21-05-1981

Acts Referred:

Constitution of India, 1950 — Article 205, 226
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 1, 3, 3(1), 4, 4(1a)

Citation : 85 CWN 1047

Hon'ble Judges : Sabyasachi Mukherji, J

Bench : Single Bench

Advocate : Bholanath Sen and Narendra Chandra Saha, for the Appellant; Sadhan Gupta, A.A.G., Manjari Gupta and S.K. Mustafi for Respondent No. 1, A.P. Chatterjee, Senior Standing Counsel and K.N. Laha for Respondent No. 2 and N.N. Gooptu, Govt. Pleader and Jamini Banerjee, for the Respondent

Judgement

Sabyasachi Mukherji, J.—This petition was filed on or about 20th of February, 1981 and a rule nisi obtained on behalf of 142 petitioners. Subsequently petitioners no. 82, no. 83, no. 86, no. 105 and no. 107 filed an application during the hearing of this petition asking for leave to withdraw from the said writ petition. I granted such leave. Therefore, out of the 142 petitioners 5 have to be deleted, and there are about 137 petitioners now in the instant writ petition. There was another writ petition C.R No. 697 (W) of 1981 Satya Narayan Ghosh & Ors. v. State of West Bengal, & Ors. which was also filed by several petitioners. Both these petitions under Article 226 of the Constitution challenge certain orders of requisition under the West Bengal Land (Requisition and Acquisition) Act, 1948 issued by the Collector, Hooghly and the Additional District Magistrate Hooghly said to be for alleged implementation of "Gea-Kunti Basin Drainage Scheme". I will have occasion to refer to this scheme later on. The petitioners ask for a writ of mandamus asking the respondents not to take any step or further steps pursuant to or continuing on the basis of what is described as purported orders of requisition which were annexed to the petition collectively and in any manner whatsoever utilising the lands of the petitioners for the purposes detailed in the said orders of requisition and cancel the same and certain other incidental reliefs as mentioned hereinbefore. The orders of

requisition were issued under the 1948 Act, as indicated before and the purpose was said to be for the implementation of the said scheme as I have indicated before. The petitioners in both the petitions make common grievances and the grievances in short are -- that they are agriculturists and citizens of India holding agricultural lands in different Mouzas namely, Balitipa, Baghdanga, Balarampur, Swetpur, Garji, Bighati, Gourangapur, Dighara and Khurigachi etc. under the Police Station Singur and Police Station Bhadreswar in the District of Hooghly. The petitioners grow crops and rice and they and their members of the family are entirely dependent upon the income derived from the produce of these lands and they alleged that the Collector of Hooghly under Act II of 1948 in exercise of the powers conferred under sub-section (1A) of Section 3 of the West Bengal Land Re question and Acquisition Act, 1948 purporting to requisition the petitioner's land for the alleged purpose of re-excavation of cut Kunti Basin Drainage Scheme under Ghea-Kunti Scheme. Several points were taken in the petition but some very broad points were pressed before me. The first point that was pressed before me was this, Ghea-Kunti Drainage Scheme had been prepared by the Government of West Best Bengal after long deliberations in or about 1973. Thereafter, having regard to the needs of the people around and having regard to the plight of the people who would be dislodged if the scheme was fully implemented and having regard to the various other factors, on or about 26th of May, 1976 the Government of West Bengal published a booklet "Ghea-Kunti Drainage Scheme" and made certain representations to the people therein. It is the allegations of the petitioners that the orders of requisition were in complete deviation from the scheme referred to above. They, further, allege that the said deviations had been made without any rational justification and as such the said requisition orders were not for the alleged purpose for which these were purported to have been made. The petitioners have, further, stated that in or about 1954 a canal named Cut-Kunti was excavated from the river Kunti by the Damodar Valley Corporation for the purpose of drainage of water of River Ghea. The length of the canal is about 11 kilometres and its breadth is about 100 ft. It is stated that it starts from Makhaltala and ends at Champdani. According to the petitioners, programmes for the purpose of carrying out the Ghea-Kunti Basin Drainage Scheme were made in the said printed booklet wherefrom it would be found that in order to implement this scheme the canal Cut-Kunti would be utilised as far as possible by expanding the bed of the said canal and for that purpose no other land would be acquired. Excess water would find its way from the rivers Ghea, Kunti, Saraswati etcetera as shown in the map. For that purpose, the silted bed of these rivers would be excavated. According to the petitioners the lands acquired in the year 1954 for excavation of the canal Cut-Kunti had not been yet fully utilised. It is also the case of the petitioners that under the programme no further land would be acquired, which according to the petitioners, is the representation contained in the booklet for the purpose of such canal is now being attempted to be violated. The petitioners, further, state that though river Ghea has been re-excavated but neither Kunti nor Saraswati nor the existing drainage canals have been re-excavated, which according to the version

of the petitioners of the scheme, would have saved the land and drained the whole flood water as such the petitioners' grievance is that the purported requisitions were bad and had been made for collateral purposes and ulterior motive and contrary to the assurances given in the scheme. The petitioners state that whereas Kunti, North Saraswati and South Saraswati were required to be de-silted and re-excavated, no such work had been undertaken. Further, to highlight the grievance the petitioners stated that while the main river of Ghea is 165 feet in breadth and 25 feet high the Cut-Kunti is sought to be expanded to 700 feet alone besides North and South Saraswati and Kunti for the outlet of the Water flowing from the said stream which according to the petitioners is without any rhyme or reason. Therefore, the petitioners state that the purported requisitions are contrary to what is laid down in the programme and the expression "re-excavation of Cut-Kunti" is bad. The petitioners further state that there is promissory estoppel binding on the Government not to requisition the lands in question. Further, the said orders are being sought to be proceeded with in an arbitrary manner without taking all the relevant factors into consideration. Therefore, the factual grievance of the petitioners is that there is promissory estoppel binding on the Government and the purported orders of requisition in alleged implementation of the scheme are malafide and bad without taking into consideration all the relevant factors into consideration.

2. The second grievance of the petitioners is that the Act of 1948 was a temporary statute and the said temporary statute had expired by efflux of time and therefore the purported orders of requisition are bad because the same were made after the expiry of the statute because the orders of requisition were passed in December, 1980 or early part of January 1981. The petitioners' further grievance is that the ACT; called the West Bengal Land (Requisition and Acquisition) Re-enactment Act of 1977 has no legal effect and is also bad. The said Act was passed according to the petitioners in June, 1977 after the expiry of the previous Act on 31st of March, 1977 and a dead Act could not be made alive by subsequent re-enactment.

3. The third legal argument advanced on behalf of the petitioners is that the Act permitted both requisition and acquisition but in this case there was no acquisition as yet and no decision to acquire the lands in question. Therefore, the petitioners said that by virtue of requisitions the property under a statute which was temporary in nature the Government was incompetent to destroy the property and the implementation of the drainage scheme and making the water pass through the land's would be destructive of requisition under the temporary Act and therefore bad.

4. The petitioners had, further, alleged that they were in possession of the lands. They have further mentioned that 16 other petitioners in C.R. No. 697 (W) of 1981 (Satya Narayan Ghosh & Ors) had made an application for the same purpose on 6th of February, 1980 and a rule nisi was issued and an interim order was made.

5. In view of the various allegations made about the breach of the orders it may be appropriate to refer to the fact that when the application was moved and rule nisi was issued by me as prayed for on 20th of February, 1981 this was in the presence of the learned Additional Advocate General and other lawyers of the State Government. I passed an interim order in terms of prayer (e) of the petition which restrained the respondents from giving any; effect or further effect to and/or taking any steps or further steps pursuant to and/or action or further acting or continuing to act in any manner whatsoever on the basis of the said orders of requisition which were collectively marked as Annexure "B" and/or utilising the lands of the petitioners in any manner for the purposes indicated in the said impugned orders. This order was made for a period of four weeks from the date and it was further stated that the order was confined only to the lands of the petitioners as mentioned in the petition and liberty was given to apply for extension of interim order. At the intervention of the learned Additional Advocate General it was clarified that the above interim order was issued on the allegations of the petitioners that the petitioners were then in possession of the impugned lands in dispute and as such I gave directions to the respondents for filing of the affidavits. I also made an order on the 24th February, 1981 directing the office that a plain copy of the order counter signed by the officer of this Court would be handed over to the junior of the learned Additional Advocate General.

6. Before I deal with the factual controversy in this case, in my opinion it would be material to refer to the legal arguments with the West Bengal Land (Requisition and Acquisition) Act, 1948 having expired on 31st of March, 1977 the impugned notices of requisition were invalid. As mentioned hereinbefore the said Act expired on 31st of March, 1977. In June, 1977 in the beginning an Ordinance was issued. Thereafter, West Bengal Act XV of 1977 being West Bengal Land (Requisition and Acquisition) Re-Enactment Act 1977 was passed, the said Act is as follows :--

West Bengal Act XV of 1977.

The West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977.

(Passed by the West Bengal Legislature)

(Assent of the President was first published in the Calcutta Gazette, Extraordinary of the 22nd July, 1977)

An Act to re-enact the West Bengal Land (Requisition and Acquisition.) Act, 1948.

Whereas it is expedient to re-enact the West Bengal Land (Requisition and Acquisition) Act, 1948, for the purposes and in the manner hereinafter appearing :

It is hereby enacted in the Twenty-eighth year of the Republic of India, by the Legislative of West Bengal as follows :--

1. Short title and commencement. (1) This Act may be called the West Bengal

Land (Requisition and Acquisition) Re-enacting Act, 1977.

(2) It shall be deemed to have come into force on the 1st day of April, 1977.

2. Re-enactment of West Bengal Act II of 1948. -- The West Bengal Land (Requisition and Acquisition) Act, 1948 as in force on the 31st day of March, 1977 (hereinafter referred to as the said Act), is hereby re-enacted subject to the modification that for sub-sec. (4) of Section 1, the following sub-section shall be substituted, namely :--

(4) It shall remain in force until the 31st day of March, 1979.

7. I may incidentally mention that this Act had also expired on 31st of March, 1979 but by further Act that is to say, by the West Bengal Land (Requisition and Acquisition) Amendment Act, 1979 which was passed by the Legislative Assembly and which received the assent by the President and was gazetted on the 17th March, 1979 the Act was extended upto 31st of March, 1984. On this aspect two contentions were raised, one was that the impugned orders of requisition had not been issued under the provisions of the re enacting Act but had been issued under the provisions of West Bengal Act II of 1948 and as such bad. This contention, however, cannot be accepted. If an authority exercising a power has jurisdiction and wrongly invokes the provisions of a wrong section or wrong statute then the validity of the action would be referable to the provision which confers jurisdiction and not to the jurisdiction which makes it nugatory. This principle is well settled. See in this connection the observations of the Supreme Court in *L. Hazari Mal Kuthiala Vs. The Income Tax Officer, Special Circle, Ambala Cantt.*, of the report and *Hukumchand Mills vs. state of Madhya Pradesh*, 1966 SC 1329. The aspect, however, which requires consideration more closely, is, whether the West Bengal Act XV of 1977 was a valid piece of legislation and consequently the subsequent Act was a valid piece of legislation. It was contended on behalf of the petitioners that the expired statute which had died a natural death could not be revived by only enacting a re-acting provision but there should be fresh legislation incorporating the provisions. In this connection several authorities were referred.

This precise question came up for consideration before a learned single judge of this Court in the case of *Bhagaban Roy and Others Vs. First Land Acquisition Collector and Others*, where most of the authorities cited at the bar on this aspect have been discussed. I am in respectful agreement with the conclusion arrived at by the learned single judge, on this aspect. The learned advocate for the petitioners placed strong reliance on the observations of the Supreme Court in the case of *Krishna Chandra v. Union of India* 1975 S.C. 1389 where the Supreme Court referring to the decision in the case of *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*, observed as follows:-

....What parliament has done by enacting the said section is not to validate the invalid State Statutes, but to make a law concerning the cess covered by the said Statutes and to provide that the said law shall come into operation

retrospectively. There is a radical difference between the two position. Where the Legislature wants to validate an earlier Act which has been declared to be invalid for one reason or another, it proceeds to remove the infirmity from the said Act and validates its provisions which are free from any infirmity. That is not what Parliament has done in enacting the present Act. Parliament knew that the relevant status were invalid, because the State Legislatures did not possess Legislative competence to enact them. Parliament also knew that it was fully competent to make an Act in respect of the subject matter covered by the said invalid State Status. Parliament however, decided that rather than make elaborate and long provisions in respect Of the recovery of the cess, it would be more convenient to make a compendious provision such as is contained in S. 3. The plain meaning of S. 3 is that the material and relevant provisions of notifications, orders and rules issued or made thereunder are included in Sec. 3 and shall be deemed to have been included at all material times in it. In other words, what Section 3 provides is that by its order and force the respective cases will be deemed to have been recovered because the provisions in relation to the recovery of the said cesses have been incorporated in the Act itself. The command under which the cesses would be deemed to have been recovered would, therefore, be the command of Parliament, because all the relevant sections, notifications, orders and rules have been adopted by the Parliamentary Statute itself.

8. Thereafter it was observed that it was a far constitutional cry from this position to the other proposition where Parliament has power to enact on a topic actually legislated within its competence, but as an abbreviation of drafting, borrows into the Statute by reference the words of a State Act not qua-State Act but as a convenient shorthand, as against a longhand writing of all the sections into the Central Act, such legislation stands or falls on Parliament's legislative power vis-a-vis the subject viz. Mines and Minerals. It was pointed out that the distinction between the two legal lines may sometimes be fine but always is real. After referring to a passage, in *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*, , it was pointed out that no Parliamentary omnipotence to redraw Legislative Lists in the 7th Schedule can be arrogated to confer on the State competence to enact on a topic where it is outside its Lists. But if Parliament has power to legislate on a topic, it can make an Act on the topic by any drafting means including by referential legislation. In this connection it was further observed as follows :--

The learned Solicitor-General, in the course of his submissions made it clear that he did not want to vindicate the levy by any validation of the invalidated portion of S. 10 of the Bihar Act. He based his case on the success with which Parliament had legislated for itself although adopting a shorthand form of incorporation referentially of a State Act and subordinate legislation given in the Schedule to the validation Act. He also made it cleat that R. 20 (2) had nothing to do with Bihar Legislature but was the product of Parliamentary legislation by delegation in favour of State Government. Thus, in his view, the Parliament legislated for

itself and statutorily adopted for itself the second proviso to S. 10 of the Bihar Act and the otherwise ultra vires sub-rule (2) of R. 20. If the re-enacting technique adopted for the referential or incorporating legislation was insufficient in law, he failed. Otherwise, the Act and Rules referred to in the Schedule to the Validation Act revised and became operational, retrospectively. There is a force in the submission that taking a total view of the circumstances of the validation Act Parliament did more than simply validate an invalid law passed by the Bihar Legislature but did re-enact it with retrospective effect in its own right adding and amending on Central Act to the statute book.

9. In my opinion, the said observation would be apposite in this case. Here, however, learned advocate for the petitioners before me sought to urge that in that case it was not disputed before the Supreme Court the legislative competency of the Parliament by specific enactment to validate retrospectively otherwise invalid State legislation or incorporate into a Central Act a void State legislation. But learned Advocate for the petitioners sought to urge before me that in this case he was disputing the competence of the State legislature to enact by reference to a dead Act.

10. But I am unable to accept this submission. In 1977 June the State legislature was indubitably competent to enact a new legislation containing the provisions of 1948 Act then if instead of setting out in detail all the provisions it incorporates by reference to the old, the Act does not become bad. On behalf of the petitioners it was contended that a thing which was dead could not, be made alive after the death. As a proposition it is correct. But what the legislature in the instant case has done was not to make alive a thing dead after the death but to make a new law with retrospective effect within its jurisdiction and competence. It was urged that reference to a statute which had expired was reference to a thing non-existing, and as such the statute was vague and incapable of ascertainment. In this connection it was sought to be stressed that no one was obliged to know the history of a law though every one is presumed to know the law. I am unable to accept this argument. There is no vagueness. The Act of 1948 is certain enough to be found out and the provisions can be easily be found out. What the legislature was doing in this case was without reenacting provision by provision was reenacting the provisions of law by incorporating the provisions which was there before, by so doing the legislature was referring to a thing that was certain and capable of ascertaining. In that view of the matter I am unable to accept this contention urged on behalf of the petitioners. I need not in this connection refer to the several authorities to which my attention was drawn which as I have already said before have been discussed by the single Judge in the judgment referred to hereinbefore.

11. It was contended on behalf of the petitioner that the Supreme Court in the case of R. M. P. Chamarbaugwlia vs. Union of India, AIR 1957 S.C 627 has stated that in construing a provision of law it was not permissible to go into the history of enactment to get the meaning of the enactment. It was sought to be urged

that similarly in construing the meaning of this statute it was not possible for the Court to embark upon to find out what was the law prior to the date it lapsed. It may, however, be observed that the Supreme Court in its view has since then travelled longway and has held in several decisions that in case of ambiguity of a provision the background of the legislation and the history of legislation are permissible means of the construction of the statute. But, for the purpose of this case, it is not necessary to rely on that principle. It is not a case of construing a provision of a statute by the history of the statute. Here the statute itself, that is to say, the Act of 1977 has re-enacted the provisions of the Act of 1948. Therefore, it is not a question of going to the history of the statute to construe the meaning of the construction 1977 Act. The question of vagueness may or may not have been possible to be urged, if it was not possible to ascertain what was the statute in 1948. But, as I have indicated before, it is capable of ascertaining very easily. Therefore, there was no element of vagueness on this aspect. In the premises, in my opinion, re support can be had from the same observations of the Supreme Court upon which reliance was placed. I have already discussed the observations of the Supreme Court in the case of Krishna Chandra Gangopadhyaya and Others Vs. The Union of India and Others, made in paragraph 10 of the decision to which my attention was drawn by the learned advocate for the petitioners.

12 Reliance Was also placed by the learned advocate for the petitioners on the observation of the Privy Council in the case of AIR 1931 149 (Privy Council) and my attention was drawn to the observations at page 152 of the said report where the Judicial Committee noted that the independent existence of the two Act was therefore recognised despite the death of the parent Act, its off spring survived by the incorporating Act Therefore, the Judicial Committee was concerned with the principle that this was an accepted rule of construction that where a statute was incorporated by reference into second statute, repeal of the first statute did not affect the second. Learned advocate for the petitioners sought to rely on this decision in aid of the submission that it must be an accepted law which could be incorporated. I am unable to find any such limitation of power of the legislature. The legislature is competent to legislate within its field and in making the enactment the legislature must express its intention clearly or in a manner which could be ascertained with certainty There is no difficulty in this connection in respect of the Act of 1977.

13. Reliance was also placed on the decision of the Federal Court in the case of AIR 1949 175 (Federal Court) . That case, again, in my opinion, is not relevant to the problem before me where the question was whether after the repeal of enactment the Governor was competent to amend the repealed enactment. Learned advocate for the petitioners also sought to support from the observations of the Allahabad High Court in the case of U.P. State Road Transport Corporation, Lucknow Vs. State Transport Appellate Tribunal, Lucknow and Others, . There, the learned single Judge of the Allahabad High Court observed that the law enacted by legislature, without having the legislative competence,

would be void abinitio and the same could not be revived or revitalised even if the legislative competency was conferred on the legislature subsequently. But that did not prevent, in my opinion, to re-legislate again or afresh and incorporate the provisions which was no longer, the law and that is precisely what has been attempted to be done in this case, before me, though by what has been described as a shorthand method.

14. Learned advocate for the petitioners, however, contended that the new Act of 1977 used the expression "is hereby enacted". Therefore, it wanted to establish by law what was there in 1943. But the learned advocate for the petitioners sought to urge that the enacting portion did not enact the preamble to the Act of 1948. He submitted that the Preamble to the Act of 1943 was no longer available as preamble in aid of the construction of 1977 Act.

15. It appears to me that the Act of 1948 was there and the preamble explained the need for the enactment of the Act of 1948. In the absence of anything else to the contrary when the legislature thought it necessary to reenact the provisions of the Act of 1948 by the Act of 1977, it must be presumed that the need which necessitated the reenactment as indicated in the preamble of 1948 Act continued for the reenactment of the 1977 Act. Unlike an act of an executive there is a presumption of bonafide in the act of legislature and unless there is a fraud in the sense of making colourable exercise of the powers of the legislature in a particular case, the legislation of a competent legislature should not be normally be struck down. The Court scrutinises or examines the competence and necessarily the legality of a legislation. But the Court hardly examines the bonafides of the legislature. That is not within the judicial purview, unless a particular piece of legislation is challenged as a colourable exercise of the power, i.e., purporting to legislate on one matter by describing it as a legislation of a particular nature while it is not legislation of the nature attributed to attract jurisdiction or competence. But that is not the challenge, in the instant case. For the reasons aforesaid as indicated above, this contention, therefore, in my opinion, is not open to the petitioners that the impugned legislation was bad.

16. On behalf of the petitioners, it was contended that the purported orders of requisition were in deviation of the scheme originally sanctioned by the Government and represented to the people, as I have mentioned before. It was submitted that there was no mention of any new Cut Kunti in the original scheme envisaged or sanctioned in 1973 or as printed and represented to the people in 1976. On behalf of the respondents No. 2 has filed an affidavit whereby he has sought to explain that the proposed requisitions were within the proposed scheme sanctioned, that it was absolutely necessary for irrigation and protection of the lives and properties of the people and further that the lands proposed to be requisitioned were well within the limits indicated in the scheme. As a matter of fact, it was urged that the lands proposed to be taken were far less than the total quantity of land required as indicated. Both the Land Acquisition Collector, who is the Additional District Magistrate concerned, as well as the Executive

Engineer have filed affidavits (though the Executive Engineer has not filed any affidavit-in-opposition to the main rule, but only filed opposition to the contempt application). According to the Executive Engineer, for the passage of expected 7000 cusecs of water widening of the existing passage by 720 feet was absolutely required. According to the petitioners, not so much was required and the purpose could well be served by attending to the other steps indicated in the Government scheme. It was, further, argued that Government satisfaction was not there. Unfortunately, both sides have exhaustively addressed me on this aspect of the matter. This aspect requires a detailed technical examination of the questions involved which unfortunately the Court is not competent to undertake.

17. There is also another difficulty. That the Court lacks the machinery in the technical personnel to decide or adjudicate on a matter of this nature, that is to say, whether a particular proposed irrigation scheme is in accordance with the previous irrigation scheme or whether from the engineering point of view it is feasible or desirable or could have been done in a better way.

18. But, quite apart from that, there is one fundamental difficulty in entertaining the ground and that is under the Act the Government is enjoined and empowered to requisition the properties on its satisfaction, as contemplated in the provisions of sub-section (1) of Section 3 of the Act. It is the Government's satisfaction on the materials before it, that is important. The Court cannot substitute its own satisfaction or its own evaluation for the satisfaction of the Government. But in a society governed by the rule of Law, the Government must act on relevant materials and must apply its mind to the relevant materials in coming to the conclusion for the exercise of its power. The Court has jurisdiction therefore to determine whether there were materials before the Government to come to the conclusion for the exercise of its power or from the materials it was possible to arrive at that decision and whether there was reasonable nexus and connection between the material, and the satisfaction arrived and further whether the authority had fairly and objectively applied its mind to the relevant materials. On this aspect, as I have indicated before, there are conflicting claims and counter claims. It has been asserted by the petitioners that if the drainage and other steps, as originally envisaged, had been carried out in the proper phase, then this upsetting and which is really the cutting of the canal known as Cut Kunti channel, would have become redundant specially when there is a large amount of arable land in and around the surroundings. It has been further tried to urge, before me, that the proposed scheme is also from the technical point of view non-feasible and it would not help water logging of the areas concerned. On the other hand, contrary submissions have been reiterated on behalf of the respondents. As I have mentioned before, the Additional District Magistrate, who is as well the Land Acquisition Collector, in the affidavit-in-opposition to the main Rule and the Executive Engineer in the affidavit-in-opposition to the Contempt Rule have asserted contrary, have given figures and the history of this drainage scheme. It cannot be said on these materials that there were no materials which were relevant or germane to the issue. Then the question remains whether the

Government has applied its mind to the issues properly or objectively. Now, on this issue, as I said, these have been contradictory submissions and, in my opinion, in the present climate of (sic) of faith is the intrinsic fairness (sic) exclusive actions it would be advisable in a situation like this where the lives and (sic) of large number of people are concerned, that this question should be as far as possible objectively examined. I enquired and was told that the present Secretary of the Irrigation Department is an irrigation engineer and he was connected in some way or other with the original project and he is familiar with the development of the project. In the premises, I propose to have the scheme reexamined in certain lights and I shall indicate and the directions I propose to give on this matter.

19. Before I conclude, I must reiterate that a point was taken, as I have indicated before, that the preamble to the Act of 1948 had not been re enacted. Learned advocate for the petitioners is right to a certain extent that the preamble had not been re-enacted. But that does not, in my opinion, as I have indicated before, affect the position as has been observed by Maxwell on the Interpretation of Statute, 11th Edition, Page 45 ; the preamble cannot either restrict or extend the enacting provision, when the language and the objects and scope of the Act are not open to doubt. Here, except the purpose of the Act, which has been described to be "An Act for the requisition and speedy acquisition of land for certain purposes" the other portion of the preamble is in identical term with sub-section (1) of Section 3. Therefore, except for the use of the expression "speedy acquisition" the other provisions are similar. Therefore, it is not, in my opinion, a fact that the preamble was not re-enacted, it has not in any way affected the position. Moreover, as has been mentioned in the Craies on Statute Law, 6th Edition, page 199, the object of the preamble is to explain the origin and if the origin explained, as it was in the statute book from 1948 to 1977, the necessity of preamble does not very much survive. Preamble is never considered to be the essential part of the statute. (See in this connection the observations of Crawford on Statutory Construction, 1940 Edition, page 354, Article 205).

20. On this aspect learned advocate for the petitioners sought to rely, as I have mentioned before, that the scheme was in deviation of the original scheme. On the other hand, on behalf of the respondents, it has been asserted that the scheme was well within the purview of the original scheme as envisaged. Even if the scheme was in deviation, if the conditions of sub-section (1) of Section 3 were, fulfilled, then it would not, in my opinion, confer on the petitioners any right to challenge the requisition of land. On this aspect, reliance was naturally placed on the theory of promissory estoppel and my attention was drawn to the observations of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . There, the Supreme Court has sought to explain what is meant by promissory estoppel. This decision was rendered by a Bench consisting of two learned Judges of the Supreme Court. The effect of that decision, however, has been to a very large extent watered down

by the observations of the Supreme Court in subsequent decision in the case of Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, . This decision was also rendered by two other learned Judges of the Supreme Court. For my present purpose, it is not necessary to examine the effect of the observations made in the subsequent judgment. But for the application of the theory of promissory estoppel, even if it be accepted that there was some representation in 1976 contrary to what was contained in the scheme of 1973, and this is being sought to be deviated by the proposed requisitions, in order to attract the plea of promissory estoppel, there must be the averment and evidence that as a result of the representations made in 1976 the petitioners have altered the position to their detriment. There is no such allegation or averment in the petition. If such an allegation was not there, then the theory of promissory estoppel cannot, in my opinion, be invoked at all, if such a plea is at all invokable in case of statutory functions discharged by a State in exercise of its statutory duties. Therefore, on this aspect, the petitioners cannot succeed. But, as I have mentioned before, before the State exercises its power under sub-section (1) of Section 3 and subsequent provisions of the Act, there must be an honest application of mind to the conditions required to be fulfilled and in order to ensure that such an application of mind has been done, I would not, in the present atmosphere rest content with the averments of the Additional District Magistrate or the Executive Engineer concerned with the scheme but I would direct, as I have indicated before, the Secretary, irrigation Department to re examine in certain manner which I shall indicate hereinafter.

21. There is, however, another aspect which was sought to be urged in support of this application and that was this. That the effect of this requisition would be to destroy the lands of the petitioners and those would no longer continue as lands but would go under the canal and the lands would be destroyed. It was sought to be urged that the requisitions under the temporary Act could not be used for the purpose of permanent destruction of the premises or properties in question. Now, so far as whether the requisitions could be made for any permanent purpose under the temporary Act was concerned, several decisions were cited. Reliance in this connection was placed on the decision of the Supreme Court in the case of Collector, Akola vs. Ramchandra AIR 1968 SC 245. There, the Supreme Court was concerned with the Bombay Land Requisition Act. There, the Supreme Court observed that the only limitation to the power which Section 5(1) of that Act conferred was the temporary life of the Act. But the expressions "any land for any public purpose" were, according to the Supreme Court, sufficiently wide enough to include any public purpose whether temporary or otherwise. It was for the requisitioning authority to judge and not for any Court of law to decide how best the land was to be used. If the requisitioning authority used the land for a purpose which was not temporary such as setting up a new village site and for construction of houses, it was for the Government and those put up such structures to contemplate the possibility of having to return in future the lands to the owner in its original state, I must mention that

there was a provision in that Act which enjoined the Government to return the land in case of de-requisitioning or the Act coming to an end to restore the land in the original condition to the person from which the premises or land was requisitioned. In that context, the Supreme Court felt, in my opinion, that there were sufficient built-in precautions against the misuse of the power to requisition a property which would put the Government or an authority into check. In the light of these observations, so far as the present Act is concerned this question was considered by the Division Bench of this Court in the case of *M.B. Sarkar vs. State of West Bengal* 75 CWN 841 : AIR 1972 Cat 8. There, at paragraphs 41 and 42 of the judgment, Chief Justice, P. B. Mukherji observed as follows :

41. The next objection of the appellants to the order of requisition is that it is not for any public purpose but for the purpose of converting fisheries into dwelling places. The contention further is that it involves a total change in the character of the property. In short, the appellant's argument on this point is that such an object cannot come within the sanction of Section 3(1) of the West Bengal Act. In support of this argument it is contended for the appellants that requisition u/s 3(1) of the West Bengal Act does not permit change in the character of the property and in particular it does not permit permanent change in the character of the property which is requisitioned under the statute. What is said by the appellants is that if the property is subsequently derequisitioned after converting the fisheries into a highland the owners thereof are likely to suffer irreparable injury.

42. I have carefully considered this objection and I am unable to accept it. Among the expressed purposes for which land can be requisitioned u/s 3(1) of that Act it is stated *inter alia* for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas by the construction or reconstruction of dwelling places". The expressed declaration of such specific objects does not in my opinion put any limitation upon the Government about changing the character of the property requisitioned. We are of the opinion that so long as these purposes are carried out by the construction or reconstitution of dwelling places" such requisition cannot be challenged on the ground that it involves permanent change in the character of the property requisitioned. The right to change the character of the property requisitioned appears expressly and is inherent in the section itself. It is plain from the language of Section 3(1) of the West Bengal Act that the property requisitioned may undergo the fundamental change in its character to serve the statutory purpose of requisition mentioned therein. Construction of dwelling places is an expressed purpose in section 3(1) of this Statute. That permits and means permanent change in the character of the property requisitioned. The further argument of the appellants is that conversion of the fisheries into highland or dwelling place would mean irreparable injury to the appellants as owners of fisheries is met by the same answer. To prefer men and their dwelling places for fisheries in an over congested city like Calcutta howling for space for human habitation is a "public purpose" in modern

sociology of law and statutes. The alleged injury to the owners of fisheries is a matter of compensation as provided in Section 7 of the West Bengal Act. We, therefore, overrule this objection of the appellants.

Therefore, His Lordship, however, was careful enough to use the expression "change in the character of land". Whether that change in the character of the land, which tantamounts to destruction of the land or destruction of the property could be done did not fall for consideration before the Division Bench.

22. Another question which does not seem to have been agitated before the Division Bench but, which was sought to be urged before me, was that where in a temporary Act two powers were given, that is to say, the power to requisition as well as power to acquisition but the purpose for which the power is sought to be exercised was of such a nature which involved the complete destruction of the property whether resort to requisition and not to acquisition would be proper exercise of the power or not. There is a fundamental difference between the requisition and acquisition and that is well settled in law. While a requisition does not divest the owner of the property but only deprives him of the temporary user of the property or premises in question, an acquisition divests the owner of the right to the property and makes the State the owner of the property. Therefore, after the acquisition the owner will have no right over the property and the property belongs to the State. The State is free to destroy or to keep the property if it so thinks best in the public interest. While the property which is under requisition, the ownership of the title of the property belongs to the owner. Therefore, the question arises whether even for public purpose, two powers were given by the temporary Act--either to requisition or to acquisition--then whether resort to requisition of the property, for public purpose, which would lead to complete destruction of the property would be the proper exercise of the power or not, this aspect does not seem to have been urged before the Division Bench of this Court. There cannot be any doubt that the purpose for which the requisition is sought be made, in this case, will lead to the complete destruction of the land and therefore, while in view of the decision of the Division Bench, I must reiterate that the temporary Act could be exercised for permanent purpose even then the question whether the permanent purpose would better be served by acquisition without resorting to that power the exercise of the power of requisition was just or bonafide, on principle, I am definitely of the opinion that such exercise of power of requisitioning the property would be bad where the statute itself provides the power of acquisition without resorting to requisition even for the purpose for which it is contemplated. My attention was also drawn to a decision of the learned Single Judge of this Court in the case of Dhirendra Nath Pal vs. State of West Bengal, 1979 Cal. 1 CLJ 212. There also His Lordship followed the principle of the two decisions which I have already mentioned hereinbefore. There also, where the power is given for acquisition resort to requisition in such a case where there would be permanent destruction of property is bonafide exercise of the power or not was not adverted to. But as the power has been exercised and as has been asserted on behalf of the State, I

propose to give certain directions after the scheme has been re-examined by the Secretary, Irrigation Department that the requisition would be proceeded with in the light of the directions I shall indicate in this matter and steps are taken in this matter.

23. Many other decisions were cited which I do not think are quite relevant for the present purpose. Before I conclude my decision on this application, I must observe that there is an issue as to whether the actual possession has been taken of the premises in question I shall deal with this question in the contempt application and I shall give proper directions on this aspect as well in disposing of this application so that this question may not cause trouble in future. Having, therefore, heard the entire matter and considered the various legal and factual aspects involved in these applications, in my opinion, the appropriate order would be the following :

(1) The respondents would not further take any steps for excavation of the lands in question which have not already been excavated or disturb the possession of the petitioners until and unless the respondents and the Government take a decision (a) to acquisition the premises in question u/s 4 (1a) of the said Act as extended from time to time, (b) the Government takes immediate steps to cause publication in the Official Gazette for the acquisition of the land in question under sub section (1a) of Section 4 of the said Act, (c) But such decision and steps should not be taken until the steps contemplated by clause (2) herein have been taken and (4) the Government takes steps for making an estimate of the amount which is likely to be determined as compensation for the acquisition of such land and takes steps to pay in advance to the person or persons from whom the said acquisition of the land is made of about 80 per cent of the said amount of compensation as envisaged in section 8B(1) of the Act which would be paid without prejudice to the rights and contentions of the Government as well as the petitioners and the persons who would be affected as to the said acquisition, such payments should be made simultaneously on taking of the possession or within a fortnight in respect of the land to be taken possession after completion of the steps mentioned in clauses (2) and (3) herein.

(3) The Government, however, would not take the aforesaid, steps unless and until the Secretary of the Department of Irrigation, Government of West Bengal re-examines the entire scheme as contained in the "Gea-Kunti Drainage Scheme", 1973 as also envisaged in the Government publication of 1976 dealing with the Gea-Kunti Irrigation Project, contained in the booklet published by the Government of West Bengal and also re-examines the present conditions of the arable land and considers how much of the land would be the minimum requirement for implementing the scheme in accordance with the aforesaid original scheme and the statements made in the said booklet and also take into consideration the steps already taken in respect of the other two zones envisaged in the said scheme. The Secretary, Department of Irrigation would consider these aspects and would take into consideration in this matter any

representations or submissions made reasonably to him within such reasonable time as he considers fit and proper and thereupon the Secretary would arrive at his decision as quickly as possible and not later than three weeks from the date of the service of the order upon him. He would also take into consideration to what extent the sanction of the Chairman of the Ganga Flood Commission as well as the Central Government authorities involved in this scheme have been obtained, and whether the sanction of the Govt. is there for that Cut Kunti Channel as shown in the map annexed to the affidavit-in-opposition of the respondents. If he is satisfied about the extent of the lands to be required he would indicate to what extent the lands of the petitioners should be required for immediate implementation of the scheme and he should arrive at his decision indicating the reasons.

(3) Upon the fulfillment of the above conditions the petitioners would not be entitled to object to the requisitions to the extent indicated by the Government and subsequent acquisition by the Government for the purpose of the scheme and they would accept the money in the manner indicated aforesaid and thereafter the Government and the respondents would be at liberty to proceed with the matter.

(4) As there is dispute as to the area or land already taken possession of, the District Magistrate, and not the Addl. District Magistrate, should personally be satisfied having regard to the nature of the land and file a report to this Court and the Govt. indicating the reasons about the position and if any disputed lands have not yet been taken possession of, then upon the fulfillment of the conditions mentioned herein, the said lands be taken possession of

(5) Until these conditions are fulfilled status quo as on to-day should be continued. If, on the other hand these conditions are fulfilled and the amount of compensation for acquisition is determined in the manner indicated and steps are taken for payment in the manner indicated, the respondents would be at liberty to proceed with the working over the lands to the extent indicated by the Secretary in his decision.

(6) The application under Article 226 of the Constitution is disposed of with the aforesaid directions.

(7) In the facts and circumstances of the case there will be no order as to costs.

(8) Let a plain copy of this order countersigned by the Court Officer be given to the parties and all concerned should act upon the same.

These directions would also guide C. R. No. 697 (W) of 1981 (Satyanarayan Ghosh and Ors. vs. State of West Bengal and Ors.).