
(1989) 03 GAU CK 0022
In the Gauhati High Court
Case No : Civil Rule No. 135 of 1980

Indra Mohan Chakraborty

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-03-1989

Acts Referred:

Assam Land (Requisition and Acquisition) (Amendment) Act, 1964 — Section 3, 3, 3(1), 3(1), 3(3)

Citation : (1989) 2 GLJ 82 : (1989) 2 GLR 281

Hon'ble Judges : A.Raghuvir, C.J. and B.P.Saraf, J

Bench : Division Bench

Advocate : U.Barua, P.C.Deka, K.R.Pathak, K.P.Sharma, G.K.Talukdar, B.K.Das, A.R.Paul Majumdar, B.BujarBarua, Advocates appearing for Parties

Judgement

Dr. B. P. Saraf, J.—By this petition under Article 226 of the Constitution, the petitioners have challenged the orders passed by the Collector requisitioning their land on which they were running a market in exercise of powers under section 3 (1) of the Assam Land (Requisition & Acquisition) Act, 1964, hereinafter the "Assam Act".

2. The facts relevant for the purpose of deciding the points raised in the present petition may be briefly stated as follows. The petitioners were running a market at Silpukhuri since 1953 under licence from the Municipal Corporation on a plot of land measuring 1 bigha 7 lecnas covered by dag No. 218 (Gauhati) On 6. 6. 72, the Collector, Deputy Commissioner, Kamrup, at the request of the Gauhati Municipal Corporation passed an order under section 3 (1) of the Act, requisitioning the lands measuring in all 3 bigha 3 katha 4 lecnas mentioned in the said notification which included the lands belonging to the petitioners including the land on which the market was being run by them. By subsequent order dated 20.6.77, the Deputy Commissioner cancelled his earlier order and re-questioned only 1 bigha 3 katha 4 lechas land covered by dags No. 217, 216, 219 and 220 all belonging to the petitioners and released the lands belonging to

other persons.

3. An appeal was filed by the petitioners under section 3 (3) of the Assam Act before the State Government challenging the order of requisition of land passed by the collector, Deputy Commissioner for the proposed Silpukhuri market. The Minister, Revenue, heard the petitioners, the Collector, Kamrup and Gauhati Municipal Corporation. It was submitted on behalf of the petitioners that provisions of the Assam Act could not be applied in respect of requisition of a running market inasmuch as there was no request from the Gauhati Municipal Corporation or requisitioning the land of the petitioners. Secondly it was contended that the petitioners had their residential houses over the requisitioned land covered by dags No. 218, 219 and 220 and land covered by dag No. 217 was still under requisition made by the Railways in 1945, as though it was derequisitioned in 1951⁵², vacant possession of the same had not been delivered to the petitioners.

4. The Minister, Revenue heard the arguments of the parties and considered their submissions. The Gauhati Municipal Corporation vide its letter No. M CGL2/76/3878 dated 10.5.79 informed the Minister that it requisitioned an area of 3 bigha 4 katha i 1 lechas of land for establishment of the proposed market. The Minister, Revenue arrived at a finding that the petitioners had their residential houses over the land covered by dags No.219 and 2.0. The Minister arrived at a finding that it would not be proper on humanitarian grounds to take the land covered by dags No. 219 and 220 on which the residential houses were situated and to evict them and drive them out from the said land to another place. Considering the letter of the Gauhati Municipal Corporation dated 10. 5. 79 and all aspects of the matter, the Minister, Revenue by order dated 7. 9 79 modified the requisition order and held that the lands of dags mentioned in the said order measuring bigha 3 katha 11 lechas should be requisitioned and directed accordingly.

5. The petitioners applied for certified copy of the aforesaid order dated 7. 9. 79 passed by the Revenue Minister on their appeal under section 3 (3) of the Assam Act. No copy was supplied. In the meantime, the petitioners were served with a notice informing that the appeal was fixed for hearing before the Minister, State, Revenue on 19. 11: 79. The aforesaid notice was however cancelled by another notice dated 17. 11,79. The petitioners thereafter, received an order dated 10. 12. 1979 (Annexure "A" to the writ petition) purportedly passed on the appeal which was already finally decided by the Revenue Minister earlier by his order dated 7. 9. 79.

6 Being aggrieved, the petitioners moved this Court by filing the present petition under Article 226 of the Constitution challenging the aforesaid order dated 10.12.79 passed by the Minister, Revenue on the ground that the appeal under section 3 (3) of the Assam Act having already been finally decided by the Minister, Revenue by his order dated 7.9.79, his successor in office had no power and jurisdiction to pass a fresh order in the very same appeal which was no more

pending. The petitioners have also challenged the said order on the ground that it was passed without hearing the petitioners inasmuch as the notice dated 8.11.79 fixing a fresh hearing of the appeal was itself cancelled by another notice dated 17. II. 79.

7. The petitioners have also challenged the order of requisition of land passed by the Collector on the following grounds :

i) That the 1964 Assam Act is not applicable in the instant case, and as such, the order of requisition passed under section 3 (1) of the said Act for establishment of model market by the Gauhati Municipal Corporation is not in accordance with law.

ii) That the conditions precedent for acquisition of a land under section 103 of the Gauhati Municipal Corporation Act are absent in the instant case.

iii) That the land having been earlier requisitioned by the Railways and the possession thereof having not been delivered to the petitioners in spite of derequisition in 1951⁵², the same remained in law under requisition and could not be requisitioned again under section 3 (1) of the Assam Act.

iv) That from the letter of Municipal Corporation, it being clear that they required 3 bigha 4 katha and 11 lectias of land, the order passed by the Collector, Deputy Commissioner, Kamrup on 20. 6. 77 requisitioning only 1 bigha 3 katha 4 lechas of land was not in accordance with law as the said land on the face of it did not meet the requirement of the Corporation for establishment of the proposed market and, as such, the said order of requisition was malafide and liable to be quashed.

8) We have heard learned counsel Mr. B. K. Das for the petitioner and Mr. P. C. Deka for the Corporation and Mr. K. P. Sarma, Additional Senior Advocate for the State. Perused the records. Considered the submissions of the parties.

9. We shall first take up the submission of the petitioners that the order passed by the Minister, State, Revenue and communicated by order dated 10. 12. 79 is illegal and without jurisdiction. It appears from the record that the petitioners filed an appeal under section 3 (3) of the Assam Act before the State Government against the order of requisition passed by the Deputy Commissioner. The said appeal was heard by the Minister, Revenue. All the parties were represented. The petitioners, the Collector, Kamrup and the Gauhati Municipal Corporation, all were heard. A letter dated 10. 5. 79 from the Gauhati Municipal Corporation informing that they required an area of 3 bigha 4 katha 11 lecbas for establishment of the pr posed market was also considered by the Minister. The Minister also considered the fact that on the land covered by dags No. 219 and 220, the petitioners had residential houses. Considering all the facts and circumstances of the case, the Minister passed a reasoned order on 7. 9. 79 and directed that the lands mentioned in the said order covered by five different dags in all measuring 3 bigha 3 katha 11 lechas should be requisitioned and directed

the Collector to act accordingly. The aforesaid facts are not in dispute. Subsequently, his successor in office, the Minister, Revenue issued a notice fixing hearing of the appeal on 19. 11. 79. The said notice was later cancelled. However, on 10. 12. 79. an order was passed deciding afresh the appeal filed by the petitioners under section 3 (3) of the Assam Act which had already been decided by his predecessor on 7. 9. 79 without even hearing the parties. In the counter filed on behalf of the State, it has been stated that the notice for hearing was withdrawn as it was found that the Minister, Revenue had already heard the parties, it is also not disputed by the respondents that the Minister, Revenue passed final order on merits on the appeal under section 3 (3) on 7. 9 79. What has been contended in the counter is that the aforesaid order was not communicated to the parties, and as such, it was not binding and the successor in office could pass the fresh order dated 10. 12.79.

10 We have considered the aforesaid facts and submissions. It is difficult to understand how a final order passed by a Minister on a statutory appeal and duly signed by him could be ignored by his successor in office and how a fresh order can be passed by him in the very same appeal. In fact, in the instant case, the appeal stood finally disposed the moment order was passed by the Revenue Minister on 7 9. 79 and there was nothing left to be decided by his successor in office. Issue of a notice fixing fresh hearing in that view of the matter was patently erroneous and the same was rightly cancelled. What we failed to understand is how after cancellation of the said notice, the Minister, Revenue could pass the impugned order. On behalf of the State, it is now contended that as the order was passed on appeal by the Minister, Revenue dated 7. 9. 79 as it was not communicated, it was open to his successor to pass a fresh order. In the alternative, it is contended that the said order should be treated as an order passed on review.

11. We have given our careful consideration to both the submissions of the learned counsel but we find it difficult to accept the same for the following reasons. Firstly, an order duly passed in a statutory appeal after hearing all the interested parties becomes a final order the moment it is signed by the appellate authority. Communication of the copy of the order to the parties may be done in due course. The order takes effect immediately it is signed. The appeal stands finally disposed of and communication of copy of the order to the concerned parties is only a ministerial function. The appellate authority comes functus officio. The order becomes final. It cannot be altered, modified or set aside except in the manner laid down by law. This interpretation also gets support from subsection (3) of section 3 of the Assam Act which provides that the decision of the State Government in an appeal under section 3 (3) of the Act shall be final.

12. In the instant case, the admitted position is that the appeal filed by the petitioners before the State Government under section 3 (3) of the Assam Act was decided by the Minister, Revenue by order dated 7. 9. 79. In fact, the said order has been produced before this Court by the State itself. The said order

becomes final on 7. 9. 79. There was no appeal thereafter pending before the State Government for decision. The successor in office, Minister, Revenue had no power and or jurisdiction to ignore the aforesaid order and to pass a fresh order in view of the legal position stated above. The impugned order dated 10. 12. 79 passed by the Minister, State, Revenue deciding afresh an appeal already disposed of is therefore, illegal and without jurisdiction and liable to be set aside.

13. In this connection, it may be appropriate also to deal with the alternate submission of the learned counsel for the State that the said order should be treated as an order passed on review. We have considered the arguments advanced by the learned counsel for the State on this score but we do not find it possible to accept the same for the following reasons. It is well settled that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. On perusal of the various provisions of the Assam Act, it is clear that no power of review has been conferred on the State Government. Power of review, therefore cannot be exercised in the instant case. It may however be pertinent to mention that even in cases, where the power of review has been conferred on the authorities, the same can not be exercised for the purpose of rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. A review proceeding cannot be equated With original hearing of the case. As held by the Supreme Court in *North India Caterers (India) Ltd vs Lt. Governor of Delhi* (1980) 2 S C C 187 : "Whatever be the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility". To quote Krishna Iyer, J "A plea of review, unless the first judicial review is manifestly distorted, is like asking for the moon A forensic defeat cannot be avenged by invitation to have a second look, hopeful of discover of flaws and reversal of result". (*North India Caterers, Supra*). These are the restrictions to the exercise of power of review where it is conferred by the statute. In the instant case, however, there is no provision for review in the Assam Act. As such, the plea taken by the State that the fresh order passed by the Minister, State, Revenue on reconsideration of the entire matter,, should be treated as an order of review does not have legs to stand,/The said submission is, therefore, rejected.

14. In view of the aforesaid discussion, we hold that the impugned order dated 10.12.79 passed is illegal and without jurisdiction and the same is accordingly quashed. The order passed by the Minister, Revenue under section 3 (3) of the Assam Act on 7.9.79 subsists and the same will operate subject however to the observations on the other points in the following paragraphs.

15. Coming to the second limb of the arguments regarding the validity of

proceeding for requisition initiated by the Collector, it may be appropriate to mention that the very same question Whether the provisions of section 3(3) of the Assam Act could be applied to a case where the land was required to be acquired for the Municipality for establishment of a market, as the purpose of requisition mentioned in that section was not satisfied came up for consideration before this Court in *Nadir Shah vs. State of Assam* AIR 1960 Assam 18. This Court held that the opening of the market for maintaining supplies and services essential to the life of the community fell within section 3(3) of the Assam Act, and as such, resort to the said provision was justified. On appeal, the Supreme Court confirmed the decision of this Court and held that when the market is meant to cater to the needs of the public so that supplies essential to life may reach it, the Deputy Commissioner had the power to requisition the land necessary for that purpose under section 3 (1) of the Act. (*Nadir Shah vs. State of Assam and another*, C.A. No. 77 of 1963 decided by the Supreme Court on 22/1/1965) Though the aforesaid decisions were under the Assam (Requisition & Acquisition) Act, 1948, hereinafter "1948 Assam Act" as the provisions of the Assam Act, 1964 which repealed the aforesaid 1948 Assam Act are identical, they squarely apply to the present case and the aforesaid submission, therefore, cannot be accepted.

16. The second, contention of the learned counsel for the petitioners That condition precedent for acquisition of land under section 103 of the "Gauhati Municipal Corporation Act, 1971 are not present in the instant, case is also covered by the aforesaid decisions. As held by the Supreme Court it is open to the Corporation under section 103 of the Gauhati Municipal Corporation Act to make an application to the Government to acquire the lands required by it and upon such application, the State Government may "order proceedings to be taken for acquiring the same on behalf of the Corporation as if such property was land needed for a public purpose within the meaning of Land Acquisition Act, 1948". It is for the authority so ordered to acquire the same through any means including requisition. In the instant case, the Deputy Commissioner who is the competent authority proceeded to acquire the land under the Assam Act and for that purpose, passed an order of requisition under section 3(1) of the Assam Act. In that view of the matter, we do not find any fault with the procedure adopted by the Deputy Commissioner. He rightly took resort to the provisions of section 3 (1) of the Assam Act for the purpose. The contention of the petitioners on this score, therefore, fails.

17. The next contention of the petitioners that as the land was requisitioned by the Railways as back as 1945. As though it was derequisitioned in 1951⁵², no vacant possession was given to the petitioners, the land continued to be under requisition. It is submitted that in that view of the matter, the land in question which was under requisition with the Railways could not be requisitioned again under section 3(1) of the Assam Act. In support of the aforesaid contention, the learned counsel for the petitioners placed reliance on a decision of the Calcutta High Court, in *Dhonegopal vs. Secretary, Land Revenue Department* reported in

AIR 1966 Calcutta 348 We have considered the submissions of the learned counsel and also perused the aforesaid decision of the Calcutta High Court. We find that, section 6 () of the Requisitioning and Acquisition of Immovable Property Act, 1952 empowers the Government at any time to release from requisition any property requisitioned under that Act. It also requires that on such release being made "property should be restored in as good a condition as it was when possession thereof was taken". Thus, "release from requisition" is independent of delivery of possession. Restoration of possession has to follow the release of property from requisition. The moment an order releasing a property from requisition is passed, the original order of requisition stands vacated and the property gets free from requisition. If the competent authority fails to restore possession thereafter, the owner, might be entitled to compensation, damages etc. under the law. But, that cannot make the order of release from requisition inoperative. In the instant case, the land in question was admittedly derequisitioned in the year 1951-52 and as such, there was no bar in passing an order of requisition under section 3 (I) of the Assam Act in respect thereof.

18. We now deal with the last submission of the petitioners that the order of requisition passed by the Deputy Commissioner, Kamrup was malafide. In support of this submission, the learned counsel has painted out to us the letter submitted by the Gauhati Municipal Corporation before the Minister, Revenue being letter dated 10.5.79 wherein it was stated that an area of 3 bigha 4 katha 11 lechas of land was required for establishment of the proposed permanent market. It has been pointed out that the Deputy Commissioner by his impugned order "of requisition dated 20.6.77 cancelled his earlier order of requisition and requisitioned only 1 bigha 3 katha 4 lechas of land which on the face of it, was not sufficient for establishment of the proposed market. From the aforesaid facts, it is contended that the order of requisition passed by the Deputy Commissioner is on the face of it malafide. We have considered the submissions of the learned counsel. The submission as made above, on the face of it, appears to have some force. However, on a closer scrutiny of the order passed by the Deputy Commissioner in the light of the modifications made by the Minister, Revenue, Assam by his order under section 3 (3) of the Assam Act passed on 7.9.79 which is the final and operative order, we do not find any substance in the aforesaid submission. By the aforesaid order of the Minister passed in appeal, the order of Deputy Commissioner was modified and he was directed to requisition the lands mentioned in the said order in all measuring 3 bigha 3 katha 11 lechas which is more or less equal to the land required by the Municipal Corporation for establishment of the proposed model market. If the lands mentioned in the said order as directed by the Minister, Revenue are requisitioned, it cannot be said that the requisition is malafide and that it will not meet the requirement of the proposed Municipal market. The order of the Deputy Commissioner dated 20.6.77 has to be read now along with the order passed under section 3 (3) of the Act by the Minister, Revenue on 7.9.79. On such a reading, it is clear that the order of the Deputy Commissioner now is for requisition of lands measuring in all 3

bighas 3 kathas and 11 lechas as specified in the order dated 7.9.79 passed in appeal and not only the small piece of land of the petitioner. In that view of the matter, aforesaid contention of the petitioner fails.

19. In view of what is stated above, we set aside and quash the order passed by the Minister, State Revenue on 10.12.79. and hold that the order passed by the Minister, Revenue, Assam under section 3 (3) on 7.9.79 is a valid and subsisting order and, therefore, the order of requisition passed by the Deputy Commissioner on 30. 6.77 shall stand modified in terms of the direction contained in the said order and it shall operate the field.

20. In the result, the petition is allowed to the extent indicated above. No order as to costs.

A.Raghuvir,C.J,I agree.