

(1981) 07 CAL CK 0025
In the Calcutta High Court
Case No : Civil Rule No. 4256 (W) of 1977

Krishna Narayan Das and Others

APPELLANT

Vs

Additional District Magistrate etc. and Others

RESPONDENT

Date of Decision : 09-07-1981

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

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

Citation : AIR 1982 Cal 380 : 86 CWN 364

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Samarendra Kumar Dutta and Sujit Kumar Laik, for the Appellant;
Debaprasad Mukherjee, for the Respondent

Judgement

M.N. Roy, J.—The petitioners, who have claimed to be the owners of the lands (hereinafter referred to as the said lands), as involved in the order, of requisition (hereinafter referred to as the said order), u/s 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the said Act), obtained this Rule on 9th Aug. 1977. At the time of the issue of the Rule, no interim order was granted, but liberty was given, to ask for appropriate interim order, on notice to the other side and although such prayer for interim order was made, the same was not entertained. The respective particulars of the petitioners, whereby they entered into and possessed their shares in the said lands and so also the names of their respective vendors have been duly disclosed in the petition.

2. It has also been stated that the purchase of petitioner No. 3, Sri Binapani Dasi from her vendor was in respect of a tank measuring more or less .93 acre in Plot No. 40 and the bank of the tank along with garden measuring more or less .36 acre in Plot No. 36/1492. That apart, one Banka Behari Rajak, father of petitioner No. 4, Sm. Jyotsna Dasi and that also of the petitioner No. 2 Kamal Krishna Rajak, possessed the said tank as a lessee. It has in short been stated and

claimed that after the purchase as aforesaid, the petitioners have been occupying the said tank, bank of the same and the garden and have reared fish. It has been stated, further that the tank in question, has been used and utilised for pisciculture or fishing and so also the bank of the same, for operations attached to the same. The petitioners have stated that the tank would be about .93 acre and the bank of the same would be about 1.20 acres, thus the total area of the tank and the bank of the same would come to about 2.13 acres. It has been stated by the petitioners that the tank in question was not used for purposes other than what has been mentioned above and more particularly for domestic and irrigation purposes and the tank In question was not adjoining to any homestead. The petitioners categorically claimed that the tank in question would be a fishery in terms of the definition in Section 2(3) of the West Bengal Fisheries (Requisition and Acquisition) Act 1965 (hereinafter referred to as the said 1965 Act), which defines "Fishery", as any land whereon water is confined naturally or artificially whether periodically or throughout the year for pisciculture or for fishing and includes a "tank" "fishery" as defined in the Explanation to Clause (e) of Sub-section (1) of Section 6 of the West Bengal Estates Acquisition Act, 1953, as also the fish in such fishery or "tank-fishery", but does not include a tank not exceeding one acre in area adjoining a homestead and used for purposes of irrigation or domestic purposes:

3. It was the case of the petitioners that on or about 12th Jan. 1977, they received notices signed by the respondent authorities concerned as issued u/s 3(1) of the said Act, intimating the purpose of the requisition, to be for maintaining supplies and services essential to the life of the community, viz. for providing proper facilities for transport/ communication/irrigation/drainage, for acquisition for stock yard offices and go-downs (PWD) Roads Department at Suri, in the District of Birbhum. It has been alleged by the petitioners that such requisition was not bona fide and in fact the same was made in a mala fide way, manner and intention or at the machination of Shri S. K. Mondal, Executive Engineer, PWD Roads, Respondent No. 4, who had the idea and intention to enjoy the fish as grown by the petitioners. In fact, it has been alleged, at least on two given dates, the said Respondent No. 4, caught fish by engaging his men from the tank of Shri Banku Behari Rajak, for which General diary entries have been lodged. That apart, it was claimed by the said Banku Behari Rajak, that there was fish worth about Rs. 8,000/- to Rs. 10,000/- in the tank.

4. It was alleged by the petitioners that in or about the month of June 1977, they came to learn from the office of the Executive Engineer concerned, that the lease of the said tank was granted to one Dharendra Dhibar, Respondent No. 6, for three years and on hearing such, necessary demand for justice was made.

5. It was claimed and contended by the petitioners that the said Act, was neither attracted nor applicable in the case of the said tank, as the same was a tank fishery within the meaning of the said 1965 Act and as such, apart from other infirmities, the requisition as challenged, was made in colourable exercise of

power of the Respondent No. 4, Executive Engineer. The petitioners, in view of the admitted fact of letting out the tank fishery to Respondent No. 6, after requisitioning the same for the purposes as mentioned above, claimed the same to be mala fide too. Such charge of mala fide nature was sought to be established, as there were other lands lying and available for the purpose and according to the petitioner even though these lands were much more and better suited for the purpose and object of the requisition, they were not touched and on the other hand, the said tank has been sought to be requisitioned by the authorities concerned at the instance of the Respondent No. 4, Executive Engineer and that too for the purposes of a private individual like the said Respondent No. 6.

6. Shri Priya Lal Aich, Special Land Acquisition Collector, Suri, Respondent No. 2 (hereinafter referred to as the said deponent), had initially filed an affidavit-in-opposition dated 28th Jan. 1978, for his behalf and on behalf of Respondent Nos. 1, 4 and 5, claiming himself to be acquainted with the facts, as he was looking after the case. There has been no affidavit filed by the Executive Engineer, Respondent No. 4 and for that, Mr. Dutt, appearing in support of the Rule, made serious comments. In fact, he commented, that the allegations of mala fide, as duly made against that Respondent or his conduct have not been duly controverted.

7. The said deponent has stated that the petitioners received the notices of requisition on 11th and 12th Jan. 1977 and the fact of rearing fish in the said tank, was not known to the respondents. He has also stated that the instant requisition was not made at the instance of the Respondent No. 4, Executive Engineer or that the said officer had the idea or intention to enjoy the fish of the tank as alleged. In fact, it has been stated that when possession of the said tank was taken on 15th Jan. 1977, there was no fish in the tank. The said deponent has of course admitted that the tank in question was leased out to Respondent No. 6, for a period of three years. He has denied the allegation that the fish of the tank was caught by the Respondent No. 4 or by his men and at his instance. The said deponent has also claimed that the said Act was applicable in this case and the same was duly applied. The said affidavit-in-opposition was replied to by the petitioners by their affidavit-in-reply dated 8th March 1978 and in this affidavit, they have not pleaded any new fact,

8. There was another supplementary-affidavit dated 7th April 1978, filed by the answering Respondents, which was allowed to be filed by the order dated 12th May 1978 and in the circumstances as mentioned therein. In this affidavit, the said deponent has stated that the requisition in question was pure and simple for public purpose and the plot number of the concerned tank under requisition, would be 36 and not 40 as alleged. He has stated further that the Birbhum Highway Division Office was started in September, 1972 and prior thereto, there was one sub-divisional office at Suri (Tilpara), under the control of the Executive Engineer, Burdwan High way Division. There was no Divisional P. W. (Roads)

Departments" Office in the district of Birbhum and such division was created by splitting up of works of construction of Roads of Birbhum District separately from those of Burdwan District and in the process of developing such Divisional Office into a full-fledged one, it was necessary that some lands adjoining and contiguous, be requisitioned for the sake of convenience and that place was most suited for properly guarding the costly materials and was also suitable for the office site.

9. It has also been stated that the requisition in question was also absolutely necessary for storing and stocking for measurement of road construction materials and also for construction of godowns and offices required for road building purposes, apart from erecting building for offices and for proper development of the District Office as mentioned above. The said deponent has further stated that since the bed of the tank became very much shallow and filled up in many places and the ultimate object and aim was to fill-up the lank and to construct in near future, structure for godowns and offices for the safety and preservation of road building materials, so after taking possession on 15th Jan. 1977, a lease to the Respondent No. 6 was granted on 23rd June, 1977, as he was the highest bidder, at Rs. 600/-, for three years, subject to the right of termination with notice. This settlement, according to the said deponent, was done in accordance with PWD Code and also the general convention of the Department and for public purpose, apart from earning extra revenue for the time being. In their reply dated 30th May 1978, to the said supplementary affidavit, the petitioners have denied all the material allegations and claimed that the purposes as disclosed now, were neither bona fide nor genuine or proper. It has also been claimed that the said deponent has made untrue statements, when he has stated about the settlement of the tank to the Respondent No. 6 being the highest bidder, as there was no tender or auction at all.

10. The total land would be .93 and 2.13 acres Le. 3.06 acres and the notice under the said Act was received by the petitioners. Those lands have also been claimed to have been purchased by the petitioners. In the pleadings and the facts as mentioned hereinbefore, Mr. Dutt, appearing in support of the Rule contended firstly, that the requisition in question, was beyond the scope and purview of the said Act and in any event, Section 3 of the said Act, which is to the following effect:--

3. (1) If in the opinion of the (State) Government or any person authorised in this behalf by the (State) Government it is necessary so to do for maintaining supplies and services essential to the life of the community or for providing proper facilities for transport, communication, irrigation or drainage, the (State) Government or the person so authorised, as the case may be, may, by order in writing, requisition any land and may make such further orders as appear to it or to him to be necessary or expedient in connection with the requisitioning :

Provided that no land used for the purpose of religious worship shall be requisitioned under this section.

(2) An order under Sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation (of an occupier, not being the owner of the land, also on such occupier).

(3) If any person fails to comply with an order made under Sub-section (1), the Collector or any person authorised by him in writing in this behalf shall execute the order in such manner as he considers expedient and may,--

(a) if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or

(b) if he is not a Magistrate, apply to a Magistrate or, in Calcutta as denned in Clause (11) of Section 5 of the Calcutta Municipal Act, 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of suck land to him,

had or has no application in the facts of the Case. Mr. Dutt secondly contended that the impugned order of requisition or the proceedings relating thereto, was absolutely null and void, bad and unauthorised, apart from being illegal and irregular, as there was abject non application of mind and the order in question was as vague as the same could be. He, thirdly, submitted that since the requisition of fishery, if at all, was governed and guided by the provisions of the said 1965 Act, so the action for requisition of the tank fishery, as taken under the said Act Was unauthorised, improper and without jurisdiction and fourthly, it was contended by Mr. Dutta that there was no public purpose involved in the instant requisition and the entire action was taken or resorted to in colourable use and exercise of power, authority and jurisdiction. That apart, Mr. Dutta claimed the process of requisition in this case, to be a mala fide one.

11. In support of his first and second submissions as mentioned above, Mr. Dutt referred to the preamble of the said Act and so also to the provisions of Section 3 of the same. The said Act was enacted, for making provisions for the requisition and speedy acquisition of land, which, in terms of Section 2 (b1) has the same meaning as in the Land Acquisition Act, 1894, for certain purposes viz. for the purposes of maintaining supplies and services essential to the life of the community and for providing proper facilities for transport, communication, irrigation and drainage and Section 3 of the same lays down, how and in what manner the power of requisition, is to be exercised. The preamble of the said Act and Section 3 of the same as mentioned above, do specify the different purposes, for which the provisions of the said Act, can be put into action or shelter under the same can be taken in a given case of requisition and the said Act or the provisions of the same or the machineries under the same cannot be employed, for requisitions other than those as mentioned or contemplated under the said Act or specified therein. In any event, the public purpose involved behind or in a requisition proceeding under the said Act, will also have to be proved, if the act or action, as taken, is required to be sustained or supported. In terms of the determinations in the case of Narendra Nath Tripathy v. State of

West Bengal, (1974) CWN 397, it has been observed that the said Act is intended to provide for the requisition and speedy acquisition of land for certain purposes, inter alia of maintaining supplies and services essential to the life of the community for providing proper facilities for transport, communication, irrigation or drainage. A perusal of the relevant provisions of the Act indicates that there is no express provision for a hearing before an order of requisition is made. The application of the principle of natural justice also appears to be excluded by necessary implication- and if a contemplated requisition in public interest is on a vast scale affecting innumerable persons it may not be possible nor practicable to afford any opportunity for hearing before requisition except at the cost of frustrating the scheme which is the basis of requisition. In such cases there will be no scope for affording any opportunity of hearing before requisition which by reason of attending circumstances will oust the application of the principles of natural justice. The views as expressed in the above case, on notice and principles of natural justice, have, in fact been followed in the case of *Sushila Debi Fomra v. State of West Bengal*, (1980) 84 Cal WN 661 and in that case, it has also been observed that the said Act does not contemplate the giving of notice to and hearing the person affected before making an order u/s 3 of the Act. Such a provision is not implicit in the Act. The only remedy available to the aggrieved person is that he is at liberty to make a representation to the authority concerned after the order is served u/s 3 (2). On the submissions as aforesaid or in support of them, Mr. Dutt, made a further reference to the order of requisition, wherein all the purposes were kept and maintained and were not scored through. That, according to him, was enough to establish the allegations of non-application of mind and vagueness or to establish the invalidity or irregularity of the concerned order. The affidavit filed by the respondents has not appropriately answered the effect of the allegations categorically made for non-striking out the eventualities not required by the requisition in question. The purposes of a requisition order would be that by reading the same or going through the same, one should be in a position to follow and understand or ascertain, in terms of the determinations in the case of *Pramatho Nath Mukherjee v. State of West Bengal*. (1966) CWN 503, whether the requisition was ordered for the purpose of drainage, irrigation, road construction or transport. The absence of such striking out the interest, purposes or the purposes not required or unnecessary and the issuance of a rolled up requisition order would establish a case of non-application of mind of the authorities concerned, apart from vagueness. The above being the position, it was expected that the requisitioning authority should have filed an affidavit, at least explaining the purposes, for which the requisition was made and how mind was applied. Unfortunately, there is no such affidavit filed and the defence as put forward, which have been mentioned hereinbefore and were referred to by Mr. Mukherjee, were not very convincing,

12. Since it was claimed and established by Mr. Mukherjee that the lands as requisitioned in their entirety, were not fishery, but such fishery formed a part of the lands as requisitioned, the third submissions of Mr. Dutt, as referred to

hereinbefore, would not be available in their entirety, in respect of or against the requisition and the same in my view, would thus be available only in respect of the part or portion of the requisition order, covering the fishery and that too for the reasons as mentioned hereinafter.

13. If the object of the requisition was for construction of office buildings or such buildings as mentioned in the affidavits, then the submissions of Mr. Dutt and more particularly on his fourth submission that there was no public purpose involved behind the requisition in question, cannot be accepted. It is true that it is impossible to define precisely the expression "public purpose". All the facts and circumstances of a case will have to be clearly examined in order to determine whether a public purpose has been established. Prima facie, the Government is the best judge as to whether a requisition was for a public purpose, but they are not the sole Judge. The Courts will have jurisdiction and it will, in my view, be their duty to determine the matter whenever a question or any dispute on that aspect is brought up or canvassed. In deciding such question or any fact, on a challenge to the requisition order being thrown, the Court will thus have to see also whether opinion was formed duly and bona fide. In fact, the provisions of the said Act, do also contemplate such formation of opinion. The defence of the answering respondents in the instant case was that, as the bed of the tank was dried up or was drying up, so the same was temporarily leased out to the respondent No. 6, as he was the highest bidder for augmenting the source of revenue. This, in my view, would not certainly establish a public purpose, rather demolish such purpose, if the same was the real basis of the requisition. In fact, so far the tank or the lands covering the same, that was the only defence. Such defence, in my opinion, was not bona fide and the defence as taken, supports the fifth submissions of Mr. Dutt on mala fide. When the requisition in question was not admittedly for the purpose of a fishery or for letting out the same for that purpose, the lease of the fishery as given to the respondent No. 6 of a portion of the requisitioned lands, was highly improper, irregular and unauthorised. Such lease as granted, has expired, even then, I have no other alternative but to hold as aforesaid, as the said subsequent leasing out to the Respondent No. 6, was not bona fide. While on this aspect, it should be noted that Mr. Dutt referred to the determinations in the case of Sailendra Nath Ray Vs. State of West Bengal, , In that case, lands were sought to be acquired for the purpose of providing facilities for transport and widening of road and in the alternative, for maintenance of supplies and services essential to the life of community and the settlement of those lands were made in respect of small traders, displaced as a result of some other acquisition. It has been observed that such settlement cannot be said to be connected with or incidental to the facilities for transport and widening of road and in the alternative for maintenance of supplies and services essential to the community.

14. A fishery, in the light of the Bench determinations in the case of Pasupati Roy Vs. State of West Bengal and Others, , does not come within the purview of the Land Acquisition Act, 1894 as the definition of land in that Act does not include

fishery as such in that view of the matter it cannot be said that the said Act could be invoked by the State Government for the I purpose of requisition of all the lands as involved in this case. At least a portion of the lands as requisitioned or a part thereof, was a tank, which was used for rearing fish and pisciculture, which fact was also established from the action of the respondents, in leasing out the said part or portion to the respondent No. 6 for such purposes and that fact or act or action would thus establish that requisition of the lands, in so far as they related to the lands covering the tank which was used or after requisition intended to be used for the purposes as aforesaid through the respondent No. 6, was inappropriate and unauthorised under the said Act. Apart from the above if a part or portion of the land, as in this case, was leased out to a third person for augmentation the source of revenue, which was the case of the answering] Respondents, then, there was in my view, no compliance with the preamble of the said Act, which provides for the requisition and speedy acquisition of land.

15. For what has been indicated above, the requisition so far the lands covering the tank concerned, which was used for the purposes as mentioned above, was bad, void and irregular, apart from being without jurisdiction, unauthorised and mala fide and the order of requisition in respect of the other lands suffered from the necessary infirmities of non-application of mind as the order in question was a rolled up one and the irrelevant purposes have not been scored through or struck off.

16. So the Rule succeeds and the same is made absolute for the reasons as mentioned above. There will be no order as to costs.

17. This order will not prejudice the Respondents now, to proceed in the matter of requisitioning the lands in accordance with law, if they so intend or are so advised.