

(1971) 07 CAL CK 0009
In the Calcutta High Court
Case No : A.F.O.O. No. 126 of 1970

Mihir Kumar Sarkar and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 05-07-1971

Acts Referred:

Land Acquisition Act, 1894 — Section 5A
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 3(1)

Citation : AIR 1972 Cal 8 : (1971) 1 CALLT 1 : 75 CWN 831

Hon'ble Judges : P.B. Mukharji, C.J.; B.C. Mitra, J

Bench : Division Bench

Advocate : P.K. Ray, Nani Coomar Chakrabarty, Ganendra Narayan Roy and S. Nandi, for the Appellant; B. Das, General, Arun Kr. Jana and Mani Bhusan Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, C.J.—This is an appeal from the judgment and order of Mr. Justice Anil Kumar Sen dated the 5th March, 1970, discharging the Rule obtained by the appellants.

2. The appellants moved this court under Article 226 of the Constitution against the State of West Bengal, the Additional District Magistrate, 24-Parganas and the Collector (under West Bengal Act II) Alipore. In that application the appellants prayed inter alia for a writ of mandamus commanding the respondents to withdraw, recall and cancel the Order of requisition issued by the State of West Bengal on or about 5th November, 1969 and for incidental relief for injunction restraining the respondents, their officers and servants and agents from interfering with the possession of the appellants in respect of the said land notified. The appellants' challenge in this appeal is against the Government's Order of requisition of appellants' lands under the West Bengal Land (Requisition and Acquisition) Act, 1948.

3. The facts briefly appear from the Order of Requisition itself. In the first place

the Order recites:

"Whereas in my opinion it is necessary for creation of better living conditions in rural or urban areas by the construction or reconstruction of dwelling places in Mouza Dhapanagar, P. S. Bhangar, District: 24-Parganas for I. W. Department of the West Bengal to requisition the land described in the Schedule below."

4. The Order then traces the authority for requisition of land to the Government Notification No. 20500 dated the 3-12-1963 read with the Notification No. 3094 LA dated 17-2-1963 published in the Calcutta Gazette Extra-ordinary of the 21st October, 1963 at page 367. This notification authorises the Collector to exercise the power conferred by Sec. 3 (1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act 2 of 1948) as amended by Act VIII of 1954, XII of 1967 of 1962, XXII of 1963 and Act III of 1967.

5. In exercise of the power conferred by Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act 1948 the Collector requisitioned the land mentioned in the schedule and ordered:

"(1) possession of the land as described in the sch. by the Surveyor Shri S. Roy/ Shri Ganguli on and from 8th November. 1969.

(2) the plan of the land may be inspected in the office of the Special Land Requisition Officer, Alipore."

6. The land in question falls within the reclamation of the Southern Salt Lake area in the Eastern outskirt of the city of Calcutta which is a well known big project of urban development.

7. The Order of Requisition is challenged on diverse grounds.

8. The first objection is that this requisition has been made by the Government in violation of the Court's order in Civil Rule No. 7132 (W) of 1968 giving opportunity to the respondents to proceed afresh in accordance with the law under the provisions of the Land Acquisition Act. The appellants' contention is that the respondents violated those directions by taking recourse to a different Statute, viz. West Bengal Land (Requisition and Acquisition) Act, 1948 and not proceeding under the Land acquisition Act for which opportunity was given by these directions of the Court in that Civil Rule.

9. The context of this argument is provided by the following facts. The appellants claimed to be the owners of certain fisheries which are included in this requisition. The same area was covered by the declaration made by the Government under the Land Acquisition Act and dated the 21st May, 1968. The appellants then disputed the validity of that declaration under the Land Acquisition Act in proceedings which were marked as Civil Rule No. 7132 (W) of 1968. By a judgment and order dated the 15th July, 1969 Mr. Justice B.C. Mitra set aside the said acquisition proceedings under the Land Acquisition Act on the finding that the object set out in the declaration was not the actual object for

which the acquisition was being made.

10. On a close scrutiny of the nature and scope of the aforesaid proceedings under the Land Acquisition Act and the order made in the Civil Rule No. 7132 (W) of 1968 setting aside such proceedings under the Land Acquisition Act, the contention of the appellants that the present proceedings under the West Bengal Land (Requisition and Acquisition) Act, 1948 violates such order cannot be sustained. In making the said Rule in the land acquisition proceedings under the Land Acquisition Act the material portion of the order of the court was as follows:

"This Order will not debar the State Government from taking fresh proceedings under the Land Acquisition Act in accordance with the law, if it is so advised."

11. The order in these terms cannot be construed in our judgment to mean that it was a positive direction that any further proceedings for acquisition must have to be taken under the Land Acquisition Act and not under any other Statute permitting it or that it prevented the respondents from invoking the West Bengal Land (Requisition and Acquisition) Act, 1948. The words of the Order "if so advised" make that plain. Secondly the Rule made absolute in Civil Rule No. 7132 (W) of 1968 was not concerned at all with the West Bengal Land (Requisition and Acquisition) Act, 1948. Therefore in those proceedings there could be no occasion for any pronouncement by the Court about the rights under the West Bengal Land (Requisition and Acquisition) Act, 1948. Thirdly the order of the court as stated above proceeded on the short point in the Civil Rule No. 7132 (W) of 1968 that the object set out in the declaration under the Land Acquisition Act was not the actual object for which the acquisition was made under that Act. It is in the light of that finding that the order of the Court quoted above permitting the State Government to take fresh proceedings under the Land Acquisition Act in accordance with the law will have to be read. In other words the proper construction of the Order of the Court as set out above is in the first place that it permitted the State Government to invoke even the Land Acquisition Act "if so advised" provided the Government avoided the mistake of disparity between the objects set out in the declaration under the Land Acquisition Act and the actual object, and in the second place the Court did not fetter by that order in any manner the Government's statutory rights under any other statute like the West Bengal Land (Requisition and Acquisition) Act and to take proceeding thereunder. We, therefore, overrule the first objection of the appellants.

12. The second objection of the appellants depends on the first to this extent that the appellants contend that the Government's recourse to the West Bengal Land (Requisition and Acquisition) Act was mala fide because it could not proceed under the Land Acquisition Act. It was contended that the present step was a subterfuge on the part of the Government to deny the more liberal rights to, the appellants which they could have enjoyed if fresh proceedings were taken under Land Acquisition Act, The main contention of the appellants on this ground was that the Government proceeded under this Statute, the West Bengal Land

(Requisition and Acquisition) Act, 1948 to deprive the appellants of the opportunity to raise an objection u/s 5A of the Land Acquisition Act.

13. This objection must also fail in our judgment. If the special statute like the West Bengal Land (Requisition and Acquisition) Act, 1948 under which the present requisition is made is other-wise valid and if it does not provide for the same or similar opportunity as provided in Section 5A of another Act like the Land Acquisition Act, then that by itself does not make the proceedings under this Act viz. The West Bengal Land (Requisition and Acquisition) Act, 1948 mala fide or bad on that ground. If different powers are provided by different Statutes it is open to the authority empowered thereby to take recourse to or even to change over from one to the other, so long as it is not a fraud upon the Statute or made with any collateral or mala fide motives. I shall cite three authorities on this point and in support of the view I am taking.

14. I shall begin with the decision of my own delivered as early as the 30th August, 1963 in Sachindra Mohan Nandy and Others Vs. The State of West Bengal and Others, . I held there (1) at pages 376-77 of that Report that the West Bengal Land (Requisition and Acquisition) Act of 1948 as contemplated in Article 31(2) of the Constitution cannot be held ultra vires on the ground that it violates Article 19(f) of the Constitution of India and I also held at p. 396 that (2) the unqualified proposition that where two Statutes are available, one giving larger rights to the subject or the citizen and the other lesser, than the choice of Statute must be left to the subject or citizen and not to the State and must always be made in favour of the subject and against the Government, cannot be accepted as correct. A statute applies by force of its own strength and if two statutes cover the same field there is no constitutional law which prevents the application of the one or the other or compels the preference of one to the other. If both can be applied either one or the other can be applied or invoked by the State empowered to do so. If the statutes prescribed unequal procedure or law then the only way they can be challenged is on the ground of infringement of equal protection or equality of laws under Article 14 of the Constitution. If they survive the test of the challenge of Article 14 of the Constitution then no further question of unconstitutional preference in the application of one or the other statute on the ground of discrimination can any longer arise and (3) I further held at pages 379-80 of that report that the West Bengal Land (Requisition and Acquisition) Act, 1948 were Indeed different in so far as they were intended to meet different purposes. Therefore if in the exigencies of a particular case the State Government chooses to apply the West Bengal Land (Requisition and Acquisition) Act, 1948 for acquisition of certain land instead of applying the slower proceedings prescribed by the Land Acquisition Act, the order of requisition cannot be challenged as discriminatory or unconstitutional. I maintain the view I expressed there. The Supreme Court in a recent Judgment, to which I shall make a reference, has also upheld the constitutional validity of the West Bengal Land (Requisition and Acquisition) Act of 1948.

15. The next decision is of the Assam High Court in *Nadir Shah v. State of Assam*. AIR 1960 Assam 18. Although this case does not deal with West Bengal Land (Requisition and Acquisition) Act, 1948 yet it is relevant because it was concerned with a similar problem of competition between the Assam Land (Requisition and Acquisition) Act, 1948 and the Land Acquisition Act. There a Division Bench of the Assam High Court made the following observations at pages 19-20 of that report:

"As to the second point that the land was not acquired under the Land Acquisition Act but was being requisitioned under Assam Act 25 of 1948, we have examined the argument and, in our opinion, that is not ground for invalidating the requisition order made u/s 3 of the Assam Act. Once it is found that the order was for a public purpose, and that the order comes within the ambit of Section 3 (1) of the Assam Act, the question as to whether the acquisition should have been under the Land Acquisition Act, becomes immaterial for the purpose of examining the validity of the order of requisition. Apart from that, the ultimate purpose, as it appears, of the State Government is to acquire this land."

I respectfully agree with that view.

16. I shall close this series of citations by the next authority of the Supreme Court in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, . Then the Supreme Court had to consider the correlated question between the Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959) with other Statutes. The principles were laid down by the Supreme Court in that decision at pages 1584-85 and at page 1588. The Supreme Court expresses the view there that the objects and reasons of the Punjab Act (31 of 1959) show that the legislature intended to provide a remedy which it thought was speedier than the one by way of suit under the ordinary law of eviction. There is nothing in this Act to warrant the conclusion that it impliedly takes away the right of suit by Government or that, therefore, it is substitutive and not supplemental. The significant observations made by Shelat J. delivering the majority judgment of the Supreme Court are in the following terms:

"With these reasonings I cannot agree. The Act does not create a new right of eviction. It creates an additional remedy for a right existing under the general law. It does not repeal the law giving the remedies of a suit or bar the jurisdiction of Civil Court to try a suit for eviction. The Government is at liberty to proceed against the occupants either under the Act or by way of a suit"

17. It will however be appropriate to conclude these citations with the latest observations of the Supreme Court in *S.M. Nandy v. State of West Bengal* where the Supreme Court takes the same view on the 19th February 1971 as I did on the 30th August, 1963. That Supreme Court decision is as yet un-reported and was delivered in Civil Appeal No. 500 of 1967 (Since reported in AIR 1971 SC 963). Sikri C. J. delivering the judgment of the Supreme Court emphasised the point that the impugned Act viz. the West Bengal Land (Requisition and

Acquisition) Act was enacted in order to provide for requisition and speedy acquisition of land for public purpose. The learned Chief Justice of India was considering the challenge to the Bengal Act in these terms:

"Whether the West Bengal Land Acquisition Act, 1948 was ultra vires under Article 19(1)(f) of the Constitution read with Article 19(5)."

The Supreme Court in that case held the West Bengal Land (Requisition and Acquisition) Act, 1948 to be constitutional and made the following observations:

"We are, therefore, of the opinion that it is difficult to hold that restrictions imposed by the impugned Act are unreasonable. Fair price has been provided for requisition, which is determinable by Civil Court and ultimately by the High Court or the Supreme Court. Regarding the necessity for requisition it must necessarily be left to the State Government. It is true that there is no express provision to make a representation against an order of requisition but there is no bar to a representation being made after the order is served u/s 3 (2) of the Act. If representation raises a point which overrides the public purpose it would be favourably considered by the State Government or other Government authorities as the case may be."

18. This last point in the above observations is important inasmuch as it is also one of points of challenge made in the present appeal before us because it is contended that this West Bengal Land (Requisition and Acquisition) Act permits a requisition without giving even a hearing or opportunity to the person whose land is requisitioned. The answer of the Supreme Court is that although the West Bengal Act does not expressly provide for a representation, yet there is nothing to prevent a representation being made after the order has been served and the Government considering it, if such representation raises a point which overrides the public purpose. The view expressed by the Supreme Court is supported by a reference also to Section 6 of the West Bengal Land (Requisition and Acquisition) Act of 1948 providing expressly for releasing requisitioned land which "is not acquired", and "is to be released."

19. The substance of this objection is that the West Bengal Land (Requisition and Acquisition) Act, 1948 permits requisition to be made without notice to the person concerned. This is contended to be against the principles of natural justice. Section 3 of this Statute provides inter alia that

"If the State Government is of the opinion that it is necessary so to do for maintaining supplies essential to the life of the community or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by State Government by a notification in this behalf, by the construction or reconstruction of dwelling places, the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning."

20. It goes on to provide in Section 3 (2) of that Act that 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.

21. It also appears from this provision that it does not require notice to be given to the owner or occupier before the order of acquisition is made, although it requires that the order of requisition after having been made, shall be served in the prescribed manner on the owner and/or the occupier of the land.

22. It is contended by the appellants that this is against the principles of natural justice and is a most unreasonable interference with the rights to property. In support of this contention the appellants have relied on a number of decisions and authorities of the Supreme Court. The first reliance is placed on the decision of the Supreme Court in *M. Gopala Krishna Naidu Vs. State of Madhya Pradesh*, . This case however has no application to the facts and principles involved in the present appeal. That was a case under disciplinary jurisdiction concerned with the Fundamental Rules of service and departmental proceedings whose principles are not on a par with the principles of acquisition and requisition of property under special statutes. The Supreme Court observed there at page 243 of that report.

"The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice."

23. These principles in my judgment relating to disciplinary jurisdiction under Rule 54 of the Fundamental Rules have no application to the principles and facts involved in the instant appeal. The second case on which reliance was placed by the appellants is the decision of the Supreme Court in *the State Bank of India Vs. Rajendra Kumar Singh and Others*, . That case also in my view has no application to the principles and facts involved in appeal. That was the case concerning Sections 517 and 520 of the Criminal Procedure Code relating to the order of return of seized property and laying down the principle that in such a context there should be given an opportunity of being heard to the aggrieved party before passing such order. That is a judicial proceeding and the order is the order of the Court and naturally the Court must hear the rival claimant before making any order of return of the seized property. The third case on which reliance was placed by the appellants is *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . This again relates to an administrative enquiry under the All India Services Act, 1951 and discussed the principles of administrative or quasi-judicial power and in that context made the observations about the concept of natural justice. It will be thus seen that all these cases to which the appellants made reference have nothing to do with the principles of acquisition and requisition under Special Statutes with which the present appeal before us is concerned.

24. The importance, however, of the last decision in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, is that it tried to indicate that since the aim of quasi-judicial as well as administrative enquiries is to arrive at a just decision these rules should apply to both and the former classical distinction between the administrative action on the one hand and judicial or quasi-judicial action on the other, attracting the principles of natural justice to the latter and not to the former is breaking down in modern jurisprudence. In making that observation the Supreme Court discussed the recent trends in some decisions of the English Court of Appeal which I shall notice later in this judgment. That is the importance of this Supreme Court decision. It might only help the appellants to this extent in their argument that even if the order of requisition is to be regarded as a purely administrative decision or executive order the principles of natural justice must nevertheless be applied. This point of view can be accepted so far as it goes but must always be read subject to the limitations that when a special statute either expressly or by necessary implication excludes notice to the aggrieved party then the statute is to be obeyed provided of course the statute is constitutional in India. See the later decision of the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, .

25. The appellants at this point tried to avail of the other observations In the Supreme Court Judgment in Civil Appeal No. 500 of 1967 (reported in AIR 1971 SC 963) quoted above in *S.M. Nandy v. the State of West Bengal* that although there is no express provision to make representation against the order, yet there is no bar to the representation being made after an order is served u/s 3 (2) of the West Bengal Act. That observation goes against the appellants because in the first place the Supreme Court in that decision upheld the constitutional character of the West Bengal Land (Requisition and Acquisition) Act, 1948 even without express provision for notice before requisition. The absence of notice clause under that Act did not vitiate the validity of the Statute and it was open to the aggrieved party to make a representation against the order of requisition made without notice in the first instance but to come forward with a representation after the order has been served. In the second place no representation was in fact made in this appeal even after the order of requisition was served but an outright application was made to the Court challenging it under Article 226 of the Constitution. Thirdly even after requisition, the requisitioned land can be released if it is not acquired as provided in Section 6 of the West Bengal Land (Requisition and Acquisition) Act of 1948.

26. The last case on which the appellants relied on this point is a decision of the Supreme Court in, *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, . This decision is really against the contention of the appellants. It is clearly laid down there that when there is conflict between rules of natural justice and statutory provisions, statutory provisions must prevail and not rules of natural justice. See the observations of K.S. Hegde, J. at page 42 of that report. The learned Judge explained this doctrine by observing.

"It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, purpose for which it is conferred and the effect of the exercise of that power."

27. The real enquiry therefore in this appeal is whether the West Bengal Land (Requisition & Acquisition) Act, 1948 specifically or by necessary implication excludes the provision of notice as part of natural justice claimed by the appellants. In order to determine this question the words used in this statute, the nature of the power used or conferred and the purpose for which it is conferred and the effect of the exercise of such power are all relevant considerations.

28. I, therefore, proceed to examine this scheme of West Bengal Land (Requisition and Acquisition) Act, 1948 to determine whether notice is expressly or by necessary implication excluded so far as requisition is concerned. I find from the analysis of this Statute that there is conscious and deliberate departure in the Act from the natural justice of giving prior notice in the case of requisition. This becomes apparent when the contrast is made between acquisition where the statute expressly provides for notice and requisition where it deliberately avoids provision for notice, I have already quoted Section 3 which does not mention any notice before requisition under this Act. On the other hand acquisition under the Act is provided in Section 4. In Section 4 (1) (a) it is expressly provided that the State Government may acquire any land requisitioned u/s 3 by public notice in the official gazette that such land is required for public purpose referred to in Sub-section (1) of Section 3. Immediately upon such publication the requisitioned land vests absolutely in the State Government free from all encumbrances and the period of requisition ends by reason of the provision of Sub-section (2) of Section 4 of this Act. Section 4 immediately follows Section 3 of the Act. When Section 3 deals with requisition it does not mention the requirement of notice to be given before requisition, but immediately in the next Section when acquisition is mentioned in Section 4 there is the express provision for notice. I read these two sections in close juxtaposition to indicate the object and purpose of the statute to exclude notice in the case of requisition and to include notice in the case of acquisition.

29. Between the Land Acquisition Act of 1894 and the West Bengal Land (Requisition and Acquisition) Act, 1948 there is a time gap of more than half a

century. Over this gap of more than 50 years the problems of compulsory acquisition and requisition of land have undergone many changes in law and in legal attitudes. They have acquired an urgency in the modern sociological context of law. Problems of modern society, congestion, density of population, influx of refugees, industrialisation, mechanisation, technology and urbanisation are some of the main forces which have produced different laws and legal attitudes in respect of acquisition and requisition. Social responsibilities attached to individual ownership of property are being recognised in laws gradually and slowly. I shall indicate briefly these changes by contrasting Land Acquisition Act, 1894 with the West Bengal Land (Requisition and Acquisition) Act, 1948. The contrast reveals the changing law on this subject.

30. The preamble of the Land Acquisition Act, 1894 describes it "as an Act to amend the law for acquisition of land for public purpose and for company." It makes elaborate provisions for preliminary investigation and hearing of objections in Part II of that Statute, specially in Sections 4 and 5A of that Act. Section 4 deals with publication of preliminary notification and powers of officers. The first step there is to have a notification in the official Gazette declaring the Government's intention that land in locality is needed or is likely to be needed, for any public purpose. It is followed by giving any person interested in any land the right to object to the acquisition u/s 5A of that statute. The aggrieved person has a right to be heard in support of his objection. This is followed by an enquiry by the Collector who makes ultimately a report to the Government. The decision of the appropriate Government on that report is provided in that statute to be final.

31. The first difference between the West Bengal Land (Requisition and Acquisition) Act, 1948 and the older Land Acquisition Act 1894 is, therefore, that all preliminary investigation in Part II of the Land Acquisition Act is obviated in the former Act in the case of requisition thereunder. Secondly all the process of hearing objection u/s 5A of the Land Acquisition Act, 1894 is avoided under the West Bengal Land (Requisition and Acquisition) Act, 1948 in the case of requisition. Thirdly the vesting of the land under the the West Bengal Land (Requisition and Acquisition) Act 1948 in case of acquisition is immediate u/s 4(2) of that Act, when a notice of acquisition is issued u/s 4 (1a) of the West Bengal Land (Requisition and Acquisition) Act, 1948. This is provided in Section 4 (2) of the West Bengal Land (Requisition and Acquisition) Act, 1948. But this is not so immediate under the old Land Acquisition Act, 1894 by reason of Section 16 of that Act where vesting in the Government takes place only after the Collector has made the award and taken possession of the land. Fourthly, the preamble of the West Bengal Land (Requisition and Acquisition) Act, 1948 expressly describes it to be "an Act to provide for the requisition and speedy acquisition of land for certain purposes". Therefore, requisition and speedy acquisition of land are the primary object of the West Bengal Land (Requisition and Acquisition) Act, 1948. I, therefore, read this preamble and the substantive provisions in the sections of the West Bengal Land (Requisition and Acquisition)

Act, 1948 to mean this that they were intended to provide for speedy acquisition. In order to do so they have provided that no notice would be required for requisition. Notice is only required under the West Bengal Act in the case of acquisition as provided in Sections 4 and 5 of that West Bengal Act. That is why acquisition under the West Bengal Act can only be made of land which has been requisitioned. Express recognition of this principle is to be found in Section 4 of the West Bengal Land (Requisition and Acquisition) Act, 1948 which permits in Sub-section (1a) the State Government to acquire any land requisitioned u/s 3 by publishing a notice in the Official Gazette that such land is required for public purposes. This is a significant difference between the Land Acquisition Act of 1894 which does not provide for land requisition but provides only for acquisition with perhaps the exception in the case of temporary occupation in respect of waste and arable land u/s 35 of the Land Acquisition Act 1894, Fifthly, while under the West Bengal Land (Requisition and Acquisition) Act of 1948 there can be no, acquisition of land without there being a requisition first, yet such requisition need not lead invariably to acquisition under the West Bengal Act because of the express provision made in Section 6 of the West Bengal Land (Requisition and Acquisition) Act, 1948 providing that "Where any Land requisitioned u/s 3 is not acquired and is to be released from requisition, the State Government may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to the possession of such land." In appropriate cases the aggrieved party can invoke this Section 6 for release of the requisitioned land. There are other differences between Land Acquisition Act, 1894 but they are not material for purpose of this appeal. The general conclusion that follows from this comparative analysis and contrast of these two Acts is that no construction should be placed on the West Bengal Land (Requisition and Acquisition) Act, 1948 which will stifle or impede the main declared object of requisition and speedy acquisition of land.

32. A few more words are necessary to revert to the subject of the legal nature of requisition having regard to the argument made about administrative action on the one hand and judicial and quasi-judicial action on the other. The Supreme Court in *Lilavati Bai Vs. The State of Bombay*, in considering the legality and validity of the Bombay Land Requisition Act, 1948 as amended by Bombay Act 2 of 1950 observed at page 529.

"An order like the one passed u/s 6 (4) (a) of the Bombay Land Requisition Act, 1948 is not in the nature of an order in Judicial proceedings between the Government on the one hand and other parties named."

Apparently the order of requisition under the West Bengal Land (Requisition and Acquisition) Act, 1948 is of a similar nature. It is not in the nature of an order in judicial proceedings. Therefore, absence of express provision for notice before requisition of land u/s 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 cannot ordinarily vitiate such requisition either on the ground of principles of natural justice or on the ground of infringement of fundamental

rights of property under the Constitution of India.

33. To overcome these difficulties on the ground of natural justice the argument was advanced on behalf of the appellants that natural justice must be made applicable whether it is in the sphere of judicial or quasi-judicial acts or in purely administrative or executive decisions. I have already noticed that argument and I have expressed my view. I shall not repeat them here again. But it is, necessary to notice this new doctrine and observe its limits.

34. I shall begin by noticing a few decisions at this stage because they seem to indicate the wind of change in this branch of the, law on this point. The pioneer to express this changing view is Lord Parker C. J. in *Re H. K. (An Infant)* 1967 2 WLR 962 where the learned Lord Chief Justice of England presiding in the Court of Appeal in the Queen's Bench Division made the following significant observations at pages 971 and 972 of that report.

"Good administration and an honest or bona fide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly; and to the limited extent that the circumstances of any particular case allow, and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply, which in a case such as this is merely a duty to act fairly. I appreciate that in saying that it may be said that one is going further than is permitted on the decided cases because heretofore at any rate the decisions of the courts do seem to have drawn a strict line in these matters according to whether there is or is not a duty to act judicially or quasi-judicially. It has sometimes been said that if there is no duty to act judicially or quasi-judicially there is no power in the court whatever to interfere I do not understand him to be saying that if there is no duty to act judicially, then there is no duty even to be fair."

35. These observations of the learned Lord Chief Justice of England were made in connection with actual words and language of the Commonwealth Immigrants Act, 1962 and the duties of the Immigrant Officers under that Act, which are very different from the provision of the West Bengal Land (Requisition and Acquisition) Act, 1948, which must ultimately govern and determine this appeal. See particularly the provisions of Sections 2, 3 and Schedule I of the Commonwealth Immigrants Act requiring notice on which this English decision is based and on which the Lord Chief Justice of England made the above observations. These observations were made in the most guarded language and with specific limitations plain from such words of the Lord Chief Justice as "limited extent," "the circumstances of any particular case allow," and "within the legislative framework under which the administrator is working." It will be inappropriate to take the Lord Chief Justice's observation without these limitations.

36. The next spokesman for this new view and attitude is Lord Denning M. R. in

Schmidt v. Secretary of State for Home Affairs (1969) 2 WLR 337 where the learned Master of the Rolls observed at page 350 of that report:

"I quite agree, of course, that where a public officer has power to deprive a person of his liberty or his property, the general principle is that it is not to be done without his being given an opportunity of being heard and of making representations on his own behalf Some of the judgments in those cases were based on the fact that the Home Secretary was exercising an administrative power and not doing a judicial act. But that distinction is no longer valid. The speeches in Ridge v. Baldwin (1964) A. C. 40 show that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest, or, I would add, some legitimate expectation, of which I would not be fair to deprive him without hearing what he has to say."

Thereafter Lord Denning M. R. cites the observations of Lord Parker C. J. in the case above namely in Re H. K. (An Infant) 1967-2 WLR 962.

37. Lord Denning M. R. was dealing with a case in the Court of Appeal under the Aliens Order, 1953 whose provisions are not comparable with those of the West Bengal Land (Requisition and Acquisition) Act, 1948 relating to requisition.

38. The Supreme Court decision of two learned Judges J.C. Shah and G.K. Mitter, JJ. in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, made the following observations at page 1272.

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

39. These observations however, were made in connection with an enquiry depending on complicated questions of fact where an order of compulsory retirement based on a certain disputed date of birth was involved and where the petitioner was not given the report of the Enquiry Officer who conducted the enquiry into the correct date of birth. These observations were made on the basis of facts and law which have no application to the facts and law of the present appeal before us.

40. As at present advised this Court is not prepared to subscribe to the doctrine that there is no distinction between judicial or quasi-judicial decisions on the one hand and purely executive and administrative decisions on the other. The very nature of the writs like mandamus on the one hand and Certiorari or Prohibition on the other stems from that distinction. If all administrative or executive decisions were to follow judicial or quasi-judicial procedures then that would in

this Court's view lead to utter confusion and an impossible state of affairs and will mean disregard of the basic principles of executive action and judicial action which do not represent a merely formal or theoretical distinction but a qualitative distinction springing from the nature of the act itself. No doubt Lord Parker's observation that good and honest administration must act fairly is basic to law and any good legal administration but that only means that the executive or the administrative action should not be mala fide or for collateral purpose. Lord Parker's proposition must be read subject to the express limitations that the learned Lord Chief Justice himself used and which I have quoted above. Lord Denning's observations that the distinction is no longer valid, following as they did Lord Parker's view, must be read subject to the same limitations. As at present advised this Court is of the opinion that an executive decision or action or an administrative decision is liable to be struck down if it is used mala fide or for a collateral purpose, on that ground alone, and not on the ground that there is no legal and juristic distinction between executive action and the judicial action. In any event in the case of an area completely covered by a special statute and specially in a field which is not covered by the common law I maintain the view that the statute must govern and its language and words are the determining factors. Many principles of natural justice today have been overcome by dictates of statute passed because of the needs of modern society and social welfare. To conclude where a statute either expressly or by necessary implication excludes notice to the aggrieved party in case of requisition of land for public purpose as in the West Bengal Land (Requisition and Acquisition) Act, 1948, is to fly in the face of this statute. Where there is statutory silence there is scope for applying the principles of natural justice but where on a proper interpretation of the statute itself, expressly or by necessary implication, such notice is excluded then it will not be justifiable for any court to re-introduce it on the ground of principles of natural justice. That is also how read the latest pronouncement of the Supreme Court in Civil Appeal No. 500 of 1967 (reported in AIR 1971 SC 963) quoted above.

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 reconstruction 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 to 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.

43. The next challenge to the order of requisition is that it is highhanded giving no time or hardly any time to the appellants. The argument for the appellants is advanced on the following lines. The impugned order is dated the 5th November, 1969. The order itself was served on the 7th November, 1969, calling upon the appellants to deliver possession on the very day following. The appellants contend that this is grossly insufficient notice and as such the order should be struck down. In the very first instance, Section 3 (1) as quoted above does not speak of any notice whatever. That section provides in Section 3 (2) that the order shall be served in the prescribed manner on the owner or occupier of the land. That has been done. The statute, therefore, does not provide for any particular notice or any minimum period of notice. The requirements of Section 3 (2) of the West Bengal Act have on the facts of this case been satisfied. No question of any notice or reasonableness of a period of notice in such circumstances can arise. The owner or occupier of a land upon whom the order of requisition has been served u/s 3 (2) of the West Bengal Act is expected to know what he is required to deliver by that order. It is, there, in our judgment not open to the appellants to urge that the order of requisition is bad because it stated "the plan of the land may be inspected in the office of the Special Land Acquisition Officer, Alipore" or that the schedule given thereunder should have given more specific details of the land to be requisitioned. The schedule is reasonably specific and clear and offer to have the plan inspected in the order of

requisition was adequate enough even though time was short. In addition, the fact is that the owner or occupier of the land served with a notice of requisition of this character is expected to know what are his lands, of which he is required to make delivery of possession. In any event this consideration cannot in our judgment vitiate the order of requisition in the facts of this case and on the terms of the statute. It must also be borne in mind in this connection that the whole statute is for the object of "speedy acquisition" and requisition.

44. The next objection of the appellant to the order of requisition is that Section 3 (1) of the West Bengal Act permits only requisition for the purposes set out there "by the construction or reconstruction of dwelling places for people residing in such areas." The appellants contend that the limitation is contained in the words in the statute "for people residing in such area." They contend that construction or reconstruction of dwelling places for people who do not reside in such areas is not permissible under this Statute. It is the basis of this contention that the Salt Lake Reclamation Scheme provides also for people from outside who will also be entitled to come and reside in the dwelling places that may be constructed or reconstructed there. This argument proceeds on a wrong assumption of present law. This particular provision was amended by an Amendment Ordinance and known as the West Bengal Land (Requisition and Acquisition) (Amendment) Ordinance, 1969 (West Bengal Ordinance 13 of 1969). This Ordinance was promulgated and published on the 16th October, 1969 before the order of requisition was made in this case. By virtue of Clause 2 of that Ordinance the express words "for people residing in such areas" in Section 3 (1) of the West Bengal Act were deleted and completely omitted from that section. The ambit therefore, of Section 3 (1) of the West Bengal Act has been widened. It is no longer intended for people residing in such areas. This Ordinance came into force on the 16th October, 1969 before the order of requisition and therefore this requisition is covered by that Ordinance amending the West Bengal Act of 1948. Since then the amendment made by the Ordinance has been re-enacted in West Bengal Land (Requisition and Acquisition) Amendment Act of 1970 (West Bengal Act XVI of 1970). The argument was advanced for the appellants that although Section 3 (1) of the Act was amended as aforesaid, the preamble of the statute did not omit the words "for the people residing in such areas". But on well settled principles of the construction the preamble cannot override the express clear and unambiguous language of the sections of the Act. See Lord Normand's observations in the House of Lords in *Att. General v. Prince Ernest Augustus of Hanover*. 1957 AC 436 at pages 467-68-See also the Supreme Court decision in *State of Rajasthan Vs. Leela Jain*, . This argument in any event has completely lost its force by reason of Section 4 (2) of the West Bengal Land (Requisition and Acquisition) Amendment Act of 1970 (West Bengal Act XVI of 1970) which validates past action inter alia in these terms: "Anything done or action taken under the said Act as amended by the Ordinance shall be deemed to have been validly done or taken under the said Act as amended by this Act as if this Act had commenced on the 16th October, 1969".

45. This disposes of all the arguments advanced for the appellants in this appeal. Certain additional grounds had been taken by the appellants but they were not pressed. They relate to the constitutional validity of the West Bengal Land (Requisition and Acquisition) Act under Articles 19 and 31 of the Constitution of India. Those points are already concluded by the latest Supreme Court pronouncement in favour of the constitutional validity of the West Bengal Act in Civil Appeal No. 500 of 1967, (reported in AIR 1971 SC 963) quoted above and in my own judgment in that case cited earlier in this judgment. These grounds are no longer available to the appellants. A minor point was also taken in the additional grounds alleging that on the face of the affidavit-in-opposition affirmed by Shri Atul Das Gupta in the Rule in question though it was Shri Das Gupta and not the Additional District Magistrate who passed the order of requisition, the order of requisition is bad because it was signed by the Additional District Magistrate who is alleged not to have applied his mind but mechanically signed the order of requisition. This was not seriously pressed before us in the appeal. We must state however that there is no substance in this ground at all. Section 3 (1) speaks of the "opinion" of the State Government. The opinion of the Government can be formed and based on the report of administrative officers and when the authority signs on the basis of that report it does not necessarily follow that the authority signs mechanically and without applying his mind. Non-application of the mind must be established as a fact. It is not so in this case. That ground must, therefore, fail.

46. For reasons stated above this appeal fails and is dismissed with costs assessed at five gold Mohurs.

B.C. Mitra, J.

47. I agree.