

(1960) 04 CAL CK 0009
In the Calcutta High Court
Case No : Civil Revision Case No. 3417 of 1958

Mohan Kali Biswas

APPELLANT

Vs

Government of West Bengal

RESPONDENT

Date of Decision : 06-04-1960

Acts Referred:

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 2, 3(1), 3(2)

Citation : (1961) 1 ILR (Cal) 577

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Jitendra Kumar Bhattacharya, for the Appellant; N.C. Chakravarty and S.K. Rai Choudhury, for the Respondent

Final Decision : Allowed

Judgement

Sinha, J.—The facts in this case are shortly as follows: There exists a highway known as the Calcutta-Siliguri National Highway No. 34 and it runs along the northern side of a field known as "Bhatjanga Math" in mouza Krishnagar. At the time that is relevant for this application, there was a proposal for the diversion of this highway across the field, and this will affect lands belonging to the Petitioners. In order to effect this diversion, it was proposed to requisition the lands, including the lands belonging to the Petitioners. The proposal for acquisition was received by the Additional Land Acquisition Collector, Nadia, from the Superintending Engineer, Road Planning Circle. Upon this becoming known, a mass petition was put in by the local inhabitants including the Petitioners opposing the acquisition scheme. Thereupon, the Assistant Land Acquisition Collector himself investigated the objections and on May 13, 1958, made his report. According to him, the alignment of the roads should not be made across the field. He has attempted to show how if the alignment is slightly diverted, the lands of the Petitioners and others would be saved and that it would be altogether a much better scheme. According to him, the proposed diversion was "unfortunate". The Engineering Department however seems to have taken a very

hostile attitude. The report shows that although the Land Acquisition Collector requested the Assistant Engineer to be present at the enquiry, the suggestion was curtly rejected on the ground that the Assistant Engineer had other pre-occupations. The Additional Land Acquisition Collector sent the matter to the Superintending Engineer for reconsideration but the Superintending Engineer refused to reconsider it and therefore the Petitioners' lands were included in the diversion scheme. On August 23, 1958, the Additional Land Acquisition Collector issued an order purporting to be under Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948. In the order, a copy whereof is set out in annexure "B" to the petition, it has been stated that in the opinion of the "person authorized u/s 3(1)" meaning the said Additional Land Acquisition Collector, it was necessary for the purpose of maintaining supplies and services essential to the life of the community and for providing proper facilities for transport and communication to requisition the land including the lands of the Petitioners. It is against this order of requisition that this application has been made.

2. Two points have been taken challenging, the order of requisition. The first point is that that Sri. Harisadhan Mukherji, the Additional Land Acquisition Collector, who passed this order of requisition u/s 3(1) of the said Act was not a person properly authorized to make the order. The second point is that assuming that this official had authority u/s 3(1) of the Act to make the requisition, the requisition order is bad because the conditions laid down in Section 3(1) had not been fulfilled.

3. I shall now deal with the first point. In the Act, "Collector" has been defined to mean the Collector of a district and includes an officer specially appointed by the State Government to perform the functions of a Collector under the Act, the relevant part of Sub-section (1) of Section 3 runs as follows:

If in the opinion of the State Government or any person authorized 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 authorized, 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.

4. The Respondents rely on three notifications issued by the State Government for the purpose of establishing the authority of Sri. Harisadhan Mukherji to make the order of requisition. The first notification is No. 3775 L.A.(P.W.), dated May 1, 1948, published in the Calcutta Gazette on May 27, 1948, page 682. It runs as follows:

In exercise of the power conferred by Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948), the Governor is pleased, hereby, to authorize each of the Collectors and

the Deputy Commissioners mentioned in the schedule below to requisition, by order in writing, in pursuance of the provisions of the said Sub-section (1) of the said Section 3, any land within the local limits of his jurisdiction and also to make such further orders as appear to him to be necessary or expedient in connection with the requisitioning.

5. The second order is the notification No. 1142 L.A. (P.W.), dated February 14, 1949, published in the Calcutta Gazette on February 17, 1949. It runs as follows:

In exercise of the powers conferred by Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act "of 1948), the Governor is pleased, hereby to authorize the Land Acquisition Officer, Nadia, engaged in requisition and acquisition of land required for border and strategic roads in the district of Nadia to requisition by order in writing in pursuance of the provisions of the said Sub-section (1) of the said Section 3, any land within the local limits of the aforesaid district and also to make such further orders as appear to him to be necessary or expedient in connection with the requisitioning.

6. The third notification is the notification No. 21054, dated December 1, 1956, published in the Calcutta Gazette of December 20, 1956, which runs as follows:

In exercise of the powers conferred by Clause (a) of Sub-section (2) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948), the Governor is pleased to specially appoint Shri Harisadan Mukherji, Deputy Magistrate and Deputy Collector (Retired), to be an Additional Land Acquisition Officer, Nadia, to perform the functions of a Collector under the said Act in the district of Nadia.

7. It is argued that the Collector of Nadia has been authorized under Sub-section (1) of Section 3, by Government to make an order, and by the order, dated December 1, 1956, Sri Hari Sadhan Mukherjee has been conferred the power to perform the function of a Collector under the said Act, and therefore he is entitled to act under Sub-section (1) of Section 3. In my opinion, this argument is without substance. The expression "Collector under this Act" attracts the functions of a Collector which have been specifically mentioned in the body of the Act. A person who comes within the definition of a "Collector" as laid down in Clause (a) of Section 2, will be able to perform the functions of a Collector, which have been stated in the body of the Act, for example, in paras. 5, 7, etc. Under Sub-section (1) of Section 3, any person including a Collector can be authorised to act and the appointment of the Collector of Nadia does not make him, in that capacity, a Collector under the Act. He is merely a donee of power under Sub-section (1) of Section 3. Therefore, the appointment of Sri. Hari Sadhan Mukherji to perform the functions of a Collector under the Act does not ipso facto attract the provisions of Sub-section (1) of Section 3.

8. I now come to the notification, dated February 14, 1959. Here the power is granted to the Land Acquisition Collector, "engaged in requisition and acquisition of land required for the "border and strategic roads in the district of Nadia." Sri.

Hari Sadhan Mukherji is not the Land Acquisition Officer but the Additional Land Acquisition Officer, Nadia. It is argued that an Additional Land Acquisition Officer has the same power as that of the Land Acquisition Officer. So far as ordinary powers are concerned, that is so. But this is a special power and there is nothing to show that a special power granted to the Land Acquisition Officer, Nadia, also enures to the benefit of the Additional Land Acquisition Officer. Then again, it is nowhere stated that he is engaged in requisitioning and acquisition of lands for border and strategic roads. For the reasons aforesaid, I am of the opinion that Sri. Harisadhan Mukherji as Additional Land Acquisition Collector is not a person authorised under Sub-section (1) of Section 3 to requisition the properties.

9. I now come to the second point. As will appear from the provisions of Sub-section (1) of Section 3, a certain opinion must be formed by the State Government or the person authorized by it. That is a pre-condition, and unless this pre-condition is satisfied, a requisition order is invalid. Assuming therefore that Sri. Hari Sadhan Mukherji was a person authorized by the State Government to exercise powers under Sub-section (1) of Section 3, the question is whether it was his opinion that the Petitioners' lands should be acquired for certain purpose or that it was necessary to do so. The plain fact is that in his considered opinion it was not necessary. I have already stated how there was a mass representation against the acquisition, and this officer investigated the position and was of the opinion that it was not necessary or even desirable to acquire these lands. He has given his report and referred the matter to the engineering department. It is also quite plain that it is the Superintending Engineer, Road Planning Circle, who formed the opinion and who, upon being referred to, refused to budge an inch from his original plan. This officer has filed an affidavit and from para. 7 thereof it is amply clear that the necessity of the alignment was the opinion of the Chief Engineer of the Government of India. It is also abundantly clear that this was fully endorsed by him whereas Sri Hari Sadhan Mukherji was against it. Having expressed himself to the effect that the acquisition was not necessary or expedient, it would be impossible to state that in the opinion of Sri. Hari Sadhan Mukherji it was necessary to acquire these lands for the purposes mentioned in the order of requisition. In fact, his opinion was to the contrary. It has been argued before me by the learned Government Pleader that in such cases, the opinions of experts should prevail. This argument must at once be repelled, because whether the opinions of experts should prevail or not, it is not for me to consider. The opinion with which we are concerned under Sub-section (1) of Section 3 is the opinion of the requisitioning authority, namely, the State Government or the person authorized by it. Here the requisitioning authority is Sri. Hari Sadhan Mukherji, the Additional Land Acquisition Collector of Nadia. In his opinion, these lands should not be acquired and it was not necessary to do so. He was compelled therefore to make this order against his own opinion. Consequently, the provisions of Sub-section (1) of Section 3 have not been fulfilled.

10. Both the points taken by the Petitioner must therefore succeed and the order of requisition must be quashed by a Writ in the nature of certiorari. There will be a Writ in the nature of mandamus directing the Respondents not to give effect to this requisition order. The Rule is made absolute to this extent. There will be no order as to costs. This order will however be without prejudice to the Respondents or their properly authorized representatives making orders of requisition in accordance with law.