
(1959) 02 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 152 of 1958

Nadir Shah and Others

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 23-02-1959

Acts Referred:

Assam Land (Requisition and Acquisition) Act, 1948 — Section 3, 3(1), 4
Assam Municipal Act, 1956 — Section 148, 216(1), 67
Constitution of India, 1950 — Article 226

Citation : AIR 1960 Guw 18

Hon'ble Judges : Haliram Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : P.L. Shome, S.K. Ghose and P.N. Das, for the Appellant; S.M. Lahiri, General D.N. Medhi, Govt. and N.M. Lahiri, for the Respondent

Judgement

G. Mehrotra, J.—This Rule was issued on an application under Article 226 of the Constitution, by which an order of requisition with regard to 1 bigha, 2 kathas, 7 lechas of land in the town of Gauhati, covered by dags Nos. 3216 and 3217 of periodic patta No. 627 of Gauhati, has been challenged. The land is situate in the town of Gauhati and is owned by the Petitioners. Over a portion of this area, there was a market run by the Petitioner No. 1. The Petitioner No. 1 applied to the Municipal Board, Gauhati, for a licence to use the land as a market, and in anticipation of the licence, certain dislodged dealers took the stalls on rent from him.

On 30-3-55, a resolution was passed by the Gauhati Municipal Board, in exercise of its powers u/s 216(1) of the Assam Municipal Act (Act I of 1923), under which the running of a market within the municipal area could be prohibited; and any person who wanted to run a market, had to obtain a licence. The licence was refused to the Petitioner No. 1. He was prosecuted also and sentenced to a fine of Rs. 400 - and also a recurring fine of Rs. 40/- per day. After some time, an application was made by the Municipal Board for realisation of Rs. 26,160/ -, the amount of accumulated recurring fine from the Petitioner No. 1.

The Additional District Magistrate directed realisation of the aforesaid amount, but on revision to this Court, the order was set aside on the ground that the Petitioner No. 1 had effectively closed the market from 6-6-55. Thereafter in April, 1958, an order was passed to take steps for the acquisition of the land under the Land Acquisition Act, for opening a Municipal market. On 29-8-58, the impugned order was, however, passed by the Deputy Commissioner of Kamrup, in which it is stated that he was of opinion that the land was required for a public purpose, within the meaning of Section 3(1) of the Assam Land (Requisition and Acquisition) Act (Act XXV of 1948), and that the land was requisitioned in the exercise, of power under the aforesaid section.

The previous order, dated 18-4-58, was cancelled by this requisition order. An appeal was filed before the State Government against the order of requisition, and the State Government, by its order, dated 12-11-58, rejected the appeal. In the present petition, it is prayed that a writ of Mandamus be issued directing the opposite party -- the State Government and the Deputy Commissioner, Kamrup -- not to give effect to the impugned order, dated 29-8-58, and a writ of Certiorari has also been prayed for to the effect that the two orders -- one of requisition, dated 29-8-58, and the other, dated 12-11-58, passed by the State Government on appeal -- be quashed.

2. Three main contentions have been raised by the Petitioners. It is firstly urged by Mr. Shome that the purpose for which the land has been acquired, does not come within the ambit of Section 3(1) of the Assam Land (Requisition and Acquisition) Act. The second point urged is that no proper steps were taken by the Board inasmuch as no resolution was passed by it asking the Government to requisition the land. The only power given to the Board is to acquire land for the purpose of opening a market by resorting to the procedure provided under the Land Acquisition Act.

It was not open to the State Government to requisition the land under the provisions of the Assam Land (Requisition and Acquisition) Act at the request of the Municipal Board. It is lastly urged that the conduct of the authorities and the Municipal Board clearly shows that they have acted mala fide in the matter. It was contended in, this connection that the conduct of the Board was such that the order of requisition should be set aside on the ground of mala fides.

In support of the allegation of mala fides, it is urged that previously license was refused to the Petitioner No. 1; presumably on the ground that this site was not suitable for a market; but ultimately the tenants prevailed upon the Board and the land is sought to be acquired for the purposes of opening a market by the Municipal Board. By this process, the Board is only acquiring an interest of the landlord, and the requisition cannot be said to be for public purpose. Section 3(1) of the Assam Land (Requisition and Acquisition) Act is as follows:

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 accommodation, transport, communication, irrigation or drainage, or for providing land individually or in groups to landless, flood-affected or displaced persons, or to a society registered under the Indian Co-operative Societies Act, 1912 (with such statutory re-enactment or modification thereof as shall from time to time be made) or a company incorporated under the Indian Companies Act, 1913, formed for the benefit and rehabilitation of landless, flood affected or displaced persons, 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 or for charitable purposes, and no building or part thereof wherein the owner, has actually resided for a continuous period of one year immediately preceding the date of the order, shall be requisitioned under this section." It is urged that the land has not been requisitioned for the opening of a market by the State Government, but by the Municipal Board, which is not a public purpose, as contemplated u/s 3 of Act 25 of 1948. It is also urged that the land was not suitable for opening a market, and that the opening of a market cannot be said to be "for maintaining supplies and services essential to the life of the community," The purpose of requisition, according to the Petitioner No. 1, does not come within the ambit of any of the purposes enumerated in Section 3(1) of the Assam Land (Requisition and Acquisition) Act, We have considered this argument with care and, in our opinion, it cannot be said that the opening of a market is not for maintaining supplies and services essential to the life of the community.

In a growing town like Gauhati, it is absolutely necessary that there should be a Municipal market to cater to the needs of the general public. The existence of a market is necessary for maintaining supplies and services essential to the life of the community. The fact that the requisition has been made at the instance of the Municipal Board, and that the market will be opened by the Board, and not by the State Government, does not affect the validity of the order. The opening of the market being within one of the necessities enumerated in Section 3(1) of the Assam Act, the requisition will be justified, even though the market may actually be opened by the Municipal Board. We, therefore, think that the purpose for which the requisition has been made comes within the ambit of Section 3(1) of Act 25 of 1948.

3. 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 no 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.

If action for acquisition was to be taken u/s 4 of the Assam Land (Requisition and Acquisition) Act, it is necessary under the said Act that such an order should be preceded by an order of requisition u/s 3. After proceedings are taken u/s 4 for acquisition, the property vests in the Government, and thereafter the provisions of the Land Acquisition Act can be applied to the proceedings. It cannot, therefore, be said that ultimately when the land is acquired, the provisions of the Land Acquisition Act will not be applicable to the proceedings.

The Petitioner will thus not be prejudiced by proceeding under the Assam Land (Requisition and Acquisition) Act, instead of the Land Acquisition Act. So far as the present order is concerned, it is an order u/s 3 of Assam Act 25 of 1948, and unless it can be found that it is not for a public purpose and that the compensation provided in the Act is not offered to the Petitioner, the order has to be maintained. Reliance was placed on Sections 67 and 148 of the Assam Municipal Act. Section 67 reads as follows:

67. When any land, whether within or without the limits of a municipality, is required for the purposes of this Act, the State Government may, at the request of the Board, proceed to acquire it under the provisions of the Land Acquisition Act, 1894; and on payment by the Board of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the Board.

The relevant portion of Section 148 is as follows:

148; (1). The Board at a meeting, may use their own land or building or, purchase, take on lease or otherwise acquire any land or building for the purpose, of establishing a municipal market or improving any existing municipal market.

It is contended that the Municipal Board is a statutory body and it could only act under the provisions of Sections 67 and 148 of the Municipal Act (Act 15 of 1957). These sections only empower the Board to acquire land for market under the Land Acquisition Act, and not by requisition. We have to consider the validity of the order of requisition. As to whether the Municipality itself acted properly or not under the provisions of Section 67, that is not a matter which is relevant for the consideration of the validity of the order of requisition. As we have already pointed out, if any acquisition is subsequently made, then the provisions of the Land Acquisition Act will be attracted, and there will be full compliance with the provisions of Section 148 of the Assam Municipal Act of 1956 (Act 15 of 1957). Further, Section 148 of the Municipal Act also authorises the Board to otherwise acquire the land. These words are wide enough to cover acquisition under the Assam Act, (4) Lastly, it was contended that the order was mala fide. The only ground pointed out is that from time to time the Municipal Board refused to grant license to the Petitioner to run the market and thereafter some

negotiations were going on for taking the land on rent. Ultimately steps were also taken for acquisition of the land, under the Land Acquisition Act. All this shows that the Municipal Board was acting mala fide in ultimately asking the Government to requisition the land under the Assam Act 25 of 1948.

We do not think that the circumstances pointed out make out a case of mala fides, on which the requisition order can be set aside. No mala fides of the requisitioning authorities has been pointed out so as to justify our interference with the impugned order. It was also contended that the Deputy Commissioner did not apply his mind to the circumstances of the case, but only acted at the instance of the Chairman, Municipal Board. In the counter affidavit, which has been filed on behalf of the opposite party, it has been clearly stated that the Deputy Commissioner did apply his mind to the facts and circumstances of the case, and we see no reason to doubt the correctness of the said statement.

5. It was lastly urged that on certain portions of the land, there are permanent constructions made by the Petitioner, and there are some permanent shops there, which are occupied by tenants and servants of the Petitioner No. 1. Under the proviso to Section 3 of the Assam Act, any building wherein the owner has actually resided for a continuous period of one year, cannot be requisitioned. It is not the case that the Petitioner No. 1 was residing in those buildings; the proviso, is, therefore, not attracted.

It is further urged that previously the market was only on a smaller area, and it is not necessary to requisition such a big area for the purposes of the market. Once it is held that the opening of a market is necessary for maintaining supplies and services essential to the life of the community, the requisition order comes within the ambit of Section 3 of Act 25 of 1948; and what should be the extent of the market and whether a particular land is suitable for the purpose or not are not matters which we can examine under Article 226 of the Constitution.

6. It was then contended that if proceedings under the Land Acquisition Act were started, the Petitioner No. 1 would have been given an opportunity to approach the authorities to exclude the land over which there are constructions. Even under the Assam Act 25 of 1948, a right has been given to the owner to file an appeal against a requisition order to the State Government, and it was open to the Petitioners to have approached the State Government and point out these circumstances, and the State Government could have modified the order; but as we find from the order of the State Government, dated 12-11-58, that there were only three grounds on which the requisition order was challenged, which have been dealt with by the State Government in its order, it cannot be said that the Petitioners had no opportunity to place these facts before the proper authorities. In the result, therefore, we see no force in the petition and it is rejected with costs, which is assessed at Rs. 100/- payable to the State.

H. Deka, J.

7. I agree.