
(1972) 12 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4717 of 1970

Nekh Ram

APPELLANT

Vs

Tahsildar Auraiya and others

RESPONDENT

Date of Decision : 15-12-1972

Acts Referred:

Uttar Pradesh Rural Development (Requisitioning of Land) Act, 1948 — Section 2(2) (v), 3

Citation : (1973) 43 AWR 137

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Advocate : B. Dixit, for the Appellant;

Final Decision : Allowed

Judgement

K.B. Asthana, J.—This petition must succeed. It is clear from the material provisions of the U.P. Rural Development (Requisition of Land) Act, 1948 and the rules framed thereunder that the order passed by the Tahsildar requisitioning the land of the Petitioner is without legal authority. The Tahsildar had no jurisdictions to pass an order of requisition on the application of Mahadeo as under the provisions of Rule 4 framed under the said Act no such application could be entertained. That rule contemplates application by or on behalf of the Gaon Sabha constituted under the U.P. Panchayat Raj Act, 1947 or a cooperative organisation registered under the Cooperative Societies Act, 1912 or a school recognised by the Education Department. Mahadeo, a cultivator, made the application for requisition u/s 3 of the said Act, such an application could not be entertained. No matter the application of Mahadeo was supported by the Pradhan of the Gaon Sabha who appeared as a witness and then also produced at a subsequent stage in the proceedings a copy of the resolution passed by Gaon Sabha as appears from the order of the Tahsildar dated 2-7-1969, annexure C. That would not convert the application of Mahadeo as an application by or on behalf of the Gaon Sabha. Under the rules framed to carry out the objects of the

Act it is clear that the Gaon Sabha must be shown as the Applicant. That a requisition for an individual cultivator for subserving his interest is not contemplated under the said Act, is also clear from Section 4 of the said Act which lays down : "Where any land has been requisitioned u/s 3, the requisitioning authority or such other authority as may be prescribed may use it in such manner as may appear to it to be expedient for any public purpose." Then Rule 6 lays down : "Where the land is requisitioned the requisitioning authority may either manage it himself or vest the management or superintendence in any departmental officer or officers subordinate to him or in the District Planning Officer or any Officer under his administrative control or a Gaon Sabha constituted under the U.P. Panchayat Raj Act, 1947 or a cooperative organisation registered under the Cooperative Societies Act 1912 or a school recognised by the Education Department."

2. Here in the instant case the order requisitioning the land of the Petitioner ex-facie does not show that the pathway to be carved out over the land of the Petitioner was to be used by the public. The learned Counsel appearing for the Gaon Sabha sought to rely upon the averment of the Pradhan, Dhaniram in the counter-affidavit that pathway so carved out could be used by other tenure holders. It has not been shown that any such evidence was adduced before the Tahsildar the requisitioning authority. The order of the Tahsildar shows that all that was considered was the individual difficulty of Mahadeo and I do not find any discussion the requisitioning order how the land was to be used for the benefit of the general public. In the rejoinder affidavit the Petitioner categorically averred that the pathway to be carved out would end on the field of Mahadeo. It is obvious, therefore, that such a pathway would not be for the benefit of any other tenure holder. In my judgment the pathway to be carved out over the land of the Petitioner being not for the public benefit would not answer the definition of public purpose within the meaning of the "paths" and "roads used in the notification of the U.P. Govt. No. 4685-R/D.C-601-50, dt. 7-12-1951, issued in exercise of; powers u/s 2(2) Clause (v) of the said Act.

3. An argument then was advanced by the learned Counsel for the opposite party, the Gaon Sabha that the petitions having taken this remedy by way of review before the Commr. which application for review was found beyond limitation and rejected and there being no legal error in that order, the Petitioner will not be entitled to claim any relief from this Court Under Article 226 of the Constitution. This argument is nothing but an argument of degeneration. When the original order of the Tahsildar requisitioning the Petitioner land was itself without jurisdiction, a mere rejection of the review by the Commr. for any reason, whatsoever, would not attach validity to the requisition. The Petitioner has brought the Original order of the Tahsildar also for being quashed by this Court in exercise of its powers Under Article 226 of the Constitution.

4. Accordingly I allow this petition and quash the two orders of the Tahsildar (Annexures B and C) dt. 1-5-1969 and 2-7-1969 respectively. The Petitioner

would be entitled to his costs as against opposite party No. 1 who only appeared, to oppose this petition.