
(1970) 02 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1986 of 1965

Paras

APPELLANT

Vs

The Requisitioning Authority and Another

RESPONDENT

Date of Decision : 09-02-1970

Acts Referred:

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

Citation : (1970) 40 AWR 268

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Advocate : Naresh Chandra Rajvanshi, S.N. Misra and S.K. Tewari, for the Appellant; S.C. for opposite parties., for the Respondent

Final Decision : Allowed

Judgement

H.C.P. Tripathi, J.—This petition is directed against the order dated 17-10-1964 passed by the Requisitioning Authority, Tahsil Kairana, purporting to requisition u/s 3 of the UP Rural Development (Requisitioning of Land) Act, 1948 about 8 Bighas of land for constructing a drain.

2. The petition was admitted on 16-9-1965 and on the same day an ad interim order was passed restraining the opposite parties from digging the nala in the plots.

3. It has been averred in the petition that rainy water does not accumulate in the villages Keserwa and Sheikhpura and there is no necessity of constructing any drain "through the heart of several chaks having very fertile land in which sugercane crop is standing", for the aforesaid purpose, the construction of the nala would tell upon the general health of the residents of the villages as the nala will be the haunting place for mosquitoes, there being no constant flow of water throughout the year. It has been further asserted that the digging of the nala is not covered by the definition of "public purpose" as given in the Act. The opposite parties have not filed any counter affidavit. Sri S.N. Upadhyaya, learned

Counsel for the State, stated that owing to some confusion in the office of the Standing Counsel the counter-affidavit could not be filed and three week's time should be allowed to the opposite parties to file the counter-affidavit.

4. As this petition has been pending since the year 1965 and the stay order has been granted against the opposite parties, it is inconceivable that they had no information about the pendency of this writ petition. In the circumstances I refuse to grant any further time to the opposite parties to file the counter-affidavit.

5. In the absence of any counter-affidavit the allegations made in the writ petition remained unchallenged. It must, therefore, be held that there is no necessity of any drain in the aforesaid two villages for draining out the rainy water as it does not accumulate there.

6. Section 2 Sub-clause (2) of the UP Rural Development (Requisitioning of Land) Act, 1948 reads:

Public purpose means for and in connection with any of the following subjects that is to say:

- (i) making, enlarging or deepening of tanks for purposes of irrigation;
- (ii) composing of village refuse or preparation of any other form of manure;
- (iii) constructions of Guls for irrigation;
- (iv) plant nurseries;
- (v) any other object which the State Government may after publication in the Gazette and after considering any objection or any suggestion which may be received by notification in the gazette, declare essential for the development of agriculture or improvement of the life of the community; in rural areas.

Sub-clause (2) does not provide digging of a nala as a "public purpose." It is, therefore, obvious that the land could not be requisitioned u/s 3 of the Act for construction of a nala in the villages as that was not a "public purpose."

7. In the result this petition is allowed and the impugned order dated 17-10-1964 passed by the opposite party No. 1, is quashed. In the circumstances of the case, there will be no order as to costs.