

(1966) 01 CAL CK 0024
In the Calcutta High Court
Case No : Civil Rule No. 624 (W) of 1962

Pramatha Nath Mukherjee and Others APPELLANT
Vs
St. of W.B. and Others RESPONDENT

Date of Decision : 31-01-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6
Negotiable Instruments Act, 1881 (NI) — Section 103, 13, 14, 15
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 3(1), 3(3), 4, 4(1)

Citation : 70 CWN 503

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Ranjit Kumar Banerjee, Saktinath Mukherjee and Sankar Mukherjee, for the Appellant; N.C. Chakrabarti and S.K. Roy Chowdhury, for the Respondent

Judgement

D. Basu, J.—This Rule is directed against an order of requisition dated 19.9.59 (which is at Anx. A to the Petition) u/s 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as "the Act of 1948"). The points taken up by the learned Advocate for the Petitioners to challenge the validity of this impugned order may be taken up serially.

2. Firstly, it has been urged that the endorsement of the Collector's order is not in accordance with the provisions of the Act and the Rules made thereunder. This very contention was raised in two earlier cases before me to be rejected *Hazur Ali v. State of West Bengal*, C.R. 2313 (W) of 1959 and *Amiya Kumar Mukherjee*, C.R. 58 (W) of 1963 (70 Calcutta Weekly Notes 499). Nothing new having been placed before me in the instant proceeding, I do not find any reason to depart from the view taken by me in the earlier two cases and the reasons given by me therein should be taken as part of the present judgment.

3. Nevertheless, I shall reiterate those reasons in brief. Section 3 of the Act says--

(1) The State Government or the person so authorised, as the case may be, may, by order in writing, requisition any land.....

(2) An order under sub-section (1) shall be served in the prescribed manner.

4. Non-compliance with sub-section (1) is not urged by the Petitioners before me, since it is admitted in the Petition that the Collector, who issued the original order, is a duly authorised person under sub-section (1) of section 3. It is, however, contended that the order has not been served upon the Petitioners in the manner required by sub-section (2). That manner has been prescribed by rule 3(1) of the Rules made under the Act. That Rule, however, has been amended in 1954 by Notification No. 840. L.A. of 18.1.54, and both the pre-amendment text and the amended text must be referred to in order to appreciate the instant point.

5. Prior to 1954, the text of rule 3(1) was as follows :--

Save as otherwise provided.....an order under sub-section (1) of section 3 shall be served by delivering or tendering a copy thereof endorsed by the Collector to the person on whom the order is to be served.

By the amendment of 1954, the word "Collector" has been substituted by the words--

by the person, authorised to make the order or by a Collector.

6. It has been shown to me that the Land Acquisition Officer, Sri S.K. Bose, who signed the endorsement in the copy, has been vested with the powers of a "Collector" under the Act by Notification No 10760 L.S. of 29.5.59. Hence, there cannot be any quarrel with the endorsement by which the copy has been forwarded to the Petitioner.

7. It has, however, been urged on behalf of the Petitioners that the copy of the order itself which has been served upon the Petitioners does not bear the personal signature of the Collector but bears a facsimile thereof. On the strength of the (3) decision of Bose, J., (as he then was), it has been contended that the personal signature of the Collector is required by rule 3(1) and that the facsimile rubber stamp makes the service of the order ineffective. On a perusal of the judgment in that case, however, it is clear that that decision was anterior to the amendment of rule 3(1), referred to by me, and that, accordingly, if, instead of the Collector, some other person signed the endorsement, as has been done in the case before me, that would have been invalid. Though the full text of that order is not to be found in the reported judgment it would seem from the following words that the endorsement of the copy was the target of attack by the Petitioners in that case :

.....it does not at all bear the personal signature of the competent authority, namely, the Collector, but only a facsimile or lithographic signature of the Land Acquisition Collector who is not the competent authority.

8. The observation that the word "endorse" meant "sign" would also show that the defect in the case before Bose, J., (as he then was) was a defect of the endorsement and not that of the signature below the copy of the order itself. In other words, what was meant by the observation that--

.....this Rule requires that the copy of the Requisition Order is to bear the endorsement of the Collector--

was that the endorsement by which the copy was forwarded must be signed by the Collector and a facsimile signature would not do. It has been rightly contended by the learned Government Pleader on behalf of the Respondents that to say that a copy of an order must be personally signed by the authority who issued the order would be an anomaly, because the copy would then cease to be a "copy" and become a counter-part of the original. Rule 3(1) does not require that a counterpart of the original must be served but that only a "copy" of the order has to be served.

9. His Lordship (Bose, J.), of course, relied on the authority of *R. v. Fitzroy-Cowper*, 59 L.J.Q.B. 265, to hold that the word "endorse" itself meant signed. But, with respect, that would only lead to the conclusion that the "endorsement" must bear the personal signature of an authority competent to endorse and not that the copy of the order itself must be signed by the authority who issued the order, because a reference to Stroud's Judicial Dictionary will show that the usual technical meaning of the word "endorsement" is some writing other than the deed itself, which is usually made on the back or at some other place of the deed and stands apart from the deed. This is the sense in which "endorsement" is denned in section 103 of the Negotiable Instruments Act, 1881. The "endorsement" is a writing separate from the instrument itself (section 13) which is required if it is intended to transfer the instrument (sections 14 and 15).

10. Rule 3(1), in question, similarly, requires endorsement of the copy of the order by a duly authorised person for the sake of a proper service of the order upon the person affected, because if a copy were served without any endorsement by a proper person, the person affected might not be satisfied about its authenticity, for the very reason that a copy need not bear the personal signature of any person. As observed by me in (1) *Huzur Ali's case* (ibid.)--

If the Legislature wanted the copy of the order to be served upon the party should also be signed by the Collector personally, it would have really required the original order to be produced in duplicate, in which case each of such documents would have an original character and none would have been a copy of the other. The language used by the Legislature does not suggest any such intention.

11. By the word "Legislature," in this context, is meant the sub-ordinate legislature, i.e., the rule-making authority. If the Rule-making authority intended that the copy itself must be personally signed, it could have drafted rule 3(1) in the manner of rule 2 in Schedule II of the Public Demands Recovery Act, 1913,

which says--

Service of a notice.....shall be made by delivering or tendering a copy thereof, signed by the Certificate Officer.....

12. The word "endorsed" has been deliberately substituted in rule 3(1), only to dispense with a signature on the copy of the order by the Collector who may not have sufficient time at his disposal, and after the amendment of the Rule, it has been made clear that signature of any other officer, duly authorised, on a separate endorsement, would validate the service of the copy. If the copy itself were required to be signed by the Collector personally, no "endorsement" of the copy would have been required. A separate endorsement has been printed on the Form prescribed for rule 3(1) of the Act of 1948. There is no provision for a separate endorsement in rule 2 of Schedule II of the Public Demands Recovery Act.

13. It was rule 2 under the Public Demands Recovery Act which was interpreted by the Division Bench in Abanindra Kumar Maity Vs. A.K. Biswas, a decision which was relied on by Bose, J., (as he then was) in (3) 65 C.W.N. 869. As explained by me, the text of rule 3(1) before me is different and therefore, the decision of the Division Bench is not applicable to the case before me. The decision in 65 C.W.N. 869 is also distinguishable for the reasons already given by me. As the instant point is occasionally raised in cases under the Act of 1948, I have dealt with the point at length to over-rule the Petitioner's contention on this point.

14. Another point which deserves rejection relates to the nature of the lands to which the impugned order relates. The contention of the Petitioners on this point (paragraphs 7 & 8 of the Petition) is twofold--(a) that the two plots in question appertain to the homestead of the Petitioners and have been wrongly recorded as "bagan" in the Revisional Settlement ; (b) that the Petitioners have installed a deity on one of these plots--3/388 some 8 years back and that, accordingly, it cannot be requisitioned under the Act, by reason of the Proviso to section 3. So far as the first part is concerned, it clearly involves a disputed question of fact and requires the annulment of the entry in the finally published record-of-rights, which cannot be effected in the proceeding under Article 226 of the Constitution. The second part also involves a question of fact which is not admitted. It has also been rightly pointed out by the learned Government Pleader that in their petition of objection (Anx. B to the Petition) to the impugned notice, submitted shortly after service of the notice, the Petitioners did not mention anything about the Shivalinga, though he contended that the lands constituted a part of his homestead. Apparently, therefore, the contention relating to the Shivalinga is an afterthought. By reason of the Proviso to section 3, the earliest point of time when the Petitioners should have raised the objection on this score was when a copy of the order was served upon the Petitioners. They made an objection petition but did not take this point therein. Since the fact is not admitted, they can have no relief on this ground in the instant proceeding.

15. There are, however, stronger points in the Petitioners' favour on which they are entitled to succeed.

(a) It has been urged that the public purpose for which the lands are sought to be requisitioned has not been stated in the impugned notice as required by the statute and that, as it stands, it shows that the authority did not apply his mind to it. The relevant words of the impugned notice are--

Whereas in my opinion it is necessary for the purposes of maintaining Supplies and Services essential to the life of the community, providing proper facilities for transport/communication/irrigation/drainage, viz., for Serampur Bora to requisition the lands....

16. It is evident at once that though the locality for whose benefit the lands were required has been stated, the specific purpose for which they are needed has not been stated. The printed form mentions all the various purposes specified in the statute (section 3(1)). In the alternative, and the Collector has not struck out the irrelevant alternatives in order to indicate which of the different alternatives formed the purpose in the instant case.

17. It is commonplace to state that one of the conditions attached by law to a statutory power is that it must be exercised bona fide. *R. v. Paddington Rent Tribunal*, (1949) 1 All E.R. 720(725). Absence of bona fides, again, may be established not only by proof of a malicious or fraudulent use of the power for extraneous purposes, but also by showing that the statutory authority did not apply his mind to the matters to be considered before exercising the power. *Associated Pictures v. Wednesbury Corporation*, (1947) 2 All E.R. 630. In India, in cases relating to deprivation of individual liberty, thus, it has been held that where the authority signs a cyclostyled form e.g., *Keshav Gokhale Vs. Emperor*, or mechanically signs an order prepared by the office, or on the report of the *Lawrence Joachim Joseph D'souza Vs. The State of Bombay*, his order must be annulled on the ground of a mala fide exercise of the statutory power. Different cannot be the conclusion where an individual's right of property is affected.

18. In the instant case, it is evident that the printed form which was signed by the Collector reproduced all the alternative purposes for which the relevant statute enabled an order to be made and the Collector did not consider it necessary to determine which of these alternatives was applicable to the case before him. In a similar case *Amiya Kumar Mukherjee v. State of West Bengal*, C.R. 58 (W) of (1963) 70 C.W.N. 499. I have upheld the validity of the order on the ground that though the printed alternatives were not struck out, the specific purpose for which the requisition or acquisition was proposed to be made was written in hand after the printed alternatives. In the case, now before me, however, the handwritten words "for Serampur Bora" simply refer to an area and not to any purpose. From a reading of the impugned order in its entirety, nobody can ascertain whether the requisition is being ordered for the purpose of drainage, irrigation, road construction or transport. It is, therefore, clear that the

Collector did not apply his mind while issuing the impugned order.

19. I have no doubt that the impugned order is liable to be struck down as ultra vires on the instant ground.

20. Even more formidable is the contention of the Petitioner that the impugned order is ultra vires for not specifying the portion of C.S. Plot No 3 which is sought to be requisitioned even though it is admitted in paragraph 13 of the counter-affidavit that only a portion of that plot was sought to be requisitioned. It is evident from the impugned order that only an area of 64 out of this plot was requisitioned though the entire area of this plot, according to the Map produced by the Respondents themselves, is 2.58. In the impugned order only the area of the portion sought to be requisitioned is given but not the description or the boundaries or any other particulars to identify that portion.

21. When a fractional area of a plot is mentioned, it means nothing to identify that area unless the location of that fraction, such as the east, west or the like, or some other physical marks are also mentioned. The statement in the impugned order that possession of the specified area would be taken on the given date, therefore, gave no indication as to the identity of the parcel which was meant and the object of rule 3 (1) made under the Act, which requires a copy of the order to be served upon the owner has thus been frustrated by this defect in the order.

22. The object of the notice will be evident from decisions under the comparable provisions of the Land Acquisition Act, 1894. Under that Act, it has been held that though it is not necessary to specify the exact particulars of the area which is notified u/s 4, because that is in the nature of a preliminary and tentative order,--sufficient particulars of the land must be given in the declaration u/s 6(1), which leads to the exercise of the final power for acquisition Babu Barkya Thakur Vs. The State of Bombay and Others, Hence, it has been further held that want of sufficient particulars and description would invalidate the declaration u/s 6 though not the notification u/s 4 Ram Sewak Vs. State of U.P. and Others,

23. Non-description of the exact parcel of land might also lead to the conclusion that the authority did not apply his mind [cf. Samawanti v. State of Punjab, AIR 1963 R.C. 151 (162)].

24. Of course, there are no two stages under the Act of 1943 as under ss. 4 and 6 of the Land Acquisition 1894. But the principle underlying the foregoing decisions is not thereby rendered inapplicable. An order of requisition u/s 3(1) of the Act of 1948, after a copy thereof is served, immediately entitles the authority to forcibly deprive the owner of the possession of his land (section 3(3)). It is not a preliminary proceeding. Hence, the same situation as u/s 6 of the Land Acquisition Act arises here. If the order does not locate the particular portion to be requisitioned, it would leave in the hands of the authority unchartered freedom to oust the owner from any portion of his plot to the extent of the area specified. It might also prejudice a tenant in the like manner, where the plot or

any portion thereof is tenanted. It is to be noted that the notice u/s 3 is also to be served on such tenant, under sub-section (2).

25. Nor am I unmindful of the fact that section 5 (2) of the Act of 1948 itself expressly provides that "particulars of the land so acquired" must be given in the notice issued under that section, where the land requisitioned u/s 3(1) is acquired u/s 4(1). While requisition gives the State the right to possess the land, acquisition enables the State to have the title to the land. But it is not obligatory for the Government to acquire every land which has been requisitioned u/s 3(1). Section 4(1) says--

Where any land has been requisitioned u/s 3, the Provincial Government may use or deal with it in such manner as may appear to it to be expedient and may acquire such land.....

The object of the notice under sec. 5(2) is to enable the persons affected to claim compensation where the land is acquired. But the Government may not go so far in each case of requisition, if the purpose for which the requisition was made is served or completed by mere occupation of the land for some period of time. The owner or occupier, however, loses his right of possession by an order of requisition u/s 3(1), per se, and immediately.

26. It is to be noted that sub-section (2) of section 3 requires a notice to be served on the owner of "the land", in respect of which the order under sub-sec. (1) has been made. It may sometimes be that different parcels of one plot of land may be in the occupation of different persons as owners or tenants. If, therefore, the particular parcel which is sought to be requisitioned is not sufficiently described. It would be impossible to comply with sub-section (2) at all.

27. Considering all aspects of the question, therefore, I have no hesitation to hold that the order and the notice u/s 3 of the Act, as properly interpreted, must give sufficient particulars so as to identify the land to which the order and the notice relates. Since the impugned order and notice does not do so, it must be held to be invalid.

28. There is another point raised on behalf of the Petitioners, namely, that the lands in question have been proceeded with by the Respondents also under the provisions of the Land Acquisition Act, 1894, and that this is not permissible in law. Though it is unnecessary to enter into this point inasmuch as the Petitioners must succeed on the grounds already dealt with by me, nevertheless, I must observe that the way in which the Respondents have proceeded in this matter is irregular and confusing. The Respondents first issued the impugned order in Anx. A under the Act of 1948 (L.A. Case No. 1--8/58-59) in respect of the whole of plot 3/388 and 64 out of plot 3 and stated that possession thereof would be taken over by the Respondents on 26.9.59. Thereupon the Petitioners submitted their objection at Anx. B. Whatever be the reason, possession was not taken by the Respondents on 26.9.59 as indicated in the order.

29. On 12.3.62, the Respondents issued the notification at Anx. C u/s 4 of the Land Acquisition Act of 1894 (L.A. Case No. IV-43/60-61) in respect of plot 3 (without specifying any area thereof) in the notification itself.

30. But without pursuing the notification under the Land Acquisition Act, on 12.3.62, the Respondents fell back upon the previous order under the Act of 1948 and issued the notice at Anx. D, stating that the Respondents would take possession of the two plots earlier notified under the Act of 1948 (Anx. A), on 28.8.62. It is this notice that brought the Petitioners to Court.

31. On behalf of the Respondents it has been contended at the hearing that what was proceeded against in the notification under the Land Acquisition Act was the part remaining outside the portion to which the Requisition order relates. Certain papers were produced before me to demonstrate this, but all this cannot be deciphered from the orders which have been served upon the Petitioners. It was, therefore, natural for the Petitioners to contend in their petition that since there are provisions in the Act of 1948 itself for an order of requisition to be followed up by acquisition under that very Act, according to the provisions therein, Government could not apply a separate enactment for acquiring a requisitioned land. As I have stated earlier, it is not necessary to go into the merits of this contention, in the present proceeding, nor would any such plea be available if the lands proceeded against under the two enactments be separate. I have referred to this point only to show how carelessly the Respondents have issued the impugned order and notification without giving the Petitioners to understand what they were really meaning. Nor is it very clear why the Respondents did not take possession of the requisitioned land in three years' time, when the machinery of requisition itself is meant for emergent situations. Be that as it may, the Petition must succeed on the grounds referred to by me earlier. Let the Rule be made absolute. Respondents are directed not to enforce the impugned order of requisition at Anx. A or to disturb the Petitioners' possession in pursuance thereof. Respondents would, however, be at liberty to proceed afresh in accordance with the law.