

(1989) 03 GAU CK 0010

In the Gauhati High Court

Case No : Civil Rule Nos. 1089 of 1987; 137, 141, 142, 143, 146 and 147 of 1988

Raj Kumar Bharatia: Dulichand Agarwalla: Ram Avatar
Bharatia: Ashok Kumar Bharatia: Jay Prakash Bharatia and
Ors. APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 08-03-1989

Acts Referred:

Assam Land (Requisition and Acquisition) (Amendment) Act, 1964 — Section 8(1), 8(1)
Constitution of India, 1950 — Article 226, 226

Citation : (1989) 1 GLJ 372

Hon'ble Judges : J.M.Srivastava, J and S.Haque, J

Bench : Division Bench

Advocate : B.K.Goswami, R.L.Yadav, R.K.Jain, R.Chakraborty, N.C.Phukan,
K.P.Sharma, H.N.Sharma, J.P.Bhattacharjee, Advocates appearing for Parties

Judgement

Haqne, J.—These 7 (seven) writ applications under Article 226 of the Constitution of India have assailed the order of the State Government contained in Memo No. RLA 178/86/29, dated 19th/21st September, 1987 whereby the Government had rescinded its earlier order No. 178/86/25, dated 30.1.1987 in connection with requisition of the land of the petitioners by the Collector, Kamrup in Case No. KRA. 40/86, dated 4.6.1986 (R. C. No. 40/86). All these writ applications are heard analogous for disposal.

2. The respondent No. 1, State of Assam has not filed any Affidavitinopposition in any of these writ applications. The respondent No. 2, Collector/Additional Deputy Commissioner, Kamrup Sri J. N. Goswami has filed Affidavitinopposition on 21.1.1988 only in Civil Rule No. 1089 of 1987. No Affidavitinopposition has been filed in the other 6 Civil Rules by respondent No. 2.

3. Affidavitinopposition in Civil Rule No. 1089 of 1987 contained statements in 22 paragraphs only. The Collector/deponent in para 23 of the Affidavitinopposition

has sworn with regard to the statement in paragraphs 20A, 20B, 20C, 21, 2436, 3842 and 4751 to be true to his knowledge and those in paragraphs 20D, 20E, 20F, 23, 37, 4346, 5255, 57 and 58 to be true to his information and matters on records ; but surprisingly no such paragraphs exist in the .Affidavitinopposition filed by the Collector. It appears that the Collector has treated his Affidavitinopposition nonseriously and was callous of the matter so much so that he had sworn to the no inexistent statements and paragraphs. Such conducts lead to infer lack of responsibility of the officer holding high office like Collector for Requisition/Acquisition.

4. The petitioners of those cases are owners of the land measuring 15B OKIIL under Dag Nos. 898 Kha, 799 Kha, 900, 901, 930, 931, 932 and 897 Kha of Japarigog, Mouza Beltola within greater Gauhati. The petitioners are owners in respect of their separate area within this 15B OK11L and had separate possession i The area of 153OK11L had been requisitioned under section 3 (!) of the Assam Land (Requisition and Acquisition) Act, 1964 by the Collector, Kamrup in the proceeding R.C.No. 40 of 1986 (No. KRA.40/86 dated 4. 6. 86). The land was requisitioned for the purpose of residential quarters of employees of Doordarshan with the aim of acquisition. The petitioners preferred appeal under section 3 (3), but their appeals were rejected by the State Government vide order dated 24. 11. 1986 (Annexure VIH).

5. After rejection of the appeal, the petitioners filed representation before the State Government for reconsideration of their earlier order dated 24.11.1986. On reconsideration, the State Government issued an order to the Collector, Kamrup vide order No. RLA/178/86/23, dated Dispur, the 20th December, 1986 intimating that Dr. Bharatia and Associates proposed to utilise the land for Nurshmg Home which would be of public utility service and that Sri Ganpat Rai Agarwalla would also face hardship if his land would be acquired, and that only a very little land would be left after releasing the lands of Dr. Bharatia and Sri Ganpat Rai Agarwalla which would be quite insufficient. for requirement of Doordarshan. In that view of the matter, the Government by the said communication modified its earlier order " No. RLA. 183/86/67, " dated 24. 11. 1986 to the extent that the requisition proceeding of the Collector be withdrawn and at the same time advised the Collector to find out alternative land for accommodation for Doordarshan staff. The Collector was asked to consider requisitioning the land belonging to Dakhinpath Satra, about 2?~Bighits which was lying vacant.

6. The order dated 20.12.19^6 of the Government (Annexure X to the petition) was followed by another reasoned order being No. RLA. 178/86/25, dated 30th January, 1987 of the Government of Assam (Annexure XI to the petition) stating that on examination of the project report of Dr. Bharatia, it revealed that more than 7 Bighas would be required for the purpose of Nursing Home of 102 bedded Hospital with a Diagnostic Centre, Composite Programme of Field Laboratory Testing including comprehensive care of Medical Research Centre already Been

finalised and that all these would be of public utility service. So, decision was taken by the Government not to requisition that area comprising about more than 7 Bighas for Doordarshan. It was also considered in that order that requisitioning the land of Sri Ganpat Rai Agarwala (Civil Rule 146/1988) would cause him to must pathetic condition of being homeless : and that the remaining portion of land would be quite insufficient for Doordarshan; accordingly, Government took decision not to proceed with the earlier requisition order and the said requisition proceeding (R.C.No. 46/1986) was set aside and the land of the petitioner had been released/derequisitioned.

7. By order No. RLA. 178/86/29, dated Dispur, the 19th/21st September, 1987, the Government had rescinded its earlier order No. RLA. 178/86/25, dated 30.1.1987 by stating that the Collector's order of requisitioning the land 15BOKHL for the purpose of Doordarshan staff would stand. This order is now assailed by the petitioners. This order runs as :

?Govt. issued order for derequisition of the said land by setting aside the requisitioning proceeding of the Collector Kamrup vide Govt. order No. RLA, 178/86/25 dated 30.1.87.

After reexamining of the whole matter, Govt. now decided to rescind the aforementioned Govt. order of derequisition of the Land and accordingly the said Govt. order under RLA. 178/86/25 dt. 30.1.87 is hereby rescinded.

The requisition order of the Collector, Kamrup for requisitioning the aforementioned land measuring 15BOKIIL only for the purpose of giving accommodation to the T.V. Staff stand*.

The Collector, Kamrup will accordingly take steps for necessary follow up action in this regard.

Secretary to the Govt. of Assam,

Revenue Department.?

8. Learned counsel Mr. J. P. Bhattacharjee and Mr. B. K. Goswami on behalf of the petitioners submit that the impugned order was passed on the back of the petitioners without giving any opportunity of hearing and so the order was violative of the principles of natural justice ; and that the order rescinding the earlier orders was bad in law. Learned Government Advocate Mr. K.P. Sarma submits that the rejection of the appeal under section 3 (3) being final, the subsequent orders of the Government dated 20.12.1986 and 30.1.1987 were no nest and the Government had the power to rectify its no nest orders by order of rescission.

9. An order of requisition under section 3(1) by the Collector can be challenged on appeal before the State Government under section 3(3). The question is whether rejection of the appeal will be a bar to the State Government for releasing the land from requisition at subsequent state? Yes, the State

Government has such power and the subsection (1) of section 8 of the Act confers such power which reads as follows :

"Where any land requisitioned under section 3 is not required and is to be released from requisition it will revert to the owner and the Collector will deliver the possession of the land to such owner or person interested..."

Sub section (1) of section 8 is an independent provision and not subservient to the result of appeal under section 3(3). The power of the requisitioning authority under section 8 (1) is very wide. Even after rejection of the appeal by the State Government, at any subsequent stage, if the State Government considers that the property requisitioned will not be required or has reason to free it, it can release the property from requisition. The Collector is an authorised agent of the State Government to act under the Assam Land (Requisition and Acquisition) Act, 1964. The State Government has the power to add, amend, vary or cancell any notification or order of the authorised agent made under section 3(1) of the Act either on appeal under section 3(3) or by virtue of the power under section 8. The State Government can act under section 8 (1) of the Act at any stage before or subsequent to any order in an appeal. We find no force in the submission of Mr. K. P. Sarma. The order passed by the State Government on 20.12.1986 and 30.1.1987 releasing the land by setting aside the requisition proceedings of the Collector were valid orders and within the purview of section 8 (1). It does not befit to the Collector, respondent No. 2 to challenge those orders as no nest as done in his Affidavit in opposition. The Collector was bound to obey and act upon these orders of the State Government.

10. The owners of the land are the most interested persons to get their land released from the requisition order. There is no bar for them to make representations to the State Government, even after rejection of their appeal. A legal right has been accrued in favour of the owners as soon as the State Government passed the order of release by quashing the requisition proceedings. Once the order of release/derequisition is made on justifiable and reasoned ground, as done in the instant case, an order of rescission of the earlier derequisition/release orders would be bad in law. The petitioners were not given any notice prior to the State Government's reexamination of the whole matter nor any opportunity of hearing therefore the order dated

19th/21st September, 1987 was passed in violation of the principles of natural justice. The rescission order was bad in law even if it would have been passed after notice and hearing of the interested parties. There would be no safeguard to the right of the land owners if such nature of order of rescission to nullify the earlier derequisition/release order is encouraged by Courts. The land of the petitioners of Civil Rule No. 1039/1987 and Civil Rule No. 146/1988 along with the other lands of the requisition proceeding were derequisitioned/ released by assigning good reasons vide Government orders dated 20.12.1986 and 30.1.1987 and by setting aside the requisition proceeding. It was fair on the part of the State Government in releasing the land of Dr. Bharatia and Associates with

a good gesture commenting that at Nurshing Home with 102 bedded hospital thereon would be of public utility services. The reason assigned in case of Sri Ganpat Rai Agarwalla was also very fair. The remaining land of the requisition proceedings covered under Civil Rule Nos. 137, 141, 142, 143, and 147 of 1988 had been derequisitioned as the land would not be sufficient for accommodating the staff quarter of Doordarshan. The plots of land covered under these Civil Rules of the petitioners stand 04 similar situation and reasonings like that of Shri Ganpat Rai Agarwalla. All these petitioners had constructed residential houses on their respective plots.

11. The State Government's orders No. RLA. 178/86/23, dated 20.12.1986 and No. RLA. 178/86/25. dated 30.1.1987 setting aside the requisition proceeding Case No. KRA/40/86, dated 4.6.1986(R,C.4Q/86) and releasing the land, were valid and legal. These orders shall stand. But the order No. RLA. 178/86/29 dated, Dispur the 19th/21st September, 1987 (the rescission order) was bad in law.

12. All these seven writ petitions are allowed. Rule is made absolute The impugned order No. RL \\. 178/86/29 dated Dispur,, the 19th/21st

September, 1987 is hereby quashed.

13. The respondent Nos. 1 and 2 shall pay cost of Rs. 300 (Rupees three hundred only) to the petitioners of each of these seven cases.

14. Send down the records immediately.

J. M. Srivastava, J. I agree.