

(1971) 08 AHC CK 0019
In the Allahabad High Court
Case No : Civil Misc. Writ No. 403 of 1970

Ram Dass Sukhi Ram

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 26-08-1971

Acts Referred:

Constitution of India, 1950 — Article 13, 19(1), 19(5), 31, 31(2)
Government of India Act, 1935 — Section 104, 299(1), 299(2)
Uttar Pradesh Rural Development (Requisitioning of Land) Act, 1948 — Section 3

Citation : AIR 1972 All 114

Hon'ble Judges : B.N. Lokur, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Lokur, J.—The Executive Engineer (Tube Wells) proposed to widen a gul between inter alia plots Nos. 900 and 925 in village Pheguna so that the gul might carry a larger volume of water from the tube well to irrigate the outlying lands; he accordingly proposed that a strip of land on both sides of the gul be requisitioned from the various plots lying on the two sides of the gul. On his application for requisition, the Tahsildar, who is the Requisitioning Authority under the U. P. Rural Development (Requisitioning of Land) Act, 1948 (hereinafter referred to as "the Act"), invited objections if any from the various land-holders adjoining the gul. The petitioner who holds plots Nos. 900 and 925 and other landholders filed objections and the Requisitioning Authority, after hearing them and after a spot inspection of the gul was of the opinion that the requisition of the strips of land from the plots lying on the two sides was beneficial to the cultivators of the outlying land and would promote agriculture; he accordingly made an order u/s 3 of the Act requisitioning the strips of land from 11 plots including plots Nos. 900 and 925 belonging to the petitioner. The order of the Requisitioning Authority is Impugned in this petition on various grounds.

2. It is urged, to start with, that the Act, which was passed by the U.P. Provincial Legislature in 1948, is ultra vires as under the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935, there is no entry enabling a Provincial Legislature to make a law for requisitioning of lands. This argument is without substance as the Governor-General, by Notification No. F. 311/47-C and G dated 21st October, 1947, published in the Gazette of India Extraordinary, dated the 25th October, 1947, empowered, in exercise of the powers conferred by Section 104 of the Government of India Act, 1935, as adapted, the Provincial Legislatures to enact laws for requisitioning of lands. In virtue of this notification, the U. P. Provincial Legislature was competent to enact the impugned law.

3. Reference was next made to Section 299(1) of the Government of India Act, 1935, which provided that no person could be deprived of his property save by authority of law and Section 299(2) of that Act which precluded a Provincial Legislature from making a law for compulsory acquisition of any land for public purpose unless the law provided for payment of compensation for the property acquired, and it was contended that the two subsections, read together, authorised the Provincial Legislature to deprive a person of his property by making a law for compulsory acquisition for public purposes and, by necessary implication, it prohibited the enactment of a law depriving a person of his property by requisitioning it. This contention has to be stated only to be rejected. The two sub-sections of Section 299 are independent of each other; Sub-section (1) referred to all types of deprivation of property, while Sub-section (2) referred to deprivation of property by compulsory acquisition thereof. A law made by a Provincial Legislature providing for acquisition of land in pursuance of the power conferred by the notification u/s 299(1) of the Government of India Act would be a law u/s 299(2).

4. It was next contended that on the commencement of the Constitution the Act became void under Article 13 of the Constitution since its provisions are inconsistent with the fundamental rights guaranteed under Articles 31(1), 31(2) and 19(1)(f).

4-A. To appreciate this argument it is necessary to mention that the Act has been described in the preamble as "An Act to provide for the requisitioning of land to promote the improvement and development of agriculture and economic condition in rural areas." Section 3 of the Act enables the Requisitioning Authority, if in its opinion it was necessary or expedient so to do for a public purpose, to requisition by an order any land by serving on the owner and occupier thereof a notice stating that the Requisitioning Authority had decided to requisition the land. u/s 4, the Requisitioning Authority or any other prescribed authority could use the requisitioned land in such manner as may appear to it to be expedient for any public purpose. Section 9 provides for payment of compensation and reads:

"9. Payment of compensation -- (1) Where any land is requisitioned u/s 3 there

shall be paid to every person interested such compensation as may be agreed upon in writing between such person and the Requisitioning Authority in respect of--

(a) the requisitioning of such land, and

(b) any damage done during the period of requisitioning to such land other than that which may have been sustained by natural causes.

Explanation:-- For the purposes of this sub-section the deepening of a tank, making of pits for composting village refuse is not damage done to the land.

(2) Where no such agreement can be reached, the Requisitioning Authority shall refer the matter with his recommendation as to the amount of compensation and the reasons therefore to the Compensation Officer and also direct the person claiming compensation to appear before such officer on such date as may be specified and the Compensation Officer shall, on the date fixed in that behalf or on any other date to which the hearing may be postponed, hear such person and after such further inquiry as he may deem fit, determine the amount of compensation which shall, except as provided in Section 12, be final and conclusive.

(3) The Compensation Officer shall in fixing the amount of compensation have regard to--

(a) the rent if any, assessed on the land which has been requisitioned;

(b) the "sayar" income if any, de-rived from such land;

(c) the value of any trees which as a result of the requisition have to be removed from the land; and

(d) the purpose for which it has been requisitioned and shall also take into consideration the benefit which the use of such land is likely directly or indirectly to confer on any other property owned or occupied by such person. But he shall not take into consideration--

(i) the value of trees, except trees mentioned in Clause (c), which may continue to be possessed and enjoyed by the person entitled thereto,

(ii) the value of any crops which may be existing on the land at the time of the requisition and may be removed by him after such time as the Requisitioning Authority may specify in that behalf,

(iii) the value of any right of any person in or over the requisitioned land enjoyment whereof has not been suspended or otherwise prohibited.

(4) The compensation fixed under Sub-section (1) determined under subsection (2) shall be paid in such manner as the parties may agree or as the case may be, the Compensation Officer may direct."

The orders of the Compensation Officer under Sub-section (2) of Section 9 are subject to review by the State Government or the Prescribed Authority u/s 12. Section 10 deals with the release of land from requisition. Sections 6, 7 and 8 refer to requisitioning of land on the application of a Co-operative Society or a Union or a Gaon Sabha but we are not concerned with these sections in this case.

5. The Act cannot be rendered void on the ground that it conflicts with Article 31(2) of the Constitution since its validity is protected under Article 31(5)(a). In this connection it may be mentioned that the Act came into force on the 1st June, 1948 i.e., more than 18 months before the commencement of the Constitution and, therefore, it enjoyed protection against Article 31(2) under Article 31(5) and not Article 31(6).

6. Relying upon the views expressed by the Supreme Court in various recent decisions, the latest being the decision in the Banks "Nationalisation case (Rustom Cavasjee Cooper Vs. Union of India (UOI), , the learned counsel for the petitioner contended that Article 31(1), which permits the acquisition of property by law, has to be construed as referring to a valid law which would not impair any of the fundamental rights enshrined in Part III of the Constitution. It was urged that the Act infringes the fundamental right under Article 19(1)(f) and is not saved by Article 19(5) as the restrictions imposed by the Act on the right to hold and dispose of property are unreasonable, particularly as the compensation sought to be provided by the Act for requisition of land, is disproportionate to the value or income of the requisitioned land. The Act provides for requisitioning of private land to subserve a public interest, namely, development of agricultural and economic condition in rural areas; unless the requisitioning is necessary or expedient for a public purpose, the Requisitioning Authority cannot make an order requisitioning any land under the Act. For a temporary requisition of the land depriving the landholder of the land, compensation is paid as provided in the agreement reached between the Requisitioning Authority and the landholder. In the absence of such an agreement, the Compensation Officer holds an enquiry and determines the amount of compensation; the Compensation Officer, in determining the compensation is required to have regard to the rent of the land requisitioned, the sayar income, if any, derived from such land, the value of the trees to be removed from the land and the purpose for which the land is requisitioned and the benefit which the landholder is likely to derive from the requisitioning. The quantum of compensation, in my opinion, is liberal and approximates the annual income which can be derived by the landholder. In the Banks Nationalisation case the Supreme Court observed:--

"Where the law provides for compulsory acquisition of property for a public purpose it may be presumed that the acquisition or the law relating thereto imposed a reasonable restriction in the interest of the general public. If there is no public purpose to sustain compulsory acquisition, the law violates Article 31(2). If the acquisition is for a public purpose, substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be

presumed, but enquiry into reasonableness of the procedural provision will not be excluded."

These observations apply with equal force where the law provides for requisitioning of land for a public purpose followed by payment of compensation equal to loss of income consequent upon the acquisition. I am not impressed by the argument that the fundamental right to hold and dispose of property has been impaired to such an extent that the law is not protected by Article 19(5).

7. The next argument of the learned counsel for the petitioner was that the order of requisition made in this case has not stated that the compensation will be paid and is therefore, void. In my opinion the order u/s 3 of the Act need not point out that the compensation would be paid. Payment of compensation is a statutory obligation which follows requisitioning and negotiations for an agreement as to the amount of compensation will ensue only after the order u/s 3 is made. The absence of a reference to compensation in the order of requisition would not affect the validity of the order.

8. It was faintly suggested that after the decision of the Requisitioning Authority to requisition the land, a notice ought to be given to the landholder concerned before actually making the order of requisition. There is no force in this contention. Section 3 of the Act lays down the procedure of requisition : the Requisitioning Authority has to form an opinion whether it is necessary or expedient to requisition any land for a public purpose; after such an opinion is formed the Requisitioning Authority proceeds to requisition the land by order; the requisition is complete when a notice is served on the owner or occupier of the requisitioned land, the notice stating that the Requisitioning Authority has decided to requisition the land. Neither the Act nor the Rules provide for any further enquiry into the matter. Where the owner of the land is afforded an opportunity to state the objections, if any, before the Requisitioning Authority has formed his opinion, as has been done in this case, the principles of natural justice cannot be said to have been violated.

9. The result is that none of the objections to the validity of the requisitioning order raised on behalf of the petitioner are such as to invalidate the order of requisition. The result is that the petition deserves to be and is hereby dismissed. No order as to costs.