

(1980) 04 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 2075 to 2077 of 1979

Ram Prasad Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-04-1980

Acts Referred:

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

Citation : AIR 1980 All 250 : (1980) AWC 274

Hon'ble Judges : Murlidhar, J;K.N. Singh, J;K.N. Seth, J

Bench : Full Bench

Advocate : A.R. Dube, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Singh, J.—A Division Bench of this Court referred these three petitions under Article 226 of the Constitution for hearing to a larger Bench as there was conflict in the two Division Bench decisions of this Court on the question as to whether land could be requisitioned under the U. P. Rural Development (Requisition of Land) Act, 1948, for the purpose of constructing a drain.

2. The petitioners' land in all the three petitions was requisitioned u/s 3 of the U. P. Rural Development (Requisition of Land) Act, 1948, (hereinafter referred to as the Act) for the purpose of constructing a drain to facilitate the flow of flood water in the rural areas to avoid water logging causing damage to the crops and other property of the residents of the area. The petitioners have challenged the validity of the requisition proceedings by means of these petitions on the ground that under the provisions of the Act, the petitioners' land could be requisitioned for purpose which was temporary in nature and it could not be requisitioned for a purpose which was of a permanent nature. At the stage of initial hearing for admission of the petitions it was urged on behalf of the petitioners before the Division Bench that while the Act provides for requisition of land for a limited period, the Land Acquisition Act, 1894, provides for acquisition of land in respect of a purpose of permanent nature, Since construction of drain is a work of

permanent nature, the petitioners' land could not legally be requisitioned under the Act, instead it could be acquired under the Land Acquisition Act, 1894. Reliance was placed on a decision of a Division Bench of this Court in *Jangpal Singh v. Tahsildar, Etmadpur Spl. A. No. 818 of 1967, D/- 30-4-1970*. On the other hand, the Standing Counsel placed reliance on the decision of another Division Bench in *State of U. P. v. Thakurji* 1975 All LJ 390. As there was conflict of decisions the Division Bench referred the matter to a larger Bench. Learned Counsel for the petitioners has raised the same contention before us placing reliance on the decision of the Division Bench of this Court in *Jangpal Singh's* case.

3. The Act was enacted to provide for the requisitioning of land to promote the improvement and development of agricultural and economic condition in rural area and to prescribe an expeditious procedure for determination of compensation to be paid to the affected persons. Section 3 lays down that if in the opinion of the Requisitioning Authority, it is necessary or expedient to do so for a public purpose, it may order requisition of any land by serving notice on the owner or occupier thereof, Public purpose as defined in Section 2 (2) means for and in connection with any of the following subjects, namely :

- (1) Making enlarging or deepening of tanks for purposes of irrigation;
- (2) Composting of village refuse or preparation of other form of manure;
- (iii) construction of guls for irrigation;
- (iv) plant nurseries;
- (v) any other purpose which the State Government may after publication in the Gazette declare essential for the development of agriculture or improvement of the life of community in rural areas.

The Act confers power on the Requisitioning Authority to requisition land for a public purpose as enumerated in Section 2 (2) of the Act or for any other purpose declared by the State Government as a purpose essential for the development of agriculture or improvement of the life of community in the rural area. The State Government by a notification dated June 21, 1949, declared construction of drain channels to be an object essential for the development of agricultural and economic condition in rural area and improvement of the life of community. The Requisitioning Authority is, therefore, empowered to requisition land for public purpose of constructing drain channels. The provisions of the Act indicate that the requisition of land is for a temporary period as Section 10 contemplates return of land to the owner after the same is released from requisition. On the requisition of the land title in the property does not vest in the Government or the Requisitioning Authority, instead the owner continues to hold the title and his right remains unaffected. The Requisitioning Authority or the Government acquires merely a right to possession and enjoyment of the land. The Act does not contain any provision prohibiting requisitioning of land for

a purpose or object which may be of a permanent nature. The Act merely contemplates transfer of possession to the Requisitioning Authority for the use of the same for the purpose for which (it) may have been requisitioned. If any damage is caused to the land, the owner is entitled to compensation u/s 9 of the Act. But the owner of (sic) the value of the property as ownership right continues to vest in him. On the other hand, if a land is acquired under the provisions of the Land Acquisition Act and possession is taken, the land vests in the Government and the owner is deprived of his title to the land. It is in this sense that the acquisition is generally permanent in nature because after the acquisition the erstwhile owner has no concern with the property. Under the provisions of the Land Acquisition Act the property can be acquired not only for a purpose which is permanent in nature but it can also be acquired for a purpose which may be temporary in nature. The validity of acquisition proceedings does not depend upon permanent or temporary nature of the purpose. Similarly in the case of requisition of property, it is not necessary that the object for which a property is requisitioned should be temporary in nature. The only difference is that while in the case of requisitioning of land the owner is entitled to the return of the property and also to damages if any injury is caused to the property, whereas in the case of acquisition of land, there is no question of return of property to the owner, instead he is entitled to compensation which is related to the value of the property.

4. In Jangpal Singh's case, (Spl. A. No. 818 of 1967, D/- 30-4-1970) (All), land was requisitioned for construction of drain. The Bench quashed the requisition order on the ground that the Act does not permit acquisition of land for a work of permanent character, if the Government proposed to acquire land on permanent basis recourse must be had to the Land Acquisition Act. The Division Bench did not consider the matter in detail. It appears that the Bench was of the opinion that since the purpose of construction of drain was of a permanent nature recourse should be had under the Land Acquisition Act. We are unable to agree with the view taken by the Bench in Jangpal Singh's case, as in our opinion the validity of the requisition proceedings does not depend upon permanent or temporary nature of work.

5. In *State of U. P. v. Thakurji* 1975 ALJ 390 a Division Bench of this Court upheld the requisition of land for the construction of road under the provisions of the Act. The Division Bench considered the matter at length and held that it was not necessary that the object for which a property is required to be taken possession of must be for a definite or a certain period. Validity of the requisition of land does not depend upon the nature of the object. Making or deepening of tanks for the purpose of irrigation could last for years and years depending on the situation of a tank and of the surrounding areas. Similarly, construction of guls for irrigation is a purpose which in its nature can continue for an indefinite period of time. It cannot, therefore be held that "public purpose" as defined in the Act is confined to definitely short-lived purpose.

6. In *Collector of Akola and Others Vs. Ramchandra and Others*, land had been requisitioned for a public purpose for providing village site for the victims of floods under the provisions of the Bombay Land Requisition Act (23 of 1948). At a later stage the State Government initiated proceedings under the Land Acquisition Act No. I of 1894, in respect of that very land and issued notifications for acquiring the land permanently for purposes of construction of houses and settling a new village site. The owners of the land challenged the validity of requisition as well as acquisition proceedings by means of writ petitions. The High Court allowed the petition on the ground that the purpose for which land was requisitioned was of permanent nature for the purpose of establishing a new village site and since the Requisition Act under which the land had been requisitioned was of temporary nature, the Government could not requisition the land. The Supreme Court set aside the judgment of the High Court and observed that the Act conferred wide powers for requisition of land for any public purpose which would include any purpose of whatever nature and the power to requisition was not restricted merely on the nature of that purpose. The Supreme Court observed :

"Except for the limitation that the purpose must be a public purpose the sub-section also imposes no restriction as to the manner in which the land which is requisitioned is to be used. It may be used for a temporary purpose or for a purpose which is not temporary in nature, it is for the requisitioning authority to judge and not for a Court of law to decide how best the land is to be used. If the requisitioning authority uses the land for a purpose which is not temporary such as settling a new village site and for construction of house, it is for the Government and those who put up such structures to contemplate the possibility of having to return in future the land to the owner in its original site. But that does not mean that the power is restricted to a temporary purpose only."

The aforesaid observations made by the Supreme Court apply with full force to the instant case. As already noted Section 3 of the U. P. Act XXVII of 1948 confers power on the Requisitioning Authority to requisition land and the only limitation on that power is that the purpose for which the property is requisitioned must be a public purpose as defined by Section 2 (2) of the Act. The Act does not impose any limitation on the power of the Requisitioning Authority by making any express or implied provision that the purpose for which the property may be requisitioned must be of a temporary character. In our opinion the view taken by the Division Bench in *State v. Sri Thakurji* 1975 ALJ 390 lays down correct law. We are further of the opinion that the view taken in *Jangpal Singh's case* (Spl. A. No. 818 of 1967, D/- 30-4-1970) (All) does not represent the correct view.

7. In the instant cases, it has been asserted in the counter affidavit that a considerable part of the rural area remains water logged due to flood water as a result of which agricultural crops were damaged. The Requisitioning Authority requisitioned the petitioners' land for the purpose of construction of drain

channels to drain out flood waters. The construction of drain has been notified by the State Government u/s 2 (2) (v) of the Act. The Requisitioning Authority was competent to requisition the petitioners' land. We find no apparent illegality in the impugned proceedings.

8. In the result the petitions fail and are accordingly dismissed, but there will be no order as to costs.