
(1966) 07 CAL CK 0030
In the Calcutta High Court
Case No : Civil Rule No. 12 (W) of 1965

Renuka Sarkar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 05-07-1966

Acts Referred:

Constitution of India, 1950 — Article 31

Land Acquisition Act, 1894 — Section 4, 5A, 6, 6(1)

Citation : (1968) 2 ILR (Cal) 42

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : C.C. Ganguli and Nirmala Kumari Chaturvedi, for the Appellant; B.C. Dutt, for the Respondent

Final Decision : Allowed

Judgement

D. Basu, J.—Two points have been urged on behalf of the Petitioner against the impugned order of requisition at annex. A to the petition. Both the points appear, however, to be covered by the two decisions of mine in *Amiya Kumar Mukherjee v. State of West Bengal* (1966) 70 C.W.N. 499 and *Pramatha Nath Mukherjee v. State of West Bengal* (1966) 70 C.W.N. 503—one in favour of the Petitioner and the other against him. So far as the first point is concerned, namely, that the order is not signed by the Additional Collector and Magistrate, 24-Parganas, the decision (p. 499, idid (1)) is against the Petitioner, where I have stated that the requirement of Rule 3(1) under the Act is that the copy must be endorsed by the Collector or a person authorised by the Collector under the Rule as amended. So far as the order itself is concerned there is the order signed by the Additional Collector of which the notice which has been served is a carbon copy. The other point, however, is in favour of the Petitioner, namely, that the order specifies that parts of certain plots have been requisitioned without specifying the area or location of those portions. In my judgment at p. 503 of the said report (2) I have given my reasons why non-specification of the portion sought to be requisitioned, renders the order ultra vires. Mr. Dutt, on behalf of the opposite parties,

however, sought to re-open the question on several grounds. The first ground, according to him, is that the position under the Requisitioning Act of 1948 is different from the position under the Land Acquisition Act of 1894 under which the Supreme Court has said that sufficient particulars must be given in the declaration u/s 6(1). Mr. Dutt's contention is that there is nothing corresponding to the procedure for hearing objections u/s 5A of the Land Acquisition Act, under the Requisitioning Act of 1948. But the object of giving particulars in the declaration u/s 6 cannot be to facilitate an objection u/s 5A, because the latter precedes the declaration u/s 6. Apart from that, the real object of giving particulars is to give a notice to the person to be affected as to what he has to give up. In fact, as the Supreme Court has pointed out, "the particular land" needed is determined only after the inquiry u/s 5A is gone through.

2. Mr. Dutt next sought to make a distinction between the powers of requisition and acquisition. In extent, of course, there is a distinction, but in law the distinction is not basically different so far as the individual whose property is sought to be taken is concerned. Both requisition and acquisition are acts of deprivation of property done by the Sovereign in exercise of the power of "eminent domain". While the order of requisition deprives the owner of his right to possession, the order of acquisition deprives him of his title. While the order of requisition continues, the right to possess vests in the State and the individual's right to have the property back after de-requisition is little more than husk. The guarantee contained in Clauses (1) and (2) of Article 31 of the Constitution is that a person can be deprived even of his possession of property only by an authority of law. The object is to ensure that by mere executive orders a person cannot be deprived of his right of property and that object would be frustrated if, as argued by Mr. Dutt, a written order required under the law is left to be supplemented by the oral directions of the Executive Officer who goes to take delivery of possession in execution of the written order. In my judgment in *P.N. Mukherjee v. State of West Bengal* Supra I have observed:

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.

In the instant case even the area is not specified in the impugned order. If, therefore, it is permissible to simply mention in the order a certain plot saying that a portion thereof would be requisitioned and thereafter for the Executive Officer to point out the intended portion of the plot, then there would be not only a violation of the statute but a violation of the requirements of Article 31, Clauses (1) and (2) of the Constitution itself.

3. The other argument made by Mr. Dutt is that unless and until the Executive Officer goes to the spot, it may not be possible for the Executive Officer to determine which portion of the land would really be required for the purpose. This argument is, however, contrary to the other part of his argument that a scheme is prepared and a plan made of the lands which are sought to be

requisitioned before the order of requisition is made. Apart from that, the scheme of Section 3 of the Requisitioning Act is a little different from that under the Land Acquisition Act where there are two stages. As the Supreme Court has said, the stage u/s 4 of the Land Acquisition Act is of a preliminary and tentative character. At this stage the Government does not really apply its mind to any particular portion of the area which is notified to those residing in the locality. It is after the hearing of objections u/s 5A that the exact parcels are determined and then follows the declaration u/s 6 which is implemented by the subsequent provisions of the Act. Under the Requisitioning Act of 1948, however, there are no two stages. There is no room for making any exploration. Section 3(1) does not speak of notifying any area but says:

The State Government may, by an order in writing, requisition any land and may make such further order as appear to it to him to be necessary or expedient in connection with the requisitioning.

Therefore, before making an order under this Sub-section it is incumbent upon the State Government to determine which is the land which is sought to be requisitioned. As soon as an order under Sub-section (1) is made, as I have pointed out in my earlier judgment, the service thereof under Sub-section (2) would follow and, without any further proceeding, the Collector has got the right to take possession under Sub-section (3). If we look at Sub-section (3), it is abundantly clear that there is no scope left for keeping the parcel of land vague until the Magistrate or the Collector seeks to enforce the order against the owner or the occupier. Sub-section (3) is as follows:

(3) If any person fails to comply with an order made under Sub-section (1), the Collector or any person authorised by him in writing in this behalf shall execute the order in such manner as he considers expedient and may-

(a) if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or

(b) if he is not a Magistrate, apply to a Magistrate and such Magistrate and enforce the delivery of possession of such land to him.

Where is the scope of the requisitioning officer to give his verbal addendum to the written order which is self-executable in terms of the statute itself? How will the execution under Sub-section (3) be made when the order itself does not specify the portion or portions regarding which the order under Sub-section (1) has been made?

4. The next argument of Mr. Dutt is that there is a scheme relating to the requisition and there is a plan made, which the owner or occupier, if he so likes, can inspect to ascertain how he will be affected by the order under Sub-section (1). But the plan, as it appears, is not mentioned at least in Section 3. In Section 5(2) there is a provision for hearing of the persons interested. But that is for a different purpose. That purpose is to ascertain the claim for compensation. There

is a provision for another notice under Sub-section (1-a) of Section 4, the form of which says a plan of the land may be inspected in the specified office. But this notice, again, is made under Sub-section (4) when the requisitioned land is sought to be permanently acquired. When there is no such proposal of the Government to permanently acquire the requisitioned land, there would be no notice u/s 4 and no opportunity given to the party affected to inspect the plan. Apart from that, reading Section 3 as a whole, I do not find any room for the contention that the party affected has any obligation to approach the authority who is going to deprive him of his land to ascertain either from any map or any records what portion of the lands referred to in the order under Sub-section (1) would eventually be requisitioned. There is no procedure prescribed either by Section 3 or in the Rules made thereunder in this behalf. Nor is there any provision for any remedy for anybody who has applied for such particulars and is refused. Considering that the statute affects the guaranteed right to property, such a liberal construction in favour of the State cannot be made. On the other hand, a statute taking away the right of property is to be strictly construed. Giving my consideration once again to the problem before me I have little hesitation in holding that the order under Sub-section (1) of Section 3 of the Requisitioning Act of 1948 which does not give particulars of the parcels of land sought to be requisitioned, in case where it is directed against portions of plots, is ultra vires and unenforceable.

5. This Rule should, therefore, succeed. But, in view of the fact that the Petitioner herself is now interested only in two plots, C.S. plots Nos. 918 and 923, while the other 3 plots are in possession of certain other persons by a registered agreement who are not impleaded, the Rule should be made absolute only in respect of these two plots Nos. 918 and 923. There would be no order as to costs.

6. The opposite parties are directed not to give effect to the impugned order against the Petitioner in respect of these two plots.

7. The opposite parties would be at liberty to proceed afresh according to law.