
(1962) 08 CAL CK 0029
In the Calcutta High Court
Case No : Civil Revn. No. 4297 of 1960

Sachindra Mohan Nandy and Others	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 30-08-1962

Acts Referred:

Chandernagore (Administration) Regulations, 1952 — Section 8
Chandernagore Merger Act, 1954 — Section 17, 18
Constitution of India, 1950 — Article 14, 19(1), 31(1), 31(2)
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 1(2), 3, 3(1)

Citation : AIR 1963 Cal 373

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : A.K. Dutta and Nandalal Pal, for the Appellant; N.C. Chakravarti, D.N. Basu and Sushil Biswas for Opposite Party Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—If France had once been the inspiration of European culture, French Chandernagore can at least sun be described as a prolific source here of Indian Constitutional law. Numerous cases have come to the Court from what used to be the French Settlement of Chandernagore and their decisions now enrich the constitutional law of India. The petitioners in this case from Chandernagore challenge the validity of a requisition of land u/s 3(1) of the West Bengal Land (Requisition and Acquisition) Act of 1948 (West Bengal Act II of 1948). If the decayed City gates of former French Chandernagore still display the three famous ideals of the French Republic from out of the French Revolution, "Liberte, Egalite and. Fraternite", this petition from Chandernagore, by a strange irony of fate, claims neither equality, nor fraternity with the rest of India. This petition claims that this West Bengal statute should be excluded from what was formerly known as the french Chandernagore, but now an integral part of the territory of the independent Republic of India.

2. The orders of requisition against which the present complaint is made in the

petition are issued by the collector of Hooghly dated the 9th September, 1960 and 10th October, 1960. They are issued u/s 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948. Each of them recites that in the opinion of the Collector of Hooghly it is necessary for the purpose of maintaining supplies and services essential to the life of the com. inanity and for providing proper facilities for transport, communication, irrigation, drainage etc. for extension of Sub-Divisional Hospital, at Chandernagore to requisition the lands described there, it recites also the Notification No. 3775 L.A. (P. W. dated 11-548) published in the Calcutta Gazette Part I, of the 27th May, 1948 at page 682, which authorises the Collector of Hooghly to exercise the power conferred by Section 3(1) of the Act of 1948. After recital of these facts the Collector issues the order for requisition.

3. Mr. Qutta, the learned Advocate appearing for the Petitioners challenges the order of requisition on the ground that the West Bengal Land (Requisition and Acquisition) Act, 1948, has not been introduced to Chandernagore, According to his submission the only door by which this pre-Constitution West Bengal statute could have entered Chandernagore is Section 17 of the Chandernagore Merger Act, 1954 (Act 36 of 1954 of Indian Parliament), that section provides as follows:--

"17. Extension of laws to Chandernagore

All laws which immediately before the appointed day extend to, or are in force in, the State of West Bengal generally shall, as from that day, extend to, or, as the case may be, come into force in, Chandernagore."

(Mr. Dutta's main argument on this point is that this West Bengal Land (Requisition and Acquisition) Act of 1948 is not a law which answers the test of this word "generally employed in Section 17 of the Act as quoted above. No doubt the expression used is "all laws". Obviously all laws are not extended which are not of "general" application, such as the Calcutta Improvement Act or the Calcutta Municipal Act which apply only to Calcutta. No doubt Section 17 of the Chandernagore Merger Act, 1954 does not lead to that absurd consequence that even the Calcutta Improvement Act and the Calcutta Municipal Act apply to Chandernagore. Mr. Dutta drew inspiration for this point from such decisions of this Court as *Tulsi Charan Bairagi v. Debendra Nath Sil* 1958 (1) Cal LJ 149. It was held that neither the Calcutta Thika Tenancy Act of 1949 nor the West Bengal Non-Agricultural Tenancy Act was an Act applicable generally all over West Bengal as contemplated in Section 17 of the Chandernagore (Merger) Act of 1954, and, therefore, those statutes did not extend to Chandernagore. The basis of the view expressed there is that the Calcutta Thika Tenancy Act was applicable only to Calcutta and suburbs and to the Municipality of Howrah, and therefore, was not a piece of legislation applicable "generally" all over West Bengal. Similarly the Bengal Non-Agricultural Tenancy Act which was not applicable to Calcutta and certain suburbs thereof and the Municipality of Howrah was not a statute of "general" application as contemplated in Section 17 of the

Chandernagore (Merger) Act of 1954.

4. The difficulties experienced on this point led to the Chandernagore (Assimilation of Laws) (Amendment) Act, 1959 (West Bengal Act V of 1959) which introduced the new Section 8 stating that notwithstanding anything to the contrary, in any judgment or decision of any Court, tribunal or authority, three specific Acts-- (1) The West Bengal Land Development and Planning Act, 1943, (2) The West Bengal Non-Agricultural Tenancy Act, 1949, and (3) The West Bengal Estates Acquisition Act, 1953 shall extend to and be deemed always to have extended to Chandernagore with effect from the appointed date i.e. 2nd October, 1954.

5. That amendment, however, does not help the petitioner because as it says expressly they were made to overcome the effects of certain decisions and judgments of the Courts in respect of only those three specified Acts. The argument that the West Bengal Land [Requisition and Acquisition] Act, 1948 is not included in this Chandernagore (Assimilation of Laws) (Amendment) Act of 1959 does not prove that such Act does not operate in Chandernagore. Whether the West Bengal Land (Requisition and Acquisition) Act, 1948 operates in Chandernagore or not must be judged by the nature and character of that Act read with certainly Sections 17 and 18 of the Chandernagore (Merger) Act, 1954.

6. It appears to me that the West Bengal Land (Requisition and Acquisition) Act, 1948 does answer the test of the word "generally" used in Section 17 of the Chandernagore (Merger) Act, 1954. The reason for saying so is that by virtue of Section 1(2) of the West Bengal Land (Requisition and Acquisition) Act, 1948 it is expressly stated that the Act extends to the whole of West Bengal. Therefore, it is an Act "generally" applicable to the "whole" of West Bengal.

7. It was then contended by Mr. Dutta for the petitioners that while the West Bengal Land (Requisition and Acquisition) Act, 1948 was generally applicable to the whole of West Bengal geographically nevertheless it was an Act which must be treated more or less as of a temporary and not a permanent character. In support of this argument he relies first on the preamble of the Act which says that it is expedient to provide for the requisition and speedy acquisition of land for the purposes of maintaining supplies and services essential to the life of the community and for providing proper facilities for transport, communication, irrigation or drainage. Then he relies on the provision of Section 1(4) which continues the Act only upto certain periods and then extends it again if the need arises, it was at first provided in 1948 when the Act was passed that the Act was to remain in force upto 31st March, 1951. Then by Section 2 of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1951 that date was substituted by 31st of March, 1954. Then again by a further amendment in 1954 it was amended to remain in force upto 31st March, 1957. Since then there have been further extensions. The argument briefly on this point is that a statute which is not only limited in area but also limited in time is outside the purview of Section 17 of the Chandernagore (Merger) Act, 1954 and does not answer the

test of the word "generally" used there, I am unable to accept this argument because even a temporary statute, as distinguished from a permanent, if it applies generally without exception cannot be excluded on a true construction of the word "generally". Shortness of duration does not affect the question of the generality of the application of the statute so long as it lasts. Even if there be a distinction between a permanent statute and a temporary statute that distinction does not avail to the petitioner here because the nature of the statute is such that it is in effect and in substance more or less of a permanent nature although it is being extended from time to time, In fact, it has been in such extension from 1948 upto 1962 for more than 14 years. It is also significant to add that the Chandernagore (Assimilation of Laws) Act, 1955 (West Bengal Act IV of 1955) also uses almost the same words and certainly the particular word "generally" in Section 3 as in Section 17 of the Chandernagore (Merger) Act, 1954.

8. The Idea of both Section 17 of the Chandernagore (Merger) Act, 1954 as well as of the Chandernagore (Assimilation of Laws) Act, 1955 is to extend to Chandernagore all laws which Immediately before the 2nd October, 1954 extended to or were in force in the State of West Bengal generally. If any such exception had to be made that was made expressly as in the case of Bengal Municipal Act, 1932 which was a general Act but whose operation was prevented in Chandernagore by Section 5 of the Chandernagore (Assimilation of Laws) Act, 1955 which expressly provides that notwithstanding anything contained in Section 3, the Bengal Municipal Act shall not extend to Chandernagore. No such exception is expressly made in favour of the West Bengal Land (Requisition and Acquisition) Act, 1948.

9. On an interpretation, therefore, of Section 17 of the Chandernagore (Merger) Act, 1954, I have come to the conclusion that the West Bengal Land (Requisition and Acquisition) Act, 1948 being a general law immediately before the appointed date, the 2nd October, 1954, applies to Chandernagore on its merger with West Bengal. In addition to Section 17, Section 18 also of the Chandernagore (Merger) Act throws some light on the construction, Section 18 of this Act deals with repeal of corresponding laws and savings. It provides inter alia that any law in force in Chandernagore immediately before the appointed day which corresponds to any law referred to in Section 17, whether such corresponding law was in force in Chandernagore either by virtue of Chandernagore (Application of Laws) Order, 1950 or by virtue of any notification issued under the Chandernagore (Administration) Regulation, 1952, or otherwise, shall as from that day, stand repealed in Chandernagore. That being so, the corresponding law within the meaning of Section 17 of the Chandernagore (Merger) Act stands repealed, in other words, corresponding Chandernagore French law before the appointed day must yield to the statute of West Bengal after the appointed day. Reading, therefore, Sections 17 and 18 of the Chandernagore (Merger) Act together it becomes clear that West Bengal statutes were extended to Chandernagore and the existing Chandernagore corresponding laws were repealed. It was then contended on behalf of the petitioners that there was no corresponding law

within the meaning of Section 18 of the Chandernagore (Merger) Act on the subject of requisition of private property in French Chandernagore. therefore, it is said that there was no corresponding law of requisition in Chandernagore and therefore the existing law of Chandernagore remained. This part of the argument was intended to be supported by reference to clause 8 of the Chandernagore (Administration) Regulation, 1 of 1952 which provides-

"Save as otherwise expressly provided in this Regulation, all laws in force in the free town of Chandernagore immediately before the appointed day shall continue in force until repealed or amended by a competent Legislature or authority."

Mr. Dutta, therefore, contends that existing laws in the free town of Chandernagore continued and as there was no law for requisition in free Chandernagore existing at the time that immunity of private citizens from State requisitions of their properties continues. This argument is ingenious but suffers from the fallacy that fails to take notice of the special definition of the "law" in the Chandernagore (Administration) Regulation, 1 of 1952 where "law" means any Act, Ordinance, Regulation, Rule, order or by-law (including any law by whatever name called made by the Government of the French Republic) which immediately before the appointed day, (i.e. 9th of June, 1952) was in force in the free town of Chandernagore. Therefore, law in the Chandernagore (Administration) Regulation 1 of 1952 does not mean no law and the resulting immunity of the French subjects of the French Chandernagore but means, what is known in jurisprudence as positive law in the shape of Act, Ordinance, Regulation, Rule, Order or Bye-law. It is only they who are continuing by Section 8 of that Regulation and not undefined immunities.

10. The first challenge, therefore, of Mr. Dutta must fail.

11. Mr. Dutta then entered the still more difficult realm of constitutional Law by, challenging, the order of Requisition on the ground that this requisition is bad because the Act itself is bad as it does not answer the test of reasonableness under Article 19 of the Constitution which he contends still regulates cases of requisition under Article 31(2) of the Constitution. He makes an attempt to say that, what he calls the Second Kochuni's case, supports his argument. Before discussing that case it will be useful to briefly formulate the constitutional point. The Act impugned is an Act dealing with requisition and acquisition. Mr. Dutta contends that Article 31(1) of the Constitution by which no person shall be deprived of his property save by authority of law is still regulated by Article 19 and the doctrine of reasonableness thereunder. That proposition is accepted now and is no longer debatable.

The second step in his argument is that under Article 31(2) the word "property" still remains and it is still provided that there can be no compulsory acquisition or requisition "save for public purposes and save by authority or law". He, therefore, contends that the expression "authority of law" occurring in Article 31(1) and attracting Article 19 and the doctrine of reasonableness thereunder

must equally be applicable to the same expression used is the same Article 31 under sub-article (2) notwithstanding the fact that this sub-article (2) specifically and exclusively refers to requisition or acquisition. To my mind, interesting as this point may be, it is too late in the day for Mr. Dutta to contend that it is so. The observation to the case of Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, , far from helping the petitioners are really against them. Mr. Dutta specially relied on the observations at p. 916 (or SCR) : (at p. 1094 of AIR) to the following effects

"But there is no scope for drawing such as analogy after the Constitution (Fourth Amendment) Act, 1955, as thereafter they dealt with two different subjects: Article 31 (2) and (2A) with acquisition and requisition and Article 31(1) with deprivation of property by authority of law. The decision of this Court in The State of Bombay Vs. Bhanji Munji and Another, no longer holds the field after the Constitution (Fourth Amendment) Act, 1955."

I do not see how this observation helps the petitioners. Indeed at p. 915 (of SCR): (at p. 1093 of AIR) Subba Rao J. makes it quite clear by saying--

"On the other hand, Article 31(1), by reason of amendment, ceases to be a part of the guarantee against acquisition and requisition of property without the authority of law and must therefore be construed on its own terms. But the more formidable opposition to the argument put forward by Mr. Dutta is to be found in the decision of the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, where at page 1208 it was laid down:

"The other attack under Article 19(1)(f) of the Constitution is equally futile in view of the decisions of this Court in The State of Bombay Vs. Bhanji Munji and Another, and Lilavati Bai Vs. The State of Bombay, ."

The principles laid down here were followed by the Supreme Court in a more recent case and which is more appropriate on the point before me. That is a decision of the Supreme Court in Smt. Sitabati Devi v. State of West Bengal, C.W. No. 22 of 61, decided on 1-12-1961. This decision is on this very Act viz. the West Bengal Land (Requisition and Acquisition) Act, 1948. The validity of this very Act was questioned in that case. This decision is not yet reported in any of the Reports but is available in Blue Print. It appears that the observation in Kochuni's case that The State of Bombay Vs. Bhanji Munji and Another, no longer holds the field" has to be understood to mean that it no longer governs cases of deprivation of property by means other than requisition and acquisition by the State.

This decision distinguishes Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, on the ground that the latter was not concerned with a law of requisition or acquisition. It was not directly concerned with the question whether The State of Bombay Vs. Bhanji Munji and Another, would not after the amendment apply even to a law or requisition or acquisition of property governed by Article 31(2) as it now stands and it did not decide that question.

Having regard to the fact that the Supreme Court, in that case of *Smt. Sitabati Devi v. The State of West Bengal*, decided that this very statute was valid, I do not think the point is any longer open to argument by Mr. Dutta. See also the observations in *Sm. Kamala Bala Dassi and Others Vs. State of West Bengal and Another*, and the observations of the Special Bench decision of this Court in *Paschim Banga Malbahi Cycle Mazdoor Union and Others Vs. Commissioner of Police, Calcutta and Others*, . The appeal which the Supreme Court dismissed in *Sitabati Devi v. The State of West Bengal* arose from the decision of the First Court reported in *Sitabati Devi v. State of West Bengal*, 66 Cal WN 423 where it was held that this West Bengal Land (Requisition and Acquisition) Act II of 1948 dealing with requisition and acquisition as contemplated in Article 31(2) of the Constitution could not be held to be ultra vires on the ground that it violated Article 19(1)(f) of the Constitution.

12. In this view of the matter it is not necessary to discuss whether this particular West Bengal Land (Requisition and Acquisition) Act, 1948, is unreasonable because of the absence of any right of representation for the aggrieved party and because of the absence of any right of appeal even after requisition or acquisition. Indeed this Act was passed with a view to meet the need of "speedy acquisition of land for the purposes of maintaining supplies and services essential to the life of the community". The purpose and the preamble also were enlarged by addition of the purpose of "creation of better living conditions in urban or rural areas by the construction or re-construction of dwelling places" by the West Bengal Land (Requisition and Acquisition Amendment) Act, 1957 (West Bengal Act XII of 1957).

13. Looking at the problem in this petition from a totally different point of view, it seems to me that this petition should fail on a much broader ground. The claim in this petition in short is, that what was known as French Chandernagore or the free city of Chandernagore, is somehow or other has a privileged place under this Act. While the whole of West Bengal bore and still bears the burden of the West Bengal Land (Requisition and Acquisition) Act, 1948 yet Chandernagore for some unexplained reason should be kept out of its operation. Such a claim seems to me to be clearly unconstitutional and to interpret the West Bengal Land (Requisition and Acquisition) Act, 1948 in that light would be to violate the Constitution. What will be violated by such interpretation is the well-known constitutional doctrine of equality before the law and the equal protection of laws within the territory of India as guaranteed by Article 14 of the Constitution. It is provided by Article 13 that the existing laws when the Constitution came into force which clashed with the exercise of fundamental rights conferred by Part III of the Constitution will be to the extent of their inconsistency void while post-constitutional laws inconsistent with such fundamental rights would be void ab initio. Equality before the law or the equal protection of laws within the territory of India is a fundamental right guaranteed by the Constitution. When every district of West Bengal comes within the operation of the West Bengal Land (Requisition and Acquisition) Act 1948, I do not see any rational or intelligible

principle to exclude Chandernagore as a class by itself outside the operation of this general Act.

14. To-day Chandernagore is a part and an integral part of the territory of the Union of India. It will not be necessary to analyse the different constitutional processes by which this has become a fact beginning from the French Decree dated the 7th November, 1947, declaring Chandernagore a free city. On the 8th June, 1958 the Agreement between the Government of France and the Government of India left it to the population of the French establishment in India the right to pronounce their future fate. Then came the Referendum of the citizens of Chandernagore on the 19th June, 1949, voting In favour of merger with India and the Government of India taking over the de-facto administration of Chandernagore on the 2nd May, 1950 when the Chandernagore Application of Laws Order, 1950, came into force and applied to the free city of Chandernagore with modifications and restrictions thereunder. This was followed by the Treaty of Cession on the 2nd February, 1951, of the Free State of Chandernagore signed at Paris and on the 9th June, 1952 Chandernagore was transferred de jure to the Union of India. On the 30th June, 1952, the President of India promulgated the Chandernagore (Administration) Regulation 1 of 1952 to which reference has already been made. Thereafter came the Constitution (Seventh) Amendment Act as a sequel to the states Reorganisation Act of 1956 on 1-11-56 whereby in the First Schedule of the Constitution express reference was made to Chandernagore under the State of West Bengal. On the 2nd October, 1954 Chandernagore merged into the state of West Bengal. In fact the Chandernagore (Merger) Act came into force on the 2nd October, 1954.

15. An analysis of this Merger Act clearly shows what the effect is of all these Constitutional Amendments, by Section 3 of the Chandernagore (Merger) Act, 1954 it is expressly laid down that from the 2nd October, 1954 Chandernagore shall form part of the State of West Bengal and the boundaries of that State shall be so altered as to comprise within them the territory of Chandernagore. It also expressly lays down that Chandernagore shall form part of the district of Hooghly in the State of West Bengal and the State Government shall, by order in the official Gazette provide for the administration of Chandernagore by constituting it into a new sub-division of the said district. That being so, Chandernagore is a part of the Union of India and part of the State of West Bengal, could it then be said that an Act of general application like the West Bengal Land (Requisition and Acquisition) Act, 1948 should not be made applicable to Chandernagore? Chandernagore could certainly have been singled out as a class by itself for special reason. But there is and can be no special reason. If there could be a reasonable classification and a legislation made on that basis satisfying the tests under Article 14 of the Constitution, then a special treatment of Chandernagore might be well-conceived. But without any reasonable classification and without any rational basis, why should a particular sub-division of a district of Hooghly which was formerly French Chandernagore but which has since become a part of the territory of West Bengal, be kept outside the operation of this statute of

general application? To interpret the West Bengal Land (Requisition and Acquisition) Act of 1948 as excluding Chandernagore would be to make the Act unconstitutional by preventing equal protection of laws or equality before the laws between Chandernagore and the rest of West Bengal.

16. Under Article 1 of the Constitution the territory of India inter alia comprises (a) the territories of the States; (b) such other territories as may be acquired. Chandernagore which was formerly a French settlement is an acquired territory under such circumstances I have mentioned. Article 2 of the Constitution provides that Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit. Article 3 of the Constitution provides that Parliament may by law, inter alia, form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, or increase the area of any State; or alter the boundaries of any State. When French Chandernagore comes within the rights and privileges of the Indian Constitution, it naturally has to bear the responsibilities and obligations of that constitution. One of the privileges and responsibilities under the Constitution is equality of laws and equal protection of laws throughout the territory of India. Once an inch of land or territory becomes a part of the territory of India it must come within the canopy of her Constitution unless by treaty or agreement of acquisition or cession or other constitutional device there is any express reservation. To interpret this Act, therefore, of the West Bengal State, namely, the West Bengal Land (Requisition and Acquisition) Act, 1948 so as to render it applicable to Chandernagore is to protect the Constitution and to enforce the principles of equality before the laws and equal protection of the laws guaranteed by the Constitution. I should have thought that the old citizens of the French settlement of Chandernagore whose Government was the first to declare in the world in the eighteenth century the doctrine of equality as part of a liberal political Constitution to be the last to complain about the West Bengal Land (Requisition and Acquisition) ACT, 1948 while the rest of Chandernagore's fellow citizens of India in West Bengal bear the responsibilities and obligations of that statute.

17. In *Re: The Berubari Union and Exchange of Enclaves* Reference Under Article 143(1) of The Constitution of India, the Supreme Court in its advisory jurisdiction on reference by the President of India under Article 143(1) of the Constitution during the course of giving the advice at pages 287-288 (of SCR): (at pp. 858-859 of AIR) referred to the merger of Chandernagore with West Bengal and observed at page 288 (of SCR): (at pp. 858-859 of AIR).

"We have thus briefly referred to the history of the acquisition and absorption of Chandernagore and its merger with West Bengal because it significantly illustrates the operation of Article 1(3)(c) as well as Article 3 (b) and (d) of the Constitution."

At the end of the advice at pages 295-296 (of SCR): (at p. 862 of AIR) the Supreme Court further observed;

"A law of Parliament relating to both Article 368 and Article 3 would be necessary only if Parliament chooses first to pass a law amending Article 3 as indicated above in that case Parliament may have to pass a law on those lines under Article 368 and then follow it up with a law relating to the amended Article 3 to implement the agreement."

18. A territorial distinction if nothing else to justify it would clearly be discriminatory and violative of Article 14 of the Constitution. These questions came recently in connection with the Indian Arms Act and the validity of Section 29. See in this connection the decision of the Supreme court in *Jia Lal v. Delhi Administration*, Cr. Appeal No. 69 of 1961, decided on 3-5-1962 and as yet unreported (since reported in *Jia Lal Vs. The Delhi Administration*,), and a decision of this Court in *The State Vs. Keshab Chandra Naskar*, , and also the two Allahabad High Court decisions in *Mehar Chand Vs. State*, , *Bhai Singh Vs. The State*, .

19. There are one or two minor points which may now be disposed of. Mr. Dutta argued that there was no satisfaction of the Minister in Charge to show that the State Government was satisfied before making this order of requisition. This is ground IV of the present petition. The ground is misconceived. Before discussing this ground it may be added that Mr. Dutta contends that, under the Standing Rules of Business and Orders of the Government, satisfaction of the Government is to be had by first obtaining satisfaction of the Minister in charge, He Was prepared to show relevant decisions on that point. But this argument misses the significant feature of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 which does not limit the question of satisfaction to that of the State Government alone. There is an alternative satisfaction in the statute. That alternative is that it may also be satisfaction of any person authorised in that behalf by the State Government. The language of Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 is material and is as follows:--

"If in the opinion of the State Government or any person authorised in this behalf by the State Government it is necessary so to do for maintaining supplies and services essential to the life of the community or for providing proper facilities for transport, communication, irrigation or drainage the State Government or the person so authorised, as the case may be, may, by order in writing, requisition any land etc."

A glance at this provision will show that it is either in the opinion of the State or any person authorised in that behalf by the State Government, in this case the Additional Collector of Hooghly. Due authorisation of such person has been produced before me. I see, therefore, no reason why he should go through the process of the State Government's satisfaction through the Minister in charge so long as he, the person authorised by the State Government, is satisfied. At one stage Mr. Dutta tried to argue that this will lead to uncontrolled delegation by the State to any person. Again the point is concluded and it is not necessary to

discuss cases on this point. Here it is the opinion of the State Government or a person authorised on that behalf by the State Government. It is expected that a responsible State Government will be responsible and it will not appoint a peon or a jamadar to exercise the power of requisition. If it does then that particular order may be questioned, and that does not make Section 3 or the Act unconstitutional.

20. Then Mr. Dutta also tried to argue that the Notification on which the Collector of Hooghly relied was a Notification of 1048 whereas the Order of requisition is an order of 1960 and Chandernagore came into India as part of its territory by the Merger Act of 1954. Therefore, he says that the old notification which authorised the collector of Hooghly to exercise powers under the West Bengal Land (Requisition and Acquisition) Act, 1948 was not sufficient to include Chandernagore. I am unable to accept that argument. Collector of Hooghly remains the authority for Hooghly, whatever the area of Hooghly may be. If the area of Hooghly is enlarged by addition then he is also the authority for the enlarged Hooghly. If Hooghly was increased in area by the inclusion of Chandernagore he nevertheless remains the "duly" authorised person or Hooghly even though it is added Hooghly. The authority to persons to requisition land u/s 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948, is to be found in notification No. 3775 LA. (P.W.) dated the 11th May, 1948 published in the "Calcutta Gazette" of 1948 part I, page 682, The notification recites as follows:--

"In exercise of the power conferred by Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948), the Governor is pleased, hereby, to authorise each of the collectors and the Deputy Commissioners mentioned in the schedule below to requisition, by order in writing, in pursuance of the provisions of the said Sub-section (1) of the said Section 3, any land within the local limits of his jurisdiction and also to make such further orders as appear to him to be necessary or expedient in connection with the requisitioning:"

It is followed by a Schedule which includes the Collector of Hooghly district. I am, therefore, satisfied that the order of requisition cannot be questioned on the ground that Hooghly in 1948 is not the same Hooghly of 1954 When Chandernagore came within its ambit.

21. At one stage Mr. Dutta tried to question the service of the Order or notice of requisition. The objection was that there was no service of the Order by registered post and it was made on the first petitioner Sachindra Monan Nandy by affixing the same on the outer window of the residence where the other two petitioners Jnanendra Monan. Nandy and Rabindra Mohan Nandy reside. This objection cannot be sustained. In the first place it is not alleged that petitioner Sachindra Mohan Nandy did not reside in the same place along with the other two petitioners Jnanendra Mohan Nandy and Rabindra Mohan Nanny. Jnanendra Mohan Nandy and Rabindra Mohan Nandy are two brothers and they are both

cousins of Sachindra Mohan Nandy. Section 3(2) of the West Bengal Land (Requisition and Acquisition) Act, 1948, provides that an order u/s 3(1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation (of an occupier, not being the owner of the land) also on such occupier. The prescribed methods are contained in the West Bengal Land Requisition and Acquisition Rules, 1948 and the manner of service of the orders is laid down in Rule 3. I find nothing in the petition to support the argument that the service was not made in accordance with Rule 3(3). I hold that it was done according to Rule 3(3) and in the manner prescribed.

22. It is then complained that in adopting the west Bengal Land (Requisition and Acquisition) Act, 1948 and not Land Acquisition Act the Government discriminated against the petitioner. The point of objection, in short, is that where two statutes are available one giving larger rights to the subject or the citizen and the other lesser, then the choice of statute must be left to the people and not to the State and must always be made in favour of the subject and against the Government. In other words the liberal Act must always have to be chosen and not the illiberal one. I am unable to assent to this unqualified proposition. My reasons are first that a statute applies Dy force of its own strength and if two statutes cover the same field there is no constitutional law which prevents the application of the one or the other or compels the preference of one to the other. If both can be applied either one or the other can be applied whether it is being invoked by the State or by the subject. If the statutes prescribe unequal procedure or law then the only way they can be challenged is on the ground of infringement of equal protection or equality of laws under Article 14 of the Constitution. If they survive the test of the challenge of Article 14 of the Constitution then no further question of unconstitutional preference in the application of one or the other statute on the ground of discrimination can any longer arise.

23. My second reason is that these two Acts are indeed different in so far as they meet different purposes. The Land Acquisition Act of 1894 is a centra; act of the then Governor General in Council. It extended to the whole of India at that time. Its preamble said

"It is expedient to amend the law for the acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition."

On the face of this preamble this was clearly a case or acquisition and an Act dealing with acquisition. On the other hand the West Bengal Land (Requisition and Acquisition) Act, 1948 is an Act of the State Legislature. Its preamble as already indicated before points out that "It is expedient to provide for requisition and speedy acquisition of land for the purposes of maintaining supplies and services essential to the life of the community and for providing proper facilities for transport, communication, irrigation or drainage"" which was expanded by the amendment to include also "creation of better living conditions in rural or

urban areas by the construction or re-construction of dwelling places for people residing in such areas." While in born the Land Acquisition Act as well as in the West Bengal Lana (Requisition and Acquisition) Act one of the overriding objects is "public purposes", it is tq be borne in mind that the concept of "public purpose" changes with me growth and development of the State and its political philosophy and a live constitutional jurisprudence must be able to adjust it to such changing concept of public purpose. It is clear from the provisions of the preamble of the West Bengal Land (Requisition and Acquisition) Act, 1948, that the particular public purposes emphasised there are:

- (1) for maintenance of supplies and services essential to the life;
- (2) for providing proper facilities for transport, communication, irrigation or drainage; and
- (3) for creation of better living conditions.

These are the specified public purposes under the said statute. It also is a statute whose declared and expressed object is "speedy" acquisition having regard to the objects in view and having regard to the many problems that were created in the year 1948 when the Act cams into operation and it had to deal with many emergent problems created by the partition of India. The land in question was taken for hospital purposes. Hospitals are a crying need in this State with its expanding population expanding not only by reason of internal causes but by such artificial political situation as the influx of migrants. In such a context there is a reasonable justification for the speedy procedure prescribed under the West Bengal Act. To deal with such a situation modern Governments and modern States cannot afford in many cases to go through the long drawn processes of notices, objections and hearings before the land is acquired or requisitioned. That will frustrate in many cases the very object of "speedy acquisition" under the Act. Nevertheless the Act does provide a procedure for objections with regard to the amount of compensation and for their hearing although not for acquisition itself. I am, therefore, unable to hold that in choosing to apply the West Bengal Land (Requisition and Acquisition) Act, to requisition these lands in the present case and not applying the slower procedure prescribed under the Land Acquisition Act, the order in question can at all be challenged as discriminatory and unconstitutional.

24. For these reasons this petition must fail and is dismissed. The Rule is discharged. Interim order is vacated. There will be no order as to costs.