

(1988) 07 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16194 of 1984

Smt. Dropadi Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-07-1988

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Land Acquisition Act, 1894 — Section 17, 49(1), 5A
Uttar Pradesh Rural Development (Requisitioning of Land) Act, 1948 — Section 2(1), 2(2)

Citation : (1988) 2 AWC 1138

Hon'ble Judges : B.N. Mishra, J;A.N. Varma, J

Bench : Division Bench

Advocate : Ram Niwas Singh, for the Appellant;

Judgement

A.N. Varma, J.—This petition assails the validity of a notice issued to the Petitioners by the Tahsildar acting as a Requisitioning Authority under the U.P. Rural Development (Requisition of Land) Act, 1948 ("The Act" hereafter) stating that the land mentioned therein is required for a public purpose and consequently, they may deliver possession thereof to the said authority within ten days.

2. The essential facts lie within a narrow compass. The Petitioners claim that they are tenure holders of two plots, namely, Nos. 70 and 96 lying in village Bilaspur, district Deoria. The Tahsildar, Salempur, district Deoria has, however, issued notices to the Petitioners stating that these plots are needed for public purpose within the meaning of the aforesaid Act and that consequently, the Petitioners may handover possession thereof within ten days. It is these notices which have been challenged by means of this petition. A counter affidavit has been filed on behalf of the Respondents controverting the material allegations contained in the petition.

3. Several questions were raised in support of the petition, the first of which was

referred by us for the opinion of a Full Bench which having answered the same against the Petitioners has returned the papers for being placed before us for the disposal of the petition. The question referred was whether the nomination of the Tahsildar as the Requisitioning Authority under the proviso to Section 2(1) of the Act must precede the appointment of the Tahsildar by the State Government to act as the Requisitioning Authority. The contention was that inasmuch as in this case the nomination by the Collector of the Tahsildar was made after the appointment of the latter by the State Government to act as Requisitioning Authority, the Tahsildar was not competent to requisition the land under the Act. The Full Bench has by its order dated 25-2-1988 answered the question referred to it in the negative against the Petitioners following that decision we hold that the Tahsildar was legally competent to issue the impugned notices.

4. The second ground of challenge was that the land is not being requisitioned for a public purpose as defined under the Act. The contention has no substance. "Public purpose" has been defined u/s 2(2) to mean, apart from the purposes specified under Clauses (i) to (iv), any other object which the State Government may after publication in the gazette and after considering any objection or suggestion received in that behalf, declare essential for the development of agriculture or improvement of the life of community in rural areas. Acting under this provision the State Government issued a notification dated 7-12-1951 published in the gazette dated December 1, 1951 stating that laying of pathways and road etc is essential for the development of agriculture and improvement of the life of community in rural areas.

5. This notification provides a complete answer to the Petitioners' submission. In the counter affidavit it has been stated that the road in question was being constructed for connecting two villages. That obviously is a public purpose within the meaning of the Act designed to improve the life of the community inhabiting the concerned rural areas.

6. This brings us to the next contention which was that the impugned action has been taken without any application of mind. The contention has been repudiated in the counter affidavit. It has come in evidence that the road was proposed to be constructed for the convenience and use of the general public, namely, for connecting two villages, viz. Karuwana and Parasiya. It is further asserted in the counter affidavit that the proposal for requisition of the land was received by the Collector from the Executive Engineer, Provincial Division, PWD Deoria, vide letter No. 1990/13 dated 16-8-84, whereupon the Collector duly authorised the Tahsildar, Salempur to take further action in the matter.

7. On these facts, it is impossible to hold that the impugned action was taken without any application of mind. An attempt was, however, made in this connection by the learned Counsel to point out that there were other village pathways available which could serve the purpose of linking the two villages. Whether the existing pathways were adequate for the purpose is obviously a matter which is for the competent authority to determine as this Court cannot in

these proceedings embark upon that kind of enquiry and determine whether the existing pathways would have sufficed.

8. The next submission was that though the Act does not expressly provide for giving any pre-decisional opportunity to the persons to be affected by the proposed action such an obligation and duty on the authority must be read into the provisions of the Act as the persons likely to be affected by the impugned requisition proceedings have valuable rights to defend, namely, those of property and enjoyment thereof. In support, learned Counsel cited a decision of the Supreme Court reported in *Madan Gopal Agarwal Vs. District Magistrate, Allahabad and Others*, . We may, however, add that this decision was rendered at a time when Clause (f) of Article 19(1) of the Constitution was in operation. We wonder, therefore, whether the authority would hold good even after the deletion of Clause (f) of Article 19(1). We, however, leave the matter at that for the reasons to be stated below.

9. The learned Standing Counsel, on the other hand, relying on the preamble to the enactment, namely, to prescribe an expeditious procedure for determination of compensation to be paid on account of requisition of land required for the development of agriculture and economic condition in rural areas as well as the scheme of the enactment submitted that there was no scope for reading into the enactment any such an obligation as giving of a pre-decisional hearing would be destructive of the emergent situation which the proposed requisition may be designed to meet. It was urged that the enactment was in the nature of an emergency provision intended to take effective measures for a speedy development of agriculture and life of community in rural areas.

10. We, however, do not propose to express any concluded opinion on these submissions as we find that in the present case the proposed road in question has except to the extent of the Petitioners' land already been completed after the requisition of the land of other tenure holders, 8 Kms. long road has already been constructed and but for the interim orders issued by this Court, the remaining part of the road would also have been completed. By and large the impugned requisition proceedings appear to have been accepted by the other tenure holders without question. The scheme under challenge is designed to serve a public purpose, namely, construction of a link road.

11. In view of these facts we would not like to strike down the notices issued by the Respondents on this submission of the learned Counsel for the Petitioner in the exercise of our discretionary powers under Article 226 of the Constitution. We should not, however, be taken to have expressed any opinion on the validity of this contention either way. We will leave that question to be determined in some other appropriate case.

12. That finally takes us to the last contention. The submission was that inasmuch as the construction proposed to be made by the Respondent was of a permanent nature, it was not permissible in law to requisition the land. The

purpose for which the land was being requisitioned, being of permanent nature, it was urged, the authorities could take resort to the Land Acquisition Act and acquire the land thereunder and not to the U.P. Rural Development (Requisitioning of Land) Act, 1948. In support, learned Counsel placed strong reliance on a decision of the Supreme Court in the case of H.D. Vora v. State of Maharashtra 1984 SC 866. The contention deserves a serious consideration though as a statement of law it is slightly inaccurate. The settled legal position as we shall presently demonstrate seems to be that if there is power to acquire as also the power to requisition and the purpose is of permanent nature then though the Government does not lack the power of requisition, it would be misuse of power to requisition the property and keep it under requisition permanently in which case the requisition proceedings can be challenged not because there was lack of power to requisition but because its continuance beyond a reasonable time, when the purpose could be served equally by taking resort to the acquisition proceedings, would amount to an abuse of the power to requisition. The law on the subject has been summed up by their Lordships of the Supreme Court after noticing the leading authorities on the subject in the case of Jiwani Kumar Paraki v. The 1st Land Acquisition Collector, Calcutta reported in 1984 SC 1707 in paragraphs 22 to 24 which are quoted below:

22. In view of the decision in the case of H.D. Vora Vs. State of Maharashtra and Others, in the light of the decision of this Court rendered by a Bench of three Judges in Collector of Akola and Others Vs. Ramchandra and Others, and bearing in mind the distinction between "requisition" and "acquisition" as also the provisions of West Bengal amended Section 49(1)(quoted above), the correct position in law would be that it will not be correct to say that in no case can an order of requisition for permanent purpose be made but in a situation where the purpose of requisitioning the property is of a permanent character and where the Government has also the power and the opportunity to acquire the property or a part thereof especially upon the fulfilment of the conditions of Section 49(1) of the Land Acquisition Act (as amended by the West Bengal Act) to the extent applicable if the Government chooses not to exercise that power nor attempts to exercise that power to achieve its purpose, then that will be bad not because the Government would be acting without power of requisition but the Government might be acting in bad faith. In other words, if there is power to require as also the power to requisition and the purpose is of permanent nature by having the property or a part thereof for the Government then in such case to keep the property under requisition permanently might be an abuse of the power and a colourable exercise of the power not because the Government lacks the power of requisition but because the Government does not use the other power of acquisition which will protect the rights and interests of the parties better.

23. Where one is repository of two powers that is power of requisition as well as power of acquisition qua the same property and if the purpose can equally be served by one which causes lesser inconvenience and damage to the citizen concerned unless the repository of both the powers suffers from any

insurmountable disability, user of one which is disadvantageous to the citizen without exploring the use of the other would be bad not on the ground that the Government has no power but on the ground that it will be a misuse of the power in law.

24. It is true that the purpose indisputably in the instant case is a public purpose. It is also true that the only part of the building namely one room has been requisitioned for the showroom but the premises in question has remained under requisition for over 25 years and the purpose of having the premises in question is of a permanent and perannial nature. But that by itself without anything more would not enable the Court to draw the inference that the exercise of the power was bad initially nor would the continuance of the requisition become mala fide colourable by mere lapse of time. In order to draw such an inference some more material ought to have been placed before the Court.

13. It will thus be seen that it is not impermissible in law in requisition a property under the appropriate legislation even for a permanent purpose as has been consistently held right from the case of Collector of Akola and Others Vs. Ramchandra and Others, . What is however, objectionable in law is continuance of the order of requisition beyond a reasonable period of time. What is a reasonable period would of course depend on the facts and circumstances prevailing in a particular case. The extreme contention, therefore, that the purpose being of a permanent nature and the provisions of the Land Acquisition Act being available to the authorities to meet the exigency, the Respondents did not have the power to requisition cannot hence be accepted.

14. Learned Counsel, however, laid considerable stress on the following observations of their Lordships in H.D. Vora's case (supra) appearing in the second column at page 869 of the report:

The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority. But the concept of the requisition involves merely taking of "domain or control over property without acquiring rights of ownership" and must by its very nature be of temporary duration. If requisition of property could legitimately continue for an indefinite period of time the distinction between requisition and acquisition would tend to become blurred because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the government.

15. This decision was considered by a larger Bench of the Supreme Court in the case of Jiwani Kumar (*supra*) and it was after an exhaustive analysis of the entire law that the Supreme Court finally ruled that it would be wrong to think that in no case can an order of requisition for a permanent public purpose be made (see observations of the Supreme Court in paragraph 22 of the judgment quoted above). Their Lordships said that it is the continuance of the order of requisition beyond a reasonable period of time which can furnish a ground of challenge warranting interference by courts. To that extent the observations made in H.D. Vora's case (*supra*) on which learned Counsel placed reliance appear to have been qualified by the decision in Jiwani Kumar's case. It was because of this legal finding that their Lordships did not quash the order of requisition. Instead their Lordships issued certain directions for protecting the rights of the Appellant on the lines of which we ourselves propose to dispose of this petition.

16. With this legal premise, we proceed to examine the facts of the case in hand. Undisputedly, the purpose for which the land including the Petitioner's was requisitioned was permanent in character, namely construction of a pucca road by PWD for linking two villages. Indeed in the counter affidavit there is not even a suggestion that the purpose is temporary or that the road is likely to be dismantled and possession restored to the owners of the land in any fore-seable future. Nor is it asserted that the object aimed at could not have been achieved by taking recourse to the proceedings under the Land Acquisition Act. Section 17 of the Land Acquisition Act arms the Government with ample powers to expedite acquisition proceedings in cases warranting urgent action by dispensing with the time consuming procedure contemplated u/s 5-A of that Act. Good four years have already elapsed since the order of requisition was made. This coupled with the fact that there is no move whatever to release the land in the near future supports the contention of the learned Counsel for the Petitioner that this was a case in which the provisions of the Land Acquisition Act rather than the U.P. Rural Development (Requisitioning of Land) Act ought to have been applied.

17. In the entire facts and circumstances, therefore, we are clearly of the opinion that the order of requisition is being continued beyond a reasonable time. At any rate, if the Government does not take any decision whether it wants continued use of the land within six months it would be a clear instance of misuse of power. This, therefore, is a pre-eminently fit case in which directions similar to those rendered in Jiwani Kumar's case (*supra*) ought to be issued.

18. In the result, we dispose of this petition as follows:

(i) The impugned requisition order is upheld but its continuance is permitted subject only to the conditions mentioned hereinafter.

(ii) If the Respondents want the continued use of the land the State Government shall take steps to acquire the same under the Land Acquisition Act and, if possible, issue an appropriate order acquiring the land within two years from the date on which a certified copy of this order is filed before the Secretary to the

concerned Department, Government of Uttar Pradesh.

(iii) If, however, the Respondents do not want the continued use of the land, they shall de-requisition the land without any further delay after payment of the rent/compensation such as may be admissible in law under the U.P. Rural Development (Requisitioning of Land) Act, 1945. This decision may be taken by the Respondents within 6 months from the date on which a certified copy of this order is filed before the Respondents.

19. The parties are, however, left to bear their own costs of this petition.