

(1968) 04 CAL CK 0010
In the Calcutta High Court
Case No : Civil Revn. No. 402 (W) of 1964

Srinarayan Mukherjee and Another

APPELLANT

Vs

Collector and District Magistrate of Burdwan and Others

RESPONDENT

Date of Decision : 30-04-1968

Acts Referred:

Defence of India Rules, 1939 — Rule 75A

West Bengal Requisitioned Land (Continuation of Powers) Act, 1951 — Section 3

Citation : AIR 1969 Cal 446 : (1968) 2 ILR (Cal) 621

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : N.C. Chowdhury and Ganganarayan Mukherjee, for the Appellant;
N.C. Chakravarty, Government Pleader and Biwanath Bajpayee, for the Respondent

Judgement

D. Basu, J.—In this Rule the petitioners pray that the order of requisition dated 11th January, 1946, which is at Annexure "I" to the petition should be cancelled and the disputed property should be restored back to the possession of the petitioner No. 1 who is stated to have purchased the property from petitioner No. 2, who again had purchased it from the original owners of the land as mentioned in the order of requisition. The order of requisition was issued under Rule 75-A of the Defence of India Rules made under the Act of 1939 for the purpose of using it as a Government storage godown which was necessary "for maintaining supplies and services essential to the life of the community" and the order was made by the District Magistrate of Burdwan.

2. The petitioner's case is that the State of West Bengal has ceased to use the land for the original purpose for which it has been requisitioned and that instead of using it as "Government grain Storage Godown" it was being used at the date of the Rule for accommodating "Carpentry Works" belonging to the Industries Department, which was quite foreign to the purpose for which It had been requisitioned under Rule 75-A of the Defence of India Rules. Petitioners accordingly contend that the original purpose of requisition having ceased to

exist the land should be released from requisition; they made a demand for so releasing the land which not having been heeded to they have come to Court.

3. The main plea in the counter-affidavit of the respondents is that though the disputed land was being used for the time being for the establishment of a model Carpentry Workshop by the Cottage and Small Scale Industries Department to which the land has been let out at a monthly rental basis by the Food and Supplies Department, the Government has not abandoned the idea of using the godown for storage of food-grains and also that the holding of a Carpentry Workshop is also a purpose essential to the life of the community so that it cannot be contended that the purpose for which the property had been requisitioned no longer exists. At the very outset it must be pointed out that though the supply of foodgrains is a supply which is essential to the community it cannot be contended that the erection of a workshop for training in carpentry is equally essential to the community, in the technical sense in which that expression has been used in the Defence of India Rules, even though it might be a "public purpose. If that were so then every industry or handicraft may be said to be essential to the community for which the power of requisition could be used,

4. It was contended by the learned Government Pleader on behalf of the respondents that there was nothing in the law of requisition that after requisition it could not be used even temporarily for a purpose other than that for which it had been requisitioned. On that point we have the observations of the Supreme Court in the case of *The Union of India (UOI) Vs. Ram Kanwar and Others*, which has been followed by me in my previous decision in *Dhone Gopal Mukherjee and Others Vs. The Secretary, Land and Land Revenue Dept., Govt. of West Bengal*, . Even though that decision relates to a different Act, namely, the Requisitioning and Acquisition of Immovable Property Act, 1952, the principles enunciated in that decision are quite applicable to the facts in this case as will appear from the text of the West Bengal Act 8 of 1951, which is relied upon by the respondents in support of the continuance of the order of requisition originally made in 1946. It was on the basis of the terms of Section 3 of this Act that it was further argued by the learned Government Pleader that it was not obligatory upon the State of West Bengal to use the disputed land, after the coming into force of Act 8 of 1951. for the original purposes; it was enough if it was used for any public purpose not being a purpose of the Union, as defined in Section 2(a) of the Act of 1951. In order to appreciate this contention we have got to refer to the legislative history of this enactment. It would be essential to reproduce the text of Rule 75-A of the Defence of India Rules under which the impugned order of requisition had been made in 1946. That Rule was as follows:

"Rule 75-A. (1) If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any

property, movable or immovable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning.

(2) Where the Central Government or the Provincial Government has requisitioned any property under Sub-rule (1) that Government may use or deal with the property in such manner as may appear to it to be expedient, and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official Gazette, a notice stating that the Central or Provincial Government, as the case may be, has decided to acquire it in pursuance of this rule."

The Defence of India Rules, however, expired after the official termination of the Emergency in September 1946, but notwithstanding such expiry the orders of requisition made thereunder were continued by virtue of the Requisitioned Land (Continuance of Powers) Ordinance, 1946 which was eventually replaced by the Requisitioned Land (Continuance of Powers) Act, 1947. When the Constitution came into force the legislative power relating to requisitioning and acquisition became divided between the Union and State Legislatures by entries 33 of List I and 36 of List II, -- the division being governed by the purposes for which the requisition was to be made or maintained, that is to say, if the purpose was a Union purpose it was the Union Legislature which had the exclusive sway and on the other hand if it was a State purpose the State Legislature had exclusive jurisdiction to legislate with respect to the subject. It is because of this division of legislative power that the West Bengal Legislature made the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951 (West Bengal Act 8 of 1951). This Act of 1951 was published in the Official Gazette on the 29th March, 1951. The substantive provision of this Act of 1951 is contained in Section 3 of the Act. This provision was to be read with reference to the definition of requisitioned land in Section 2(3) of that Act and the result was that any land which had been requisitioned in exercise of powers conferred by the Defence of India Act, 1939 and which had been continued by the operation of Requisitioned Land (Continuance of Powers) Ordinance 1946 or Act 17 of 1947 would continue to be subject to requisition until the expiry of the Act of 1951. Though initially the Act of 1951 was to remain in operation for three years only by a succession of subsequent enactments its lease of life has been extended, the last Act being West Bengal Act 5 of 1966. The result is that the impugned order is still continuing to subsist but the controversy in this case has been as to the purposes for which the State Government may use such property during the continuance of the Act of 1951. The contention of the learned Government Pleader is that the State Government is free to use the disputed land not only for the purpose for which it had been originally requisitioned under Rule 75-A of the Defence of India Rules but for any public purpose irrespective of the purpose for which it had been requisitioned, the only limitation being that it could not be a purpose of the Union. It has, however, been argued on behalf of the petitioners on the strength of the observations of the Supreme Court in the cited case that

Section 3 of the Act of 1951 does not enlarge the scope or extent of the order of requisition originally made in 1946 under the Defence of India Rules and that the only object and effect of the Act of 1951 was to continue the period of operation of that order of requisition and not to enlarge it in any other respect.

5. In order to appreciate the effects of the Supreme Court decision we have got to know a parallel legislation undertaken by the Union Legislature. As stated at the outset, after the commencement of the Constitution, in view of the fact that the legislative power relating to requisition came to be divided between two Legislatures, the Union Legislature had to make its own arrangement relating to Union purposes and that is how in 1952 the Parliament enacted the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 47 of 1952), which of course was confined to requisitioning for the purpose of the Union. This Act of 1952 not only conferred power upon the Central Government to make orders of requisitioning and acquisition in future for Union purposes u/s 3 of that Act but by Section 24(2) of the Act it was provided that any property which had been the subject of requisition under the Requisitioned Land (Continuance of Powers) Act, 1947, inter alia, "shall, on the commencement of this Act, be deemed to be property requisitioned u/s 3 of this Act, and all the provisions of this Act shall apply accordingly." There was of course a provision in the Act of 1952 which does not exist in the West Bengal Act 8 of 1951, namely, the proviso to Section 6(1) of the Act of 1952. Sub-section (1) of Section 6 of that Act save power to the Central Government to release from requisition any property which had been requisitioned. This was merely an enabling provision; but the proviso made it obligatory to the Central Government to derequisition a property whenever "the purposes for which such requisitioned property was being used ceased to exist". The point primarily arose from an interpretation to these words "ceased to exist", but the observations of the Supreme Court deal with the question from a comprehensive point of view. The Court observed that under Sub-rule (1) of Rule 75-A of the Defence of India Rules the power to requisition could be used only for any of the specified purposes, namely, (a) securing the defence of British India, (b) public safety, (c) the maintenance of public order, (d) efficient prosecution of the war, (e) maintaining supplies and services essential to the life of the community; and that after an order of requisition had been made the Government might use or deal with the property "in such manner as may appear to it to be expedient". Though these words "in such manner as may appear to it to be expedient" were very wide the Supreme Court observed that these words had to be read in the context of Sub-rule (1), so that the Government after making an order of requisition had the jurisdiction to use it only for any of the purposes mentioned in Sub-rule (1), for which it had been requisitioned and the reason for this restrictive interpretation of Rule 75-A Sub-rule (2) was given as follows:--

"the wide import of the word "expedient" in Sub-section (2) must necessarily be limited to the purposes under Sub-section (1) as otherwise we would be attributing to the Legislature an intention to confer a power on the Government

to requisition a property on false pretences." The conclusion of the Court was that since the user of the requisitioned property for any of those purposes mentioned in Sub-rule (1) of Rule 75-A ceased to exist or, in other words, the property was diverted to some other use the order of requisition made under Rule 75-A ceased to have its legal validity notwithstanding the fact of that order being continued by virtue of subsequent enactments. It was pointed out to the Court that Act 17 of 1947 had provided that the Government could use the requisitioned land in such manner "as may appear to it to be expedient." In this context we must know the fact that the language of Section 3 of West Bengal Act 8 of 1951 is substantially the same as Section 3 of the Act 17 of 1947 which happened to be interpreted by the Supreme Court in the cited case. It would be useful to reproduce the language side by side:--

Section 3 of Act 17 of 1947 Section 3 of Act 8 of 1951

"3.

Notwithstanding the expiration of the Defence of India Act, 1939. and rules made thereunder and the re-peal of the Ordinance, all requisitioned lands shall continue to be subject to requisition until the expiry of this Act and the Provincial Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient:

"3.

Notwithstanding the expiration of the Defence of India Act, 1939, and the rules made thereunder and the repeal of the Ordinance and the expiration of the period of operation of the Act in respect of requisitioned lands, all requisitioned lands shall continue to be subject to requisition until the expiry of this Act and the State Government may use or deal with any requisitioned land for such public purpose and in such manner as may appear to it to be expedient:

Provided that the Government may at any time release from requisition any requisitioned land."

Provided that the State Government may at any time release from requisition any requisitioned land"

The words "as may appear to be expedient" are thus common to both the Acts of 1947 and 1951. That these words did not confer any larger power to use requisitioned property than what was conferred by Rule 75-A of the Defence of India Rules was made clear by the Supreme Court in the following words:--

"Act 17 of 1947 was enacted to provide for the continuance of certain emergency powers in relation to land which, when the Defence of India Act expired, was subject to requisition effected under the rules made under that Act. "Requisitioned land" was defined to mean an immovable property which at the commencement of the said Act was subject to any requisition effected under the said rules. u/s 3 thereof, notwithstanding the expiration of the said Act and the

rules made thereunder, the requisitioned land was continued to be subject to requisition until the expiry of the said Act, and it authorized the appropriate Government "to use or deal with any requisitioned land in such manner as may appear to it to be expedient." The object of the Act was only to continue the requisition after the expiry of the life of the Defence of India Act and not to enlarge the powers of the Government in respect of the requisitioned land. The land requisitioned under the Ordinance continued to be subject to the requisition. The expression "continue" clearly brings out the idea that the scope of the section was only to give a further lease of life to the order which otherwise would have expired. The words "may use or deal with any requisitioned land in such manner as may appear to it to be expedient" were only a repetition of the words in Rule 75-A."

If it be so, the Act 8 of 1951 also does not give any larger power to the State of West Bengal than what was conferred either by Section 3 of Act 17 of 1947 or Rule 75-A of the Defence of India Rules. A question may arise that since Rule 75 A specified various purposes some of which were Union purposes and others were State purposes, how could the State of West Bengal use them for all purposes after the coming into force of the Constitution. The answer to that is really provided by the definition of public purpose in Section 2 (a) of Act 8 of 1951 which says that "public purpose does not include a purpose of the Union" or, in other words. Act 8 of 1951 would confer upon the State of West Bengal powers to continue an order of requisition or to use such land for only those purposes mentioned in Rule 75-A which were State purposes. If we look into Rule 75-A once again it will be obvious that while defence of British India and efficient prosecution of the war were Union purposes under the Constitution, public safety maintenance of public order and maintenance of supplies and services essential to the life of the community fell into the exclusive State sphere under List II (entries 1 and 27 of List II).

6. The conclusion which emerges from the above discussion is that the State of West Bengal can maintain a continuance of the impugned order of requisition in respect of the disputed land only if and so long as it uses the disputed land for a purpose relating to the maintenance of supplies and services essential to the community for which it had been requisitioned. The purpose of using it as a godown for storing foodgrains was certainly such a purpose. But the holding of a workshop for training in carpentry, though it might be a "public purpose", cannot be said to be a purpose coming under the expression "maintenance of supplies and services essential to the community" as it is understood in Rule 75-A of the Defence of India Rules. It was of course argued by the learned Government Pleader that if temporarily the land is used for some other purpose it does not necessarily follow that the purpose for which it had been requisitioned has ceased to exist and the Government may at subsequent point of time refer to original user, namely, the purpose of stop ing foodgrains. But the very fact that the disputed land has been let out to another department for a different Purpose at a monthly rent would show that at the date of the Rule it was not necessary

for the storage of foodgrains unless it was demonstrated by production of proper materials that the letting out was meant only for a limited specified period or the circumstances in which it had been made were adequately explained. It is difficult to accede to the contention that the land is still being used for the original purpose. Once it is held that this words "such manner as may appear to be expedient" refer to those very purposes which were mentioned in Rule 75-A of the Defence of India Rules. There is an end of the legal continuance of the order of requisition as soon as the property is diverted to some other use whether temporarily or permanently and in this view the petitioners' right to get back the land is not dependent upon the action of the Government by issuing a formal order of release from requisition. Hence, the fact that there is no provision in the Act of 1951 corresponding to the proviso of Section 6(1) of the Central Act of 1952 does not really alter the situation because the order of requisition made under the Defence of India Rules will continue only so long as the land is being used for any of the purposes mentioned in Rule 75-A of the Defence of India Rules, unless of course it is acknowledged that Section 3 of the Act of 1951 gave new or wider powers to the State Government, an argument which was repelled by the Supreme Court while interpreting comparable provisions of Section 3 of Act 17 of 1947.

7. The learned Government Pleader next raises certain other objections. Firstly, it was contended that the impugned order of requisition contained five plots upon which the Government had erected a godown and that it was not possible for the Government to release from requisition only one plot, namely, plot No, 1339 in which only petitioner No. 1 is interested. This, however, is not a matter of substance because once it is held that the order of requisition has ceased to have its legal existence the Government is bound to restore the property to the position of the original owner in its original condition. If the other persons interested in the rest of the five plots do not come to Court, the State of West Bengal may so far remain undisturbed but if petitioner No. 1 succeeds in respect of plot No. 1339, Government will be under the legal obligation to reduce the size of its godown and to remove that portion of the structure which stands upon the petitioner's plot No. 1339. But that cannot stand as a legal obstacle to relief in the instant proceeding. Another point raised by the learned Government Pleader was that since it was enjoined in the order of requisition at Annexure I that during the continuance of the requisition the owners could not dispose of the land without the permission of the specified authority, the petitioner or petitioners had acquired no legal interest in the disputed land by virtue of their alleged purchase. It has, however, been stated by the learned Advocate on the other side that this contention does not lie in the mouth of the Government after having allotted compensation for the period of requisition to the petitioners. Of course, the petitioners could be compelled to produce their documents of title to support their allegation of purchase but the pleadings in paragraph 4 of the counter-affidavit in relation to the averments made in Paragraphs 1, 2 and 5 of the petition seem to be somewhat indifferent. The petitioners in paragraphs 1, 2

and 5 have definitely introduced their case of purchase. It was not urged therein that the case of transfer is false but in paragraph 6 it was specifically urged that by virtue of such transfer the petitioners could not acquire any legal title because of the prohibition by the order of transfer against disposing of the said land without the permission of the requisitioning authority. It is in fact not necessary to decide the question of the validity of title of the petitioners in the instant proceeding inasmuch as Section 4 of the Act of 1951 lays down an elaborate procedure which is to be complied with in releasing the property from requisition and one of the provisions contained in this section is that where the original owner from Whom the land had been requisitioned is not found or is not readily traceable the Government may publish in the official Gazette a notice declaring that such land is released from requisition and also affix a copy thereof on some conspicuous portion of such land and upon such publication the land shall cease to be subject to requisition and shall be deemed to have been delivered to the persons specified in the order made under Sub-section (1) and the State Govt. shall not be liable for any compensation or other claim in respect of the land for any period after the said date. If this procedure be followed by the Government because of Its doubt as to the validity of the title of the petitioners it will carry out its obligation under the Act as well as immune Itself from any obligation to pay compensation. But so far as the instant proceeding is concerned, from the pleadings of either side it Is clear to me that petitioner No. 1 has got sufficient legal interest to challenge the validity of the continuance of the order of requisition as regards C. S. Plot No. 1339 in respect of which he claims his interest.

8. In the result, the proper order for this Court would be to direct the respondents to cancel the order of requisition in so far as it relates to C. S. Plot No. 1339 at Annexure I and to release the property from requisition in exercise of its powers conferred by proviso to Section 3 read with Section 4 of West Bengal Act 8 of 1951 within a period of three months from this date.

9. The Rule is made absolute accord accordingly but without any order as to costs.