

(1977) 09 CAL CK 0002
In the Calcutta High Court
Case No : Civil Rule No. 2508 (W) of 1973

Subhasini Debi

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-09-1977

Acts Referred:

Bengal Municipal Act, 1932 — Section 319
Constitution of India, 1950 — Article 226(1)

Citation : (1977) 2 ILR (Cal) 372

Hon'ble Judges : S.K. Datta, J

Bench : Single Bench

Advocate : Mrityunjay Palit, for the Appellant; A.K. Chakraborty, for the Respondent

Judgement

S.K. Datta, J.—This Rule is directed against an order of requisition being No. 2 dated August 6, 1973, in Requisition Case No. 1/77/72-73. By this order the Collector, Hooghly requisitioned .039 acres of land out of plot No. 40 of mauja Kulihanda, P.S. Chinsura. In the column for description of the specific portion of land thereby requisitioned it is mentioned "middle", obviously meaning that the middle portion of the plot was requisitioned. I There is no dispute that the plot No. 40 comprises an area of -258 acres of land and out of this land a specific portion thereof measuring .058 acres was purchased by the Petitioner by a registered kobala dated October 3, 1963, for the alleged purpose of building her residence thereon. It was stated in the petition that a plan for the purpose had already been submitted and she had started taking steps for construction of the house in accordance with Section 319 of the Bengal Municipal Act (Ben. XV of 1932) after the lapse of statutory period of one month as the municipality neither granted nor refused permission to execute the work. In this state of affairs the Petitioner was served with the above requisition order on August 3, 1973. The Petitioner took various grounds challenging the requisition by filing an application under Article 226(1) of the Constitution and a Rule was issued thereon on August 17, 1973, with an interim order directing maintenance of

status quo as on that date. Mr. Palit, learned Advocate appearing for the Petitioner, states that the Petitioner has been in possession of the land throughout and no further steps have been taken pursuant to the said requisition. Mr. Chakraborty, learned Advocate appearing for the State, submitted that, according to Government's affidavit-in-opposition, possession of the plot had already been taken. It, however, appears that the Court by an order dated February 17, 1966, directed that the said affidavit-in-opposition will not be taken into consideration as it appears the said affidavit was filed when there was no memo of appearance on behalf of the Respondents. Be that as it may, as we shall consider the order of requisition on merits question of possession would be immaterial in considering the legal validity of the said order of requisition.

2. Mr. Palit submitted that the notice was vague and unworkable inasmuch as it has not been indicated in the notice as to which portion of the plot was sought to be requisitioned. As we have seen, the plot comprised an area of more or less 16 cottahs out of which a little above 3 cottahs of land have been acquired by purchase by the Petitioner. The notice of requisition, it is pointed out, suffers from vagueness as it does not indicate the specific portion which was sought to be brought under requisition and the description of the requisitioned land as "middle" without more does not improve the position. Accordingly, the notice should be declared invalid.

3. The requisition was made u/s 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948. In *P.N. Mukherjee v. State of West Bengal* (1966) 70 C.W.N. 503 D. Basu J. struck down a notice of requisition under the same Act on the ground that the requisition order did not specify the portion of the C.S. plot which was sought to be requisitioned. It was observed in that case that the order u/s 3 of the Act must give sufficient particulars so as to identify the land to which the order relates and since the impugned order, did not do so it was invalid, the description of the requisitioned area as portion was considered as insufficient and vague.

4. In the case before us similar consideration would apply also. The notice simply mentions that the middle of the plot measuring an area of about 2 cottahs (out of a 16 cottah plot) is to be requisitioned without any further specification and on the basis of this description it is not possible to determine which specific portion of the plot was requisitioned. It is also not possible for the aggrieved party to know of her portion of the plot which was affected by the requisition. Since the order of requisition takes effect along with the issue of the order, the description of the land to requisition has to be specific, unambiguous and clearly identifiable. The description in the impugned order in the context of the above premises is vague and unworkable and on the above authority, with which I am in agreement, the order of requisition being challenged must be deemed as invalid.

5. Mr. Chakraborty submitted that a description of the specific portion under requisition as "middle" is a sufficiently specific description and should be acceptable as valid. In my opinion, it is not possible to hold it so as the term

"middle" in the order by itself without further description does not convey any specific portion which could be deemed to have been requisitioned under the order. There are cases where along with the order a plan is generally kept in the office of the Collector as it is not always possible to describe an area to be requisitioned with precision and in the order of requisition which is served on the party it is expressly stated that such plan would be available for inspection at the office of the Collector. Any party on service of the order of the requisition will have the opportunity to inspect the plan and appreciate the extent of requisition with reference to his plot. It is conceded by Mr. Chakraborty and also stated by Mr. Palit that there is no reference to any plan in the order of requisition which could otherwise be said to cure the defect of insufficient description. In view of this position, there is no escape from the conclusion that the order of requisition suffers from a fatal infirmity. The Rule, accordingly, succeeds and is made absolute. The impugned order of requisition is quashed. There will be no order as to costs. Let appropriate writs issue accordingly.

6. Mr. Chakraborty prays that the operation of the order be stayed. The prayer is refused.