
(1982) 02 CAL CK 0037
In the Calcutta High Court
Case No : Civil Rule No. 14109 (W) of 1981

Subrata Mukherjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-02-1982

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3

Citation : AIR 1982 Cal 430 : (1982) 1 CALLT 129 : (1982) 2 CompLJ 244

Hon'ble Judges : Bankim Chandra Ray, J

Bench : Single Bench

Advocate : R.N. Mitra and A.K. Ganguly, for the Appellant; A.N. Banerjee and T.K. Sen, for the Respondent

Judgement

Bankim Chandra Ray, J.—This application is at the instance of the petitioner who is one of the co-owners of the plots Nos. 13851 and 13852 of khatian No. 4494, mouza Behala challenging the validity of the notice of requisition issued u/s 3 of the West Bengal Act II of 1948 i.e. West Bengal Land (Requisition and Acquisition) Act, 1948 whereby these lands along with other plots of lands were notified for requisition for public purposes mentioned in the said notice at annexure A to the petition on the ground that the land in question purported to be requisitioned for a purpose were being utilised for another purpose viz. for construction of Behala Police Station which has been demolished on account of widening of the Diamond Harbour Road.

2. The facts in brief are as follows. The aforesaid plots of lands along with other lands were notified for requisition u/s 3 (1) of the said Act for the purposes viz. for widening Diamond Harbour Road at Behala and also for maintaining supplies and services essential to the life of the community and/or for providing proper facilities for transport, communication, etc. This requisition notice was served admittedly in 1974 and thereafter the work was taken up for widening the road and the Diamond Harbour Road was completed also long before. The petitioner

has stated that when the authorities concerned came to implement the requisition notice in respect of these particular lands of the petitioner and his co-owners they raised objection and thereafter they have come before this Court with the instant writ application on 26-6-81.

3. A Rule was issued and an interim order was made restraining the respondents from proceeding any further on the basis of the notice which has been annexed as annexure A to the petition for a period of two weeks with liberty to pray for extension of the interim order on notice to the respondents on the same application. On 24-11-81 after hearing the learned Advocates for both the parties the interim order was vacated. Then an application for restoration was filed and that was heard on 9-12-81. The application for restoration was however not allowed.

4. Mr. Mitra, learned Advocate appearing on behalf of the petitioner, has made a twofold submission before this court. His first submission is that the concerned authorities cannot proceed to construct buildings on the lands in question for the purpose of accommodating the Behala Police Station which is not a purpose mentioned in the notice of requisition. In other words, Mr. Mitra has contended that the action of the respondents is wholly arbitrary, illegal and bad inasmuch as they purport to use the land for a purpose other than that mentioned in the requisition notice. In support of this, submission Mr. Mitra cited a decision reported in *Sailendra Nath Ray Vs. State of West Bengal*, . Mr. Mitra next submitted that in the impugned notice only one purpose was mentioned i.e. for widening Diamond Harbour Road and as such the land in question cannot be used for purposes not mentioned therein. It has been also submitted by Mr. Mitra that the notice was served only on the petitioner who is admittedly one of the owners of these two plots and as such the petitioner alone has come up before this Court to assail the said notice without impleading the other co-owners of the said lands. This non-impleading the other co-owners according to the submission of Mr. Mitra does not in any way invalidate the instant writ application. Mr. Mitra further submitted that there is delay in moving this application undoubtedly but the petitioner immediately when the respondents tried to implement the order came up before this Court and as such this should be considered and the application should not be rejected on the ground of delay.

5. Mr. Amar Nath Banerjee, learned Advocate appearing on behalf of the State, has, on the other hand, submitted that this application should be rejected on the ground of inordinate delay in coming up before this jurisdiction to challenge the notice which was served on the petitioner as early as on 14-6-74 and the possession of the land was taken on 16-6-74. It has also been submitted in this connection by Mr. Banerjee that after taking possession the respondents have started construction of the building for the Behala Police Station and the construction work was made up to the plinth level when this instant application was made before this Court, therefore on the ground of inordinate delay in coming before this court the application should not be entertained and no relief

should be granted. It has been next submitted by Mr. Banerjee, learned Advocate for the State respondents, that the construction of structures for housing a police station i.e. Behala Police Station is a purpose of the State and it is also a purpose allied to, connected with and/or incidental to the purposes to create better living conditions in urban areas as well as for the purpose of maintaining supplies and services essential to the life of the community which are the purposes mentioned in Section 3 (1) of the W.B. Land (Requisition and Acquisition) Act. Reference has been made in this connection by Mr. Banerjee to a Division Bench decision of this Court. It has been next submitted by Mr. Banerjee that this application will fail for non-joinder of necessary parties as it is evident from the statement made in paragraphs 2 and 5 of the said (sic) petitioner in respect of these plots of lands.

6. The first question that poses itself for consideration is whether this writ application in the facts and circumstances can be entertained by this Court. Admittedly the order of requisition was served on the petitioner in 1974 and according to the State respondents they have taken possession on 16-6-74 which the petitioner of course denies. But it is evident from the statements and averments made in the writ petition as well as in the affidavit in reply that on the date when this application was made the petitioner was not in actual possession of these lands. It is now well settled by several pronouncements of this Court as well as of the Supreme Court that to have relief from this Equity Court one must come at the earliest possible opportunity. In the instant case since June 1974 till June 25, 1981 the petitioner did not take any steps to agitate this matter before this forum. The explanation that has been given and also the submissions that have been made by the learned Advocate for the petitioner on this score are in my opinion not sufficient for this purpose. Therefore, on the ground of inordinate delay I am constrained to hold that this Rule will fail.

7. Now regarding non-joinder of necessary parties I am not inclined to refuse relief sitting in this equity jurisdiction and as such I am unable to accept the contentions put forth by the learned Advocate on behalf of the State on this score, more so when the order u/s 3 (1) of the impugned Act was served by the State only on the petitioner and not on any of his co-sharers.

8. Coming to the merits, the argument of Mr. Mitra is that there has been a diversion of purpose in the matter of use of the land for the purpose of making structures for accommodating Behala Police Station which purpose was not mentioned in the order u/s 3 (1) of the said Act and as such the entire order is bad being illegal and unwarranted. To consider this submission in its proper perspective it is necessary to consider whether the purpose for which the lands in question are being utilised is a purpose connected with or incidental to the purposes mentioned in Section 3 of the Act viz. "for maintaining supplies and services essential to the life of the community, for creating better living conditions". It has been stated in the affidavit in opposition sworn on behalf of respondent No. 2 that the purpose for which the land is being used is connected with and/or incidental to the aforesaid purposes. Mr. Banerjee has also submitted

that the construction of house to accommodate a police station is a purpose allied to creation of better living condition in urban areas. In my opinion there is substance in this contention. My attention was also drawn to the decision in (1980) 2 Cal LJ 19 (Sm. Sushila Devi Fomra v. State of West Bengal) where the requisition of the premises was made for the purpose of the State Transport Corporation. A challenge was thrown on the ground that it is not a purpose envisaged in Section 3 (1) of the West Bengal Land (Requisition and Acquisition) Act. It has been held by a Division Bench of this Court that "It is the duty of the State to make suitable arrangement for road transport and for that purpose the State Transport Corporation has been created. Any requirement of the Corporation is the requirement of the State. In these circumstances it is difficult to accept the contention of the appellant that the purpose for which the requisition has been made is not the purpose of the State Government and as such the order of requisition should be quashed on that ground, We hold that the land can be requisitioned or acquired for the purposes of the State Transport Corporation under the provisions of the Act. The contentions of the appellant is accordingly overruled." The decision in the case of Sailendra Nath Ray Vs. State of West Bengal, is distinguishable on facts because in this case the requisition u/s 3 of the said Act was made for the purpose of requisitioning land for settlement of small traders displaced as a result of some other acquisition. Question arose whether requisition of land for such a purpose was a purpose falling within the meaning of Section 3 (1) of the said Act. It has been held that the settlement of the displaced small traders is not connected with or incidental to either of the aforesaid purposes i.e. providing facilities for transport and widening of road and in the alternative for maintaining supplies and services essential to the life of the community. This judgment therefore does not apply to the facts of the instant case inasmuch as as has been staled hereinbefore the lands of the petitioner are used for the purpose of construction of building for housing the Behala Police Station which has been demolished for widening Diamond Harbour Road.

9. For the reasons aforesaid the contentions raised on behalf of the petitioner having failed this Rule fails. It is therefore discharged. No order is made as to costs. All interim orders are vacated.