

(1958) 03 CAL CK 0013

In the Calcutta High Court

Case No : Second Appeal No's. 1032 of 1952 and 395 of 1953 with Cross-objections

The Calcutta Electrical Manufacturing Co. and Another
Vs

APPELLANT

Satyendra Nath Das and Others

RESPONDENT

Date of Decision : 04-03-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1
Defence of India Act, 1939 — Section 4
Defence of India Rules, 1962 — Rule 75A

Citation : AIR 1959 Cal 162 : (1959) 2 ILR (Cal) 402

Hon'ble Judges : U.C. Law, J;K.C. Das Gupta, J

Bench : Division Bench

Advocate : Atul Chandra Gupta and Kamjit Mookerjee, in No. 1032/52 and Nirmal Chandra Chakraborty and Nani Gopal Das, in No. 395/53, for the Appellant; Atul Chandra Gupta and Kamjit Mookerjee for Respondent 5 in No. 395/53, Nirmal Chandra Chakraborty and Nani Gopal Das for Respondent 5 in No. 1032/52 and Jitendra Nath Guha and Satya Priya Ghosh for Respondents 1 to 4 in Nos. 1032/52 and 395/53, for the Respondent

Final Decision : Allowed

Judgement

K.C. Das Gupta, J.—On the 24th of September 1943 when premises No. 4, Ghore Bibi Lane, Narkeldanga, Calcutta was held in the possession of the military authorities having been requisitioned under the provisions of Rule 75A of the Defence of India Rules, the Deputy Secretary to the Government of India addressed a letter to the Secretary to the Government of Bengal, Revenue Department stating that the Government of India considered the acquisition of the property to be essential for the maintenance of supplies and services and considered that the land should be acquired as quickly as possible for the purpose of extension of the factory of the Calcutta Electrical Manufacturing Company Ltd. engaged in the manufacture of table fans, motors and other electrical goods. In this letter the Deputy Secretary further requested the Secretary to the Government of Bengal that action should be taken under the

Defence of India Rules to requisition and acquire the land and place it at the disposal of the Company, adding that the Company would be responsible for all expenses connected therewith. Thereafter, on the 20th of October 1943 an order derequisitioning the property was passed by the First Land Acquisition Collector, Calcutta. On the same day a fresh order requisitioning the property was made by the same authority and thereafter notices purporting to be under clause (2) of Rule 75A were served from time to time on several persons said to be the owners of the land stating that the land had been acquired. Ultimately, on the 22nd of February 1945 a notice of acquisition of the same property was published in the Calcutta Gazette. This was in pursuance of an order made by the Land Acquisition Collector on the 29th January, 1945.

2. The question raised in the present litigation is whether the requisition by the order dated the 20th of October 1943 and the subsequent acquisition thereof under the Defence of India Rules was valid and effective in law. The litigation was commenced by the Das respondents on the basis of an interest in this property, acquired at a time when the land was already under requisition, averring that on the 20th of October 1943 when the property was derequisitioned and again requisitioned, the necessity of the military authorities had ceased to exist & that all that was done later on by the requisitioning & acquiring authorities was merely a device to get the land for defendant No. 2, the Calcutta Electrical Manufacturing Co. Ltd. who had earlier tried in vain to purchase the property from the owners. The plaintiffs' case, therefore, was that this was really a mala fide exercise of the power under the law and was ineffective in law to affect their interest. They prayed for a declaration that the "proceedings purporting to be under the Defence of India Rules commencing with the order dated the 20th October 1943 and ending with the order dated 29th January 1945" with respect to the premises in suit "were not really for the defence of British India or for efficient prosecution of the war or for any other purpose specified in Rule 75A of the Defence of India Rules but were merely a device resorted to for the purpose of benefiting defendant No. 2 and depriving the plaintiffs of the portions of the said property rightfully belonging to them or agreed to be sold to them by means not allowed by the law of the land and that the said proceedings were illegal, ultra vires and totally void and did not operate to create any title in or confer any authority on the requisition and other authorities or to vest the said property in them and that the property was totally unaffected by the said proceedings and the plaintiffs' title in the property was not in the least affected thereby." There was also a prayer for mandatory injunction directing the defendants 1 and 2--defendant No. 1 being the Province of Bengal and defendant No. 2 being the Calcutta Electrical Manufacturing Co. Ltd.--to pull down the structures that had been raised on the property after the 20th October 1943 and to restore the land to its original condition.

3. The main defence of both the appellants was that the requisition of the property on the 20th October 1943 and the acquisition of the same thereafter was in bona fide exercise of the powers of the Central Government and the

Provincial Government under the Defence of India Rules and was not vitiated by any mala fides and that the story that it was a device to help the Calcutta Electrical Manufacturing Co. Ltd. to get the property was entirely untrue. Another defence taken was that the suit was bad for defect of parties, the Central Government, a necessary party, not having been impleaded.

4. The trial Court accepted the plaintiffs' story that the requisition on the 20th October 1943 and the acquisition of the property thereafter was a mala fide exercise of powers. Rejecting the other defences raised by the defendants with which we are no longer concerned, he was of opinion that the plaintiffs would have been perfectly entitled to the relief claimed if the Central Government had been joined as a defendant. In his view, however, the Central Government was a necessary party and as the Central Government had not been impleaded, he dismissed the suit.

5. On appeal by the plaintiffs, the learned Additional District Judge, 24-Parganas who heard the appeal held that the Central Government was not a necessary party and that the suit was not bad for defect of parties. He also reversed the finding of the trial court on the question of mala fides and came to the conclusion that there was no want of bona fides. He held, however, that in consideration of the fact that the arrangement from the beginning was that the cost of acquisition would be paid by defendant No. 2, the acquisition was in substance an acquisition by defendant No. 2 under colour of an acquisition by the Government and that the Defence of India Rules did not provide for acquisition of any property by Government for any third person or any industrial company so that there was no valid and effective acquisition in law. As regards the order of requisition, he was of opinion that it was valid and effective in law being fully authorised by Rule 75A and having been carried out in accordance with law. He, therefore, allowed the appeal in part, gave the plaintiffs a declaration that the order of acquisition, though not the order of requisition, was ultra vires and without jurisdiction. He agreed with the trial Court in dismissing the prayer for mandatory injunction.

6. The conclusion of the court of appeal below that the requisition on the 20th October 1943 and the acquisition of the property thereafter was not mala fide and was in bona fide exercise of the powers given under the law must be treated as final and we have to decide these appeals on the basis that these acts, namely, requisition on the 20th October 1943 and the acquisition thereafter were committed in bona fide exercise of the powers given under the law. The first question, and in fact practically the only question, that arises for decision in these appeals is whether the Court of appeal is right in its view that under the Defence of India Rules there can be no acquisition with a view to hand over the property to a third party, in this case the defendant No. 2. The learned court of appeal below appears to have been impressed by the fact that whereas in the Land Acquisition Act (Act I of 1894) there is a specific provision of acquisition for the purpose of Industrial companies, there is no such provision in Rule 75A of the

Defence of India Rules or any other Rules under the Defence of India Rules. The absence of such a specific power to acquire a property for a company, as we find mentioned in the Land Acquisition Act, does not however justify the conclusion that the mere fact that a company or any other private party might benefit by the acquisition or even the intention all along was to make over the property to the company or the third party makes the acquisition itself bad. The primary purpose of war-time measure is that lands should be requisitioned and, if necessary thereafter, acquired whenever the interests of carrying on the war safely and to defend India properly requires this. The first clause of Rule 75A mentions the circumstances under which a property may be requisitioned and provides that 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 the 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 and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning. There is no mention here of any powers to acquire. When, however a property has been requisitioned in exercise of the powers under the first clause--it being in the opinion of the Central Government or the Provincial Government necessary to do so for securing the defence of British India, efficient prosecution of the war or for any of the other purposes mentioned therein, the second clause empowers the requisitioning Government to "use or deal with the property in such manner as it may appear to it to be expedient and to acquire it." The power to acquire is not in so many words made conditional on the formation of the opinion of the Government that this is necessary for the purposes mentioned therein. On a reasonable reading of the two clauses together it is abundantly clear however that it is only when the requisitioning Government continues to be of opinion that the acquisition is also necessary for the purposes mentioned in the first clause that acquisition may be made. In many cases the necessity of the acquisition may be nothing more than that the requisitioning authority should be able to make improvements or alterations in the property which would be of a permanent nature. In many other cases it might very well be that only by acquisition, as distinct from requisition, a private party whom the Government has engaged for carrying out work in connection with the fulfilment of the purposes mentioned in the first clause will be able and willing to fulfil the purposes effectively. So long, therefore, the primary purpose of "securing the defence of British India, public safety, the maintenance of public order efficient prosecution of the war maintenance of supplies and services essential to the life of the community" is kept in view, the power of the Government to acquire a requisitioned property is in no way affected by the fact that after acquisition the Government intends to make over the property to a third party or that the cost of acquisition is met by a third party. Indeed, the question as to from what source the cost of acquisition is paid is of no consequence whatsoever. Whether the requisitioning or the acquiring authority gets the money payable as cost of

the requisition or the acquisition from general revenues or from a loan raised for the purpose or from a loan raised in foreign countries or as a gift or a contribution from a private party, that cannot in my opinion affect the validity of the acquisition or the requisition. The definite finding in this case being that the requisition was in the bona fide exercise of the powers given by the first clause of Rule 75A and not being vitiated by mala fides, the mere fact that the cost of acquisition was paid by defendant No. 2 or that from the very beginning, as apparent from the letter of the Deputy Secretary to the Government of India as mentioned above, it was arranged that the expenses of requisition and acquisition would be paid by defendant No. 2 cannot affect the validity of the acquisition so long as the acquisition itself is for the same purpose for which the requisition was made. The letter of the Government of India itself shows sufficiently that in the opinion of the Government of India such acquisition also was necessary for one or more of the purposes mentioned in clause (1) of Rule 75A. There is nothing in Rule 75A or anywhere else in the Defence of India Act or the Defence of India Rules which says that even though the Government of India or the Provincial Government considered it necessary to acquire a property for the purposes mentioned in Clause (1), such power cannot be exercised where a third party is benefited thereby. There can be no doubt that in this case the third party, the Calcutta Electrical Manufacturing Co. Ltd. has been benefited by the acquisition for it is not unlikely that but for the acquisition they would not have been able to secure this property. This, however, is only a by-product of the real operation, the real operation being the acquisition of the property for the purposes mentioned in the Defence of India Rules by the authority vested in law in the Central Government and the Provincial Government.

7. It is proper to add that Mr. Guha who appeared before us for the Das respondents frankly conceded that he found it impossible to support the view of the court of appeal below that the Defence of India Rules did not permit acquisition for a third party. He agreed that the requisition and acquisition not being mala fide must be held to be effective in law in spite of the fact a third party, the defendant No. 2 was to get the property and that the cost of acquisition was to be paid by him.

8. Mr. Guha admitted that if that were all, the appeal must be allowed and the suit must be dismissed. He contended, however, that there has not been a proper compliance with the procedure laid down in Clause (2) of Rule 75 A and that, consequently, there has been no acquisition in accordance with law. The relevant portion of Clause (2) is in these words.

"The Central Government or the Provincial Government 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."

Mr. Guha has drawn our attention to the finding of the trial Court that it did not

appear that the owners were not readily traceable. He contended further that there is nothing to show that the ownership was in dispute. Consequently, he argued that there is no scope for acquisition by means of a notice in the official gazette stating that the Government has decided to acquire it in pursuance of the Rule. As it is not disputed that there was not adequate service of notice upon all the owners, Mr. Guha contends that it must be held that as soon as it is found that the owners were either not readily traceable or that the ownership was in dispute, there has been no valid acquisition in law.

9. I think it proper to mention at this stage that in the plaint itself no case appears to have been made that the publication of the notice in the official gazette was not a sufficient compliance with the provisions of Clause (2) of Rule 75A. There was a statement in paragraph 11 of the plaint that there was no publication of the said so-called acquisition in the Official Gazette under Sub-rule (2) of Rule 75A of the Defence of India Rules. It is in my opinion not reasonable to read into this bare statement an allegation that the publication of the notice in the official gazette was not in compliance with the provisions of Sub-rule (2) inasmuch as the conditions precedent for such publication had not been established. If the plaintiffs intended to assert that the publication in the official gazette was not sufficient compliance with the law, it was reasonable to expect them to aver definitely that the conditions precedent for such service, namely, that the owners not being] readily traceable or the ownership being in dispute had not been established.

10. It is in my opinion not unreasonable to think that if such an averment had been definitely made the defendant No. 1 might have been able to produce satisfactory evidence to show that the owners were not readily traceable or that the ownership was in dispute. This in my opinion would be sufficient reason to reject Mr. Guha's contention that there was no sufficient compliance with the requirement of law.

11. I do not think it necessary, however, to base my conclusion in these appeals on this omission of the plaintiffs to take the point clearly and definitely in their pleadings. In my opinion, the materials on the record are sufficient to show that the condition precedent for an acquisition by publishing a notice in the official gazette was in this case satisfied. It is necessary only to refer to the order sheet of the Land Acquisition Collector. In the order dated the 24th January 1945 we find the following statements and orders recorded by the Land Acquisition Collector :

"It appears that the notice of acquisition has not been served upon all persons claiming ownership of the land. As the ownership is disputed, send a notice of publication in the Calcutta Gazette and serve fresh notices of acquisition upon all the claimants for ownership including Saurendra Nath Chatterjee. Put up as soon as the notice is published in the Calcutta Gazette."

12. Quite clearly, therefore, the Land Acquisition Collector who had been

empowered by proper orders to take action for the acquisition was of opinion that the ownership was disputed. There is absolutely no reason to think that though the Land Acquisition Collector recorded his opinion that the ownership is disputed, he did not do so honestly. We are bound to hold on this record that the Land Acquisition Collector was in fact honestly of opinion that the ownership was disputed. It is not necessary for us to probe into the matter further to see whether his opinion was justified. He had to proceed on his own view of the matter and if he bona fide believed, as in my opinion it is proved in this case he did, that the ownership was disputed, the letter gave him the power--after necessary delegation--to acquire the property by publishing a notice in the Calcutta Gazette. Mr. Guha's contention that the acquisition was not made in a mode allowed by law must therefore be rejected.

13. Lastly, though faintly, Mr. Guha contended that what was necessary in law was that the Land Acquisition Collector must himself be of opinion that the requisition or acquisition was necessary for any of the purposes mentioned in Sub-section (1). The order of the Land Acquisition Collector itself mentions Sub-section (4) of Section 2 of the Defence of India Act as the authority under which he was exercising the powers conferred by Sub-rule (2) of Rule 75A of the Defence of India Rules. In the very Notification itself he has stated that it was in his opinion necessary and expedient for efficient prosecution of the war and for maintaining supplies and services essential to the life of the community to acquire the land described in the schedule. If it was in law necessary that the authority to whom the power is conferred under the provisions of Sub-section (4) should himself be of the opinion that requisition or acquisition was necessary for the purpose I should have no hesitation in thinking that this statement by the Land Acquisition Collector should be taken as a prima facie proof that the requirement had been satisfied. In my opinion, however, what is required in law is not that the authority to whom certain powers are delegated should be of the above opinion, but it is necessary that the Central Government or the Provincial Government should by itself be of the opinion that the requisition or the acquisition was necessary for one or more of the purposes mentioned in Sub-section (1). After the powers had been conferred u/s 4(d), the position is that the officer or authority on whom the power is conferred will exercise the power that would have otherwise been exercisable by the Central Government or the Provincial Government. The occasion for the exercise of the power or performing the duty arises when the Central Government or the Provincial Government is of the opinion that the authority on whom the power is conferred under Sub-section (4) of Section 2 can exercise the powers of requisition or acquiring. In my opinion, it is not left to the person to whom the power to perform the duty or to exercise the power is conferred to decide for himself whether it is necessary or expedient to requisition the property or acquire the property for any of the purposes mentioned in Rule 75A. The letter of the Deputy Secretary which I mentioned at the beginning of the judgment shows clearly that the Central Government was of opinion that requisition and thereafter acquisition was

necessary for one or more of the purposes mentioned in Sub-section (1).

14. I would, therefore, allow these appeals and order that the suit be dismissed. In both these appeals cross-objections had been preferred on behalf of the Das respondents. The only point raised in these cross-objections is that the Court was wrong in holding that the requisition on the 20th October 1943 was effective in law. The only contention urged by Mr. Guha in support of the cross-objections was similar to his last contention mentioned above in the appeals, namely, that the satisfaction of the proper authority had not been proved. For the reasons mentioned above in dismissing that last contention by Mr. Guha in the appeals, I am of opinion that this contention has no substance. I, therefore, dismiss both these cross-objections without costs.

15. The appellants will get costs throughout. There will be one set of hearing fee for the two appeals.

U.C. Law, J.

16. I agree.