
(1995) 08 AHC CK 0139

Allahabad High Court

Case No: C.M.W.P. No. 10161 of 1984

Ram Kishan and Others

APPELLANT

Vs

Commissioner and Others

RESPONDENT

Date of Decision: Aug. 23, 1995

Acts Referred:

- Uttar Pradesh Rural Development (Requisitioning of Land) Act, 1948 - Section 12, 2(2), 3

Hon'ble Judges: Binod Kumar Roy, J

Bench: Single Bench

Advocate: R.K. Srivastava and S.N. Agarwal, for the Appellant; Sabhajeet Yadav and S.C. for Respondents 1 to 3 and B. Malik and A.K. Sharma for Respondents 4 and 5, for the Respondent

Judgement

Bipod Kumar Roy, J.

The Petitioners pray to quash the orders as contained in Annexure III, v. and VI passed by the Authority under the Uttar Pradesh Rural Development (Requisition of Land) Act, 1948 (hereinafter referred to as the Act).

2. The portrayal of the relevant facts is in a narrow compass. The three Petitioners claim themselves to be bhumidhar of 8 Bissau 5 Door of land in Plot No. 281 and 9 Biswa 5 Dhoor of land in Plot No. 287 of village Panwaripur. Several persons of village Bhadaura moved the District Magistrate, Meerut to requisition the lands of the Petitioners as road on the grounds mentioned in their application (copy appended as Annexure 1) on which a recommendation was made by the Lekhpal to requisition 5 Bissau 1 Biswansis of land out of Plot No. 287 and 2 Biswa 7 Biswansis of land in Plot No. 291. The Topsider, exercising the powers of the Authority u/s 3 of the Act, issued notice to Petitioner No. 3 for withdrawing his possession from the lands aforementioned as well as removal of any property, if it exists over them, besides for filing any claim for compensation within 30 days of the receipt of notice. From the service report dated 07.09.83, it appears that the Petitioner No. 3 refused

to indorse his signature after reading out contents of the notice as well as to accept it, hence notice was affixed on his house. It further appears that an objection was filed by the Petitioners on 13.09.1983 on the grounds, inter alia, that there is a boundary wall on the lands in question and the proposed road can be shifted. The Tehsildar-cum Requisitioning Authority, Meerut rejected the objection of the Petitioner on the following grounds (i) By acceptance of the proposal of the objector, the problem is not solved, (ii) The Block Committee, Rota in its resolution dated 15.09.1983 had requested to straighten the road in question. The objection cannot be entertained at this stage as the lands have already been requisitioned and that it appears that the wall was erected by the objector after the initiation of the requisition proceedings, (iii) It would be proper to construct the road on the requisitioned land after taking its possession. In paragraph 10 of the writ petition, the Petitioners assert to the effect that their land cannot be requisitioned on the application of some people of a different village, which was not supported by any resolution of the Gaon Sabha nor was such resolution of the Gaon Sabha filed in view of the provisions contained under Rule 4 of the Rules framed under the Act, whereas the District Magistrate had passed orders directing the Topsider to requisition the land only on the basis of the application filed by some persons of village Bhadaura. The Petitioner filed a review u/s 12 of the Act which was heard and dismissed by the Commissioner, Meerut Division, Meerut vide his order dated 5th July, 1984 holding as follows The land has already been requisitioned (it) The Petitioners have not disclosed such facts from which it could be proved that they have sustained irreparable injury from the requisition of their lands which measures only 2 Biswa, 7 Biswansis of which possession has also been delivered.

The Submissions:

3. Mr. Srivastava, the learned Counsel appearing on behalf of the Petitioners, contended as follows: The reasons given by the authorities are perverse. The Petitioners were not afforded opportunity of hearing before the requisition of the lands. Even the Commissioner did not afford them any opportunity to lead evidence. The authorities have failed to consider that the Block Committee, Rota had no authority to pass any resolution in regard to the requisition of the lands situated in village Panwaripur of which the Petitioners are Bhumidhar. In view of the specific provisions contained in Sub-rule (4) of the Rules framed under the Act the application filed by some persons ought to have been rejected as it was not supported by any resolution of the Gaon Sabha concerned. The purpose for which the land was requisitioned was not public purpose as defined u/s 2(2) of the Act inasmuch as its effect will be to make a permanent construction by taking the land permanently.

4. On the other hand Sri Yadav, the learned standing counsel, appearing on behalf of Respondent Nos. 1 to 3 contended that there was no question of affording any opportunity of hearing to the Petitioners before requisitioning their lands. Reasons

have been validly assigned by the authorities. It was not the submission of the learned Counsel for the Petitioner before the review Court that no resolution was passed by the Gaon Sabha concerned which fact is also supported by the impugned order and this question is being agitated for the first time before the Court without appending copy of his review petition and/or any certificate of his counsel who had argued the review petition that such a point was pressed at the time of hearing of the review petition.

5. Sri Malick, the learned Counsel appearing on behalf of Respondent Nos. 4 and 5 also contended to dismiss the writ petition but by making a slight different contention. He contended that at the time of final hearing the Petitioners were undisputedly heard inasmuch as it was on their objection the impugned order, as contained in Annexure 5, was passed. Thus, there is no question of violative of principles of natural Justice. The law never required of giving any opportunity of hearing at the time of making the interim decision to requisition the land as has been done in the case. There was a resolution adopted by the Gaon Sabha for requisitioning the land in question.

5. My findings:

6. Section 3 of the Act runs as follows

Procedure of requisition. If in the opinion of the Requisitioning Authority it is necessary or expedient so to do for a public purpose, it may, by order, requisition any land by serving on the owner and occupier thereof and, when the owner or the occupier is not readily traceable, or the ownership or the right to occupation of the land is in dispute, or owing to the number of persons entitled as owner or occupier it is not reasonably convenient to serve everyone of them separately, by publishing, in such manner as may be specified in that behalf, a notice stating that the requisitioning authority has decided to requisition it in pursuance of this section, and may make such further orders including orders relating to the disposal, possession and enjoyment of any trees and other crops of any person standing on such land as appear to it, to be necessary or expedient In connection with the requisitioning.

Rule 4, of the Rules framed Under the Act, runs as follows

4. Requisites of the application for requisitioning land-(1) Every application for requisitioning of land, shall be made in writing either to the Collector or, where there is an Assistant Collector appointed as a Requisitioning Authority to such Assistant Collector and shall contain the following particulars:

(a) Name of the applicant and complete address ;

(b) full description of the land sought to be requisitioned, giving reference to the village record, its area and situation with relevant extract from village map ;

(c) the purpose of requisitioning ;

(d) the names of the owners or occupiers of the land or other persons interested in the land ;

(e) the purpose for which it is used at present;

(f) terms on which the applicant wants requisition ;

(g) any other relevant information ;

Provided that no such application shall be entertained unless it is made by or on behalf of:

(I) A Gaon Sabha constituted Under the Uttar Pradesh Panchayat Raj Act, 1947: or

(II) A Co- operative Organisation registered Under the Uttar Pradesh Cooperative Societies Act, 1965: or

(III) A school recognised by the Education Department, through the Block Development Officer/Deputy Project Executive Officer of the Block In which the Gaon Sabha. Co-operative Organisation or school is situated or in case of Shadow Blocks through the Officer in charge of the Block not lower in status to a group level worker and so nominated by the Collector ;

(IV) an Executive Engineer or Irrigation Department, Public Department, Minor Irrigation Department, Rural Engineering Service or any other Engineering Department of the State Government or any such officer as may be nominated by the Collector in this behalf:

Provided further that twine an application is made by or on behalf of a Gaon Sabha. Co-operative Organisation or School, the Requisitioning Authority shall reject the same unless he is satisfied that a resolution to this effect has been passed by the Gaon Panchayat, or the Board of Directors in case of Cooperative Organisation or the Managing Committee in case of a School. (Emphasis-added)

A bare perusal of the aforementioned provisions leaves no manner of doubt that the Legislature has prescribed sufficient safeguards to the persons whose lands are sought to be requisitioned under the Act by affording a reasonable opportunity of hearing. To crown all the Legislature in its wisdom has also mandated the authority to reject the applications made by or on behalf of the Gaon Sabha unless the authority satisfied that a resolution to the aforesaid effect has been passed by the Gram Panchayat.

7. In the aforementioned backdrop, it Is necessary to find out whether the authority concerned has applied its mind to the mandatory provisions contained in proviso to Sub-rule (4) of Rule 4 of the Rules framed Under the Act? A perusal of the impugned Order dated 06.09.1983 passed by the Topsider talks of a proposal for requisitioning the lands in a Resolution of Gaon Samaj, Zola Parishad Meerut. The question which

falls for consideration at this stage is that whether the Gaon Same, Zola Parlshad Meerut is a Gaon Sabha or a Co-operative Organisation as mentioned in the proviso to Sub- rule (4) of Rule 4 of the Rules. In their pleading in this Court, the parties are at variance. In paragraph 18 of the writ petition the Petitioners have asserted as follows

That the land of the Petitioners cannot be requisitioned on the application of some people of a different village, in view of the provisions contained under Rule 4 of the Rules framed under the Act. The application was not supported with any resolution of the Gaon Sabha nor was it filed by the Gaon Sabha itself. On the other hand, the applications were filed by certain villagers of village Bhadaura. The requisition of the land could not be invaded on the application given by some persons of village Bhadaura. The District Magistrate, Meerut, had passed the order directing the Tehsildar to requisition the land only on the basis of the application filed by some persons of village Bhadaura.

The reply of Respondent No. 2 in this context, as contained in paragraph 17 of the counter-affidavit runs as follows:

That the contents of paragraphs 18 and 19 of the writ petition are not admitted. No objection alleged to have been taken can be raised against the requisition Under the Act. The Collector nominated and directed the Tehsildar for requisition the land in question. The State Govt, has also issued a Notification.

Respondent Nos. 4 and 5 in paragraph 5 of their counter-affidavit assert that on 30.08.1983 Gaon Sabha Banwaripur, passed a resolution resolving that the road from Meerut to Bhadaura, which has several diversions, may be constructed as a straight road. In paragraph 6 they assert that after the aforesaid resolution an application"was made on behalf of residents of village Bhadaura on which orders were passed for requisitioning the lands. Paragraph 29 of their counter-affidavit contains the reply to the statement made in paragraph 19 of the writ petition, which runs as follows:

That the contents of paragraph 18 of the writ petition are not correct and denied. It is submitted here that this application was filed by several persons and Gaon Sabhas. The allegation that the application was not filed on behalf of Gaon Sabha, is not correct and denied. The entire matter was considered by the revisional authority and after considering the entire material on record the order was passed.

The Petitioners have also filed rejoinder affidavit to the counter affidavits aforementioned.

8. The learned Standing Counsel appearing on behalf of Respondent Nos. 1 to 3, however, has not produced the record to support his contention that resolution passed by Gaon Sabha concerned was before the authority. The Respondents in their counter-affidavit have also not come up with a clear court case that the

resolution was placed on the record before requisitioning the land in question. In the counter-affidavits it has not been asserted to by the Respondents that such a question was not pressed before the authority. The Review Authority has proceeded to adjudicate this question by observing that the Kshetra Samiti, Rahta has also resolved on 12.09.1983 for straightening the road lends to the grievance made by the learned Counsel for the Petitioner.

9. Merely because the delivery of the possession has been effected, which fact, however, has been disputed by the Petitioners, it cannot be held that the Petitioner was not entitled to (he reliefs claimed for before the Review Court, if they had otherwise showed that the requisition was illegal and contrary to the provisions of the Act.

10. The finding of the Review Authority that the Petitioners have not furnished such proof from which it could be proved that they will sustain special or irreparable loss Is also in my view misconceived in law inasmuch as if it was a fact that the Petitioners had constructed their wall on the land in question before the requisition, then they were sufficiently prejudiced. In this context it is also relevant to note that review is required to be granted if the authority is satisfied that grave injustice has been done. I further find that the Revisional Authority had rejected the objection of the Petitioner on the ground that the boundary wall appeared to him to have been constructed after the initiation of the requisition proceedings for which there was no material on the record and in fact, no legal material could be shown (o me either by the learned standing counsel or by Shri Mallick for Respondent Nos. 4 and 5.

11. I am also of the view that it is a fit case in which the discretion should be exercised in favour of the Petitioner.

12. For the reasons aforementioned the Impugned review order is set aside and Review (Revision) No. 8 of 1983-84 preferred by the Petitioners Is remitted back to the Commissioner, Meerut Division, Meerut for fresh disposal in accordance with law.

13. Before parting it is clarified that this judgment precedes prima facie on the basis that there was no resolution of the Gaon Sabha. If the Review Authority however, comes to a conclusion that in fact there was a resolution of the Gaon Sabha then it goes without saying as to what will be the fact of the Review petition of the Petitioners.

14. In the peculiar facts and circumstances, however, I make no order as to cost.

15. Let a writ of certiorari issue accordingly.