

Bhinashar Finance Pvt. Ltd. Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Sept. 27, 1991

Acts Referred: West Bengal Land (Requisition and Acquisition) Act, 1948 " Section 3(1)

Citation: 96 CWN 505 : (1992) 2 ILR (Cal) 413

Hon'ble Judges: Bhagabati Prasad Banerjee, J

Bench: Single Bench

Judgement

Bhagabati Prasad Banerjee, J.

In this petition the writ Petitioner challenged the validity of the order of requisition made u/s 3(1) of the

West Bengal Land (Requisition and Acquisition) Act, 1948 (W.B. II of 1948) in respect -of a piece or parcel of land containing an area of 10

cottahs 6 chittacks 17 sq. ft. with some structures standing thereon lying at municipal premises Nos. 1 and 2/A, Lansdown Place, formerly 10B

Lansdown Road, Calcutta, which was stated to have been requisitioned for the expansion of Ram Krishna Mission Seva Pratisthan Hospital.

2. The facts of this case is that the Petitioner had purchased the said premises Nos. 1 and 2A, Lansdown Place, Calcutta, by a registered deed of

sale dated October 23, 1986, executed by one Suchit Kumar Banerjee in favour of the Petitioner No. 1 and that on application being made for

mutation of name in respect of the said premises, Calcutta Municipal Corporation duly mutated the name of the Petitioner in place and stead of

Suchit Kumar Banerjee on April 29, 1987, and that by virtue of the said deed of conveyance, the Petitioner No. 1 became the absolute owner of

the said premises. It is stated that on May 15, 1987, a durwan of the said premises who is engaged by the Petitioner informed the Petitioner that

on that date at about 4 p.m. some unknown persons accompanied by two Policemen entered the said premises forcibly in spite of objection made

by the durwan in question and forcibly stuck tin-plate at the entrance of the concerned premises and the tin-plate bears the inscription therein "site

for Ram Krishna Seva Pratisthan".

3. It is the case of the Petitioner that no notice either under the West Bengal Land (Requisition and Acquisition) Act, 1948 (W.B. II 1948) or

under the Land Acquisition Act, 1894, was ever served upon the Petitioners or upon the durwan concerned who was residing at the said premises

at the relevant time. It was further stated on affidavit that no such notice was also hung up in any place of the premises in question. The said

premises which is Stated to have been requisitioned, is butted and bounded by a school, namely South Suburban School, which is one of the

oldest schools of the area. On enquiry it is stated that the property had been requisitioned under the provisions of W.B. Act II of 1948. It was

specifically stated in the petition that no notice and/or order under the provisions of Section 3(2) of the West Bengal Land (Requisition and

Acquisition) Act, 1948 (W.B. II of 1948) (referred to as the said Act) had been served upon the Petitioner. It was stated that the purpose for

which they said property was requisitioned, cannot be requisitioned under the provisions of the said Act inasmuch as the purpose was a permanent

purpose and that establishment of a hospital is a project which can be achieved after going through all the procedural steps envisaged under Act 1

of 1894. It was stated that when there is already an existent hospital under the name of Ram Krishna Seva Pratisthan in the neighbouring area,

there was no urgency involved for extension of the hospital in question. The said order of requisition was challenged on the ground that the State

Government had no occasion to form the requisite opinion that the said property was required for the purposes mentioned under the said Act.

4. An affidavit-in-opposition was affirmed on August 20, 1987, by Jayanta Kumar Das on behalf of the State. In the said affidavit-in-opposition it

was stated that the proposal bearing No. 3066-LA(ii) dated May 15, 1987, as made by the Land and Land Reforms Department was received by

the First Land Acquisition Collector for requisition and acquisition of land comprised in premises Nos. 108B and 108C, Sarat Bose Road and 1,

2A, 2B and 4A Lansdown Place under West Bengal Land (Requisition and Acquisition) Act, 1948, for the purpose of maintaining supplies and

services essential to the life of the community, namely for expansion of Ram Krishna Seva Pratisthan It was stated that a notice of requisition under

Act II of 1948 was served upon the owners of the premises by hanging up the said notice on the wall of the premises concerned and fixing May

16, 1987, at 10-30 a.m. for taking possession. It was further stated that the said notice was also affixed on the gate of the entrance to the said

premises. It was stated that on the appointed date the Secretary, Ram Krishna Seva Pratisthan was present, but none on behalf of the owners

found present and that possession of land in respect of the premises No. 1, Lansdown Place, was taken and handed over to the Secretary, Ram

Krishna Seva Pratisthan It was stated that before requisitioning the premises under Act II of 1948, the Collector enquired into the matter and

satisfied that the land in question was needed for a public purpose. The records of the case pertaining to the said requisition were called for which

were produced by the Respondents at the time of hearing of the writ application.. From the records of the case it was evident that the premises

Nos. 1, 2A, 2B and 4A, Lansdown Place was requisitioned for an expansion of Ram Krishna Mission Seva Pratisthan and after sometime, the

State Government had released the premises No. 2B, Lansdown Place for requisition and from the letter dated May 15, 1986, written by the said

Seva Pratisthan to the State Government it revealed that the purpose that was disclosed was for expansion of Ram Krishna Seva Pratisthan. While

the letter dated February 23, 1987, revealed that the real purpose was disclosed, viz. for rehabilitation for bona fide evictee families due to

acquisition of other premises for expansion of Ram Krishna Mission Seva Pratisthan. The purpose disclosed for and on behalf of Ram Krishna

Seva Pratisthan in letter dated February 23, 1987, was the real purpose for which the property in question has been requisitioned under the

provisions of the said Act and it was on the basis of this letter dated February 23, 1987. The order of requisition was passed alleging that it was

required for the purpose of expansion of the said Pratisthan suppressing the fact that was required not for expansion but for rehabilitation of

persons who would be evicted from their premises which would be requisitioned for the purpose of expansion of the said Seva Pratisthan. The

property in question was purchased by the Petitioner on October 23, 1986, and the mutation in the Calcutta Municipal Corporation"s record was

made on April 29, 1987, and that it was stated that no notice whatsoever was served upon the Petitioner who was the recorded owner of the said

premises. The West Bengal Land (Requisition and Acquisition) Act, 1948, was enacted to provide for requisition and speedy acquisition of land

for the purposes of maintaining supplies and services essential to the life of the community increasing employment opportunities for the people by

establishing commercial estates and industrial estates in different areas, providing proper facilities for transport, communication, irrigation or

drainage and creating better living conditions in urban or rural areas by the construction or reconstruction of dwelling places in such areas or for

purposes connected therewith and incidental thereto. The power to requisition the property is vested upon the State Government u/s 3(1) of the

said Act under which the State Government could requisition the property only for the purpose mentioned above and that Sub-section (2) of

Section 3 of the said Act provides that an order under Sub-section (1) should be served in the prescribed manner on the owner of the land and

where the order relates to land in occupation of an occupier, not being the owner of land, also on such occupier. The mode of service of order

passed u/s 3(1) of the said Act is prescribed under Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules, 1948. The said rule is as

follows:

3. Manner of service of order. An order under Sub-section (1) of Section 3 shall be served on the owner of the land and where the order relates

to land in occupation of an occupier not being the owner of the land, also on such occupier-

(a) by delivering or tendering a copy thereof, endorsed either by the person authorised by the Act to make the order or by the Collector to the

person on whom the order is to be served or his agent, or

(b) by fixing a copy thereof on the outer door of some conspicuous part of the house in which the person on whom the order is to be served

ordinarily resides or carries on business or personally works for gain, or

(c) by fixing a copy thereof in some conspicuous part of the land to which the order relates and also in some conspicuous place of the office of the

Collector.

5. In para. 16 of the writ application it was stated by the Petitioner that none of the modes of service prescribed under the said Rules has been

complied with in this case, inasmuch as, no notice or order u/s 3(1) of the said Act-II of 1948 was served either on the Petitioner No. 1 or the

Petitioner No. 2 or on the occupier of the same premises, namely durwan of the Petitioner and, as such, the mandatory provision of Section 3(2)

of the said Act has been completely breached and violated by the Respondents herein.

6. There was no affidavit affirmed by the Land Acquisition Collector. But an affidavit was affirmed by the said Jayanta Kumar Das, Deputy

Secretary, Government of West Bengal, wherein it was only stated at para 8 that the issue of non-service of notice as alleged in para 15 was

disputed and all acts done by the Respondents were in accordance with law. It was also stated that requisition of premises No. 1, Lansdown Road

by hanging the said notice on the wall as the owners refused to receive the same, fixing on May 16, 1987, at 10-30 a.m. for taking possession. It

was also stated that the copy of the said notice was also affixed on the gate of the entrance to the said premises. It appears from the affidavit of the

State Respondent in this case that there was only a small old dilapidated tin-shed un-inhabited along with broken brick-built structure standing

there and the plot proposed to be requisitioned was vacated. Admittedly, the owner of the premises was not staying in the said premises and,

according to the Petitioner, the durwan was occupying the said premises and who was staying there with the family. From the records produced

before this Court it is evident that the notice as required to be served u/s 3(2) was not served upon the Petitioner who became the owner of the

property on October 23, 1986. The Mutation in the municipal record was made on April 29, 1987 and thereafter the order of requisition was

passed but not served upon the owner nor addressed to the owner. No attempt was also made to serve the same on the occupier of the premises

in question. The mere statement was that notice was served upon the owner by hanging the notice on the wall of the premises in question as the

owner refused to receive the same, cannot be regarded as rebuttal to the specific allegation made in the writ application that no notice whatsoever

was served upon the Petitioner. Further, the allegation was also vague and evasive. There was no evidence on record that any attempt was made

to serve the notice upon the Petitioner who was the owner of the premises. The manner of service of order under Sub-section (1) of Section 3 of

the West Bengal Act-II of 1948 has been prescribed, inter alia, to the effect that the order u/s 3(1) of the said Act- II of 1948 shall be served on

the owner of the land that where the order relates to land in occupation of an occupier not being the owner of the land, also on such occupier by

delivery or tendering a copy thereof endorsed either by the person authorised by the Act making the order or by the Collector to the person on

whom the purported order has to be served or his agent or by fixing a copy thereof on the outer door of some conspicuous part of the house in

which the person on whom the order is to be served ordinarily resides or carries on business or personally works for gain or by sending the same

to the person on whom the order is to be served by registered post with acknowledgement due. Admittedly, in the instant case, the order of

requisition was not served under such sub-Rule (a) or Rule (b) of Rule 3. Rule 3 nowhere provides that it would be sufficient for the purpose of

service of order of requisition if it is hung up on the wall of the premises sought to be requisitioned. The mandatory requirement of the rule was that

such affixing copy of the order has to be made on the outer door of some conspicuous part of the house in which the person on whom the order is

to be served ordinarily resides or carries on business or personally works for gain Admittedly, in the instant case, according to the Respondents"

own averment in the affidavit, the said land was a vacant land having some old dilapidated structures and, admittedly, no attempt was made to

serve the notice by affixing on the outer door of the conspicuous part of the house in which the person on whom the order is to be served ordinarily

resides or carries on business or personally works for gain. The owner of the premises admittedly does not reside in the premises under requisition,

and in case the mode of service provided under Rule 3(b) fails in that event, the service was to be effected by registered post. On the basis of the

materials on record placed before this Court and on the basis of the averments made in the petition and the affidavit-in-opposition, it is clear that

the order and/or notice u/s 3(1) of the said Act was not served in accordance with the manner of service provided under the rules which are

mandatory in nature. In respect of the requisition of the property under Act-II of 1948, the only mode of giving effect to the order of requisition

was by service of the order on the owner and/or occupier in accordance with the procedure laid down in the rules, such an order is never

published in the gazette and there is no other means of publication of such requisition. Considering the scheme of the Act, the order of requisition

u/s 3(1) of the said Act cannot be said to be valid and effective under the law, unless it is served in the manner prescribed in Rule 3 of the said

Rules. In case of acquisition of land under the Land Acquisition Act or other Acts, the order of acquisition has to be published in the Official

Gazette and that in that case also there is a provision for affixing a copy of the notice in the premises in question. When the Legislature makes it

clear that order u/s 3(1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of an

occupier, not being the owner of the land, also on such occupier.

Considering the scheme of the Act such provision is mandatory and that order u/s 3(1) of the said Act could only be effective only on service as

provided under Sub-section (2) of Section 3 of the said Act. In the instant case, the order of requisition has not been served as provided in Sub-

section (2) of Section 3 of the said Act.

7. The next question Which calls for determination by this Court is whether the premises could be requisitioned for rehabilitation of bona fide

evictee families due to acquisition of other premises for the purpose of expansion of Ram Krishna Mission Seva Pratisthan. Apart from premises in

question, which is the subject-matter of the writ application, some other property had been requisitioned and that because of acquisition or

requisition of some other properties, the persons residing in those properties," which had been requisitioned, were sought to be rehabilitated by

requisition of the property in question. Under the scheme of the Act a property could be requisitioned for maintaining supplies and services

essential to the life of the community, and if it transpires that a minimum expansion of a hospital is necessary and it is very urgent, in that event, the

State Government has jurisdiction to requisition the property in exercise of the power conferred u/s 3(1) of the said Act, inasmuch as establishment

and expansion of a hospital certainly amounts to services which are essential to the life of the community. But the power u/s 3(1) of the said Act

could not be invoked for the purpose of rehabilitation of persons who have been evicted because of requisition of some other properties which

were acquired for the purpose of expansion of Ram Krishna Mission Seva Pratisthan. This is beyond the scope and ambit of the power of the

State Government u/s 3(1) of the said Act. It is one thing to say that the property is required for the purpose of expansion of a hospital and it is

quite different thing to contend that for the purpose of expansion of hospital some other properties had been acquired, and because of requisition

of those properties, some persons had been evicted consequent upon such requisition, and those persons who had been evicted because of

requisition of the properties, had to be provided for alternative accommodation and for providing alternative accommodation, it cannot be said to

be a purpose which amounts to maintaining supplies and services essential to the life of the community as provided under the Act. When the

Legislature had clearly laid down the specific purposes for which the property could be requisitioned, the State Government had to form an opinion

on the basis of the relevant materials on record that the property in question was required for maintaining supplies and services essential to the life

of the community. In the instant case, it appears that the State Government had travelled beyond the power conferred under the statute. It was

stated on behalf of the State that the purpose was a public purpose. Under the provisions of Land Acquisition Act, the property could be

requisitioned for any public purpose. But when the West Bengal Land (Requisition and Acquisition) Act, 1948, had been enacted by the State

Government for the purpose of requisition and speedy acquisition of land for certain specified purposes, and when, in fact, there is another general

law on subject, viz. the Land Acquisition Act, in that event the State Government cannot travel beyond the scope of power conferred under this

Special Act and to acquire the property which was otherwise permissible to be acquired under the Land Acquisition Act in the garb of power u/s

3(1) of the said Act. When there is a general statute the special statute and when the special statute clearly provides certain definite purpose for

which the Act could be invoked, the State Government had no jurisdiction to travel beyond the purpose enumerated under the Act and acquired it

from a different purpose. Land Acquisition Act is a general law for acquisition of the property and this means a special law enacted for some

special purposes. The provisions of this Act could only be invoked for the purpose specifically provided under the Act. In the instant case, the only

power was conferred upon the State Government to requisition the property for some specified purposes. Admittedly, the State Government had

travelled beyond the object specified for the purpose of which the power could be exercised. The exercise of a statutory power is invalid unless

the repository of the power has acted honestly and in good faith. The deliberate promotion of a purpose, be it public or private, alien to that for

which the power was conferred is to be regarded as an act of bad faith.

Where a prima facie case of misuse of power has been made out, it is open to a Court to draw the inference that unauthorised purposes have been

pursued if the competent authority fails to adduce any grounds supporting the validity of its conduct. See Para 74 in Halsbury's Law of England,

4th ed., Vol. 1(1).

8. It is also firmly established principle that when the power can be exercised on the existence of certain facts and/or situation and in the absence of

those facts which confer jurisdiction, the power could not be exercised unless the facts which confer jurisdiction, exist. The jurisdiction of the

authority concerned is dependent on the particular state of affairs. The absence of that state of affairs makes it clear that the authorities concerned

cannot exercise such power. At para 68 in Halsbury's Laws of England, 4th ed., Vol. 1910, it was observed that the exercise of statutory power

on the basis of a mistaken view of the relevant facts, whether or not they are expressed to be jurisdictional facts in the relevant statutory provision,

will also be quashed where there was no evidence available to the decision-maker on which, properly directing himself as to the law, he could

reasonably have formed that view. In some cases, Courts have quashed decisions taken on the basis of a mistake of fact, without reference to the

"no evidence rule".

In my view only for the purpose of rehabilitation of persons who have been evicted because of acquisition of other properties, the property could

not be requisitioned under exercise of power conferred u/s 3(1) of the said Act.

9. Accordingly, the real purpose for which the property was requisitioned as evident from the letter dated February 23, 1987, written for and on

behalf of the requiring body addressed to the State Government, the order of requisition cannot be made merely on the ground that it was a public

purpose. For a public purpose and property could be acquired under the provisions of the Land Acquisition Act which is the general law for

acquisition of the property But when there is a special law and when the special law prescribes the circumstances and purposes for which the

summary procedure for requisition and acquisition of the property could be made, the same must be strictly construed and the property could not

be acquired under the provisions of the said Act which is a special statute enacted for a special purpose and that the authorities concerned cannot

travel beyond the purpose specifically mentioned in the statute. The powers under the provisions of the West Bengal Act-II of 1948 are drastic

and very wide power. But confirmation of such power to the public authority is on a trust and that the trust is that the said power is not illegally

exercised. See Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others,

The procedural safeguards should be commensurate with the sweep of the powers. The wider the power, the greater the need for the restraint in

its exercise and correspondingly more liberal the construction if the procedural safeguards envisaged by the statute." Frank Futer J. in Vitarelli v.

Seaton 359 U.S. 535, at 546-47 said-"if dismissal from employment is based on a defined procedure, even though generous beyond the

requirements that bind such agency, that procedure must be scrupulously observed-this judicially evolved rule of administrative law is not firmly

established and, if I may add right so, he that takes the procedural sword shall perish with that sword. "The history of liberty" that the same learned

Judge, "has largely been the history of observance of procedural safeguards" (Mc Nobb v. U.S., 318, u/s 332 at 347 followed by the Supreme

Court of India in Ranjit Thakur Vs. Union of India (UOI) and Others,

10. In spite of challenge being thrown that the Respondents had acted arbitrarily and discriminatorily in realising one of the properties after

requisition when there is no provision for such release immediately after requisition and this had resulted in discrimination, but there is no reply to

this allegation. As it is found that the order of requisition had not been served in accordance with the rules, either on the owner or on the

representative of the owner occupying the premises and that the requisition of the property for rehabilitation of persons evicted due to acquisition

of the properties which had been acquired for the purpose of expansion of Ram Krishna Mission Seva Pratisthan is not the purpose for which

provisions of West Bengal Land (Requisition and Acquisition) Act, 1948, can be invoked, the order of requisition was wholly without jurisdiction

and without the authority of law. The said requisition was void on the fact of it as the property was requisitioned for the purpose beyond the scope

and ambit of provisions of the said Act.

11. In the result, the writ petition succeeds to the extent of the property in question, namely premises Nos. 1 and 2A, Lansdown Place. Since the

owner of the other premises had not challenged the validity of the requisition of other properties, the relief granted to this writ application is only

confined to the premises Nos. 1 and 2A, Lansdown Place. Accordingly, the order of requisition u/s 3(1) of the West Bengal Land (Requisition and

Acquisition) Act, 1948, stands quashed and the Respondents are directed to restore back to the Petitioner forthwith.

12. The writ petition succeeds to the extent indicated above. There will be no order as to costs.

13. The Rule is made absolute without any order as to costs;

Rule made absolute.