

(1978) 04 CAL CK 0009

Calcutta High Court

Case No: Civ. Rule No. 5969 (W) of 1977

Rash Mohan Chatterjee and
Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: April 3, 1978

Acts Referred:

- West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 3(1A)

Citation: 82 CWN 763

Hon'ble Judges: G.N. Roy, J

Bench: Single Bench

Advocate: Monotosh Mukherjee, P.N. Biswas and S. Datta, for the Appellant; K.N. Laha, for the Respondent

Judgement

G.N. Roy, J.

This Rule is directed against an order of requisition u/s 3 (1A) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948) in respect of plots Nos. 6 and 7 measuring 1. 3525 acres in Mouza Dum Dum House in the district of 24-Parganas passed by the Additional District Magistrate, 24-Parganas (North). It will appear from the copies of the order of requisition served on the petitioners Nos. 1 and 2 (originals were of ware produced at the hearing) that the said lands were necessary for the purpose of maintaining supplies and services essential to the life of the community or for Veterinary Hospital at Dum Dum. The petitioners' case is that the Veterinary Department had a large tract of land including suitable structures standing thereon on the adjacent land where Veterinary Hospital had been functioning for a pretty long time. It was only a few years back that about 60 bighas of lands had been sold by the Veterinary Department and on the said lands residential structures had been built by the State Government.

2. Dr. Mukherjee, the learned Counsel appearing for the petitioners contended that when the Veterinary Department did not require the lands in its possession and as a matter of fact itself sold about 60 bighas of land for the purpose of construction of residential structures for different persons not connected with Veterinary Department, it cannot be understood as to what can be the impelling necessity for the Veterinary Department to require the small area of the land in question namely, 1, 5325 acres lying near the said Veterinary Hospital. Dr. Mukherjee contended that in the aforesaid circumstances the Veterinary Department cannot legitimately claim to have genuine requirement of the said area for a Veterinary Hospital. Dr. Mukherjee further contended that on the face of the materials on record it is quite apparent that the plot purported to be requisitioned, was being utilised for building residential structures for the low income group persons and when the Veterinary Department itself only recently thought it fit to dispose of about 60 bighas of lands in its possession for building residential structures, it cannot be said that the Veterinary Department will be justified in frustrating the said scheme of petitioners to construct residential structures for the low income group persons on the requisitioned lands on the plea of starting Veterinary hospital on the said small piece of land. Dr. Mukherjee further contended that the order of requisition as served on both the petitioners will show that the Requisitioning Authority did not properly consider the facts and circumstances of the case and also did not specify precisely as to for what purpose the lands were going to be requisitioned. It will appear from the copies of the orders served on both the petitioners that the order of requisition was purported to have been made for the purpose of maintaining supplies and services essential to the life of the community or for Veterinary Hospital. Dr. Mukherjee submits that it is thus evident that the requisitioning authority could not specifically decide the real purpose for the purported requisition and the requisitioning order is vague for the said disjunctive expression "or". Dr. Mukherjee further contended that the purported order of requisition was passed in a colourable exercise of power without properly ascertaining the real nature of the structures and the intended user of the appertaining lands and the Requisitioning Authority had also no occasion to know the essential features of the lands and the intended user of the same.

3. Mr. Laha the learned Counsel appearing for the State Respondents however contended that there was no question of any colourable exercise of power in the instant case. Mr. Laha submitted that as a matter of fact as far back as in 1976 there was a proposal from the Veterinary Department to acquire this land along with structures because it was thought expedient to utilise the structures along with the land for starting a Veterinary Hospital. It will appear from the relevant file of the Land Acquisition Collector, 24-Parganas (North) since produced in Court by Mr. Laha that by a Memo dated 9th of July, 1976, the Assistant Secretary to the Government of West Bengal, Animal Husbandry and Veterinary Department wrote to the Land Acquisition Collector, 24-Parganas (North) that the Director of Veterinary Services,

West Bengal, required the existing structures and also the land for the construction of Veterinary Hospital at Dum Dum. Curiously enough, it will appear from Memo No. 6141 dated November 3, 1977 issued by the Director of Veterinary Services, West Bengal to the Land Acquisition Collector, 24-Parganas (North) that barring existing three structures, the Department was agreeable to take possession of the vacant land which would serve their purpose. Accordingly, the justification and reasons for the requirement of the lands and structures in question as indicated in 1976 have definitely undergone a change in November, 1977 when the Director of Veterinary Services had specifically pointed out that the Department is not interested in the structures. It will further appear from Memo No. 3023-V|5H-34|75 dated 15th of November, 1977 issued by the Assistant Secretary to the Government of West Bengal, Animal Husbandry and Veterinary Services Department to the Land Acquisition Collector, 24-Parganas (North) that information sought for in the Department Letter No. 2134-V dated 28th February, 1977 followed by four reminders issued on 17th of May, 1977, 29th of June, 1977, 2nd of August, 1977 and 29th of September, 1977 had not been received from the office of the Land Acquisition Collector and the Land Acquisition Collector was requested by the same Memo dated 15th of November, 1977 to expedite the information as asked for. It will also appear from the said letter dated 28th of February, 1977 referred to in the said Memo, dated 15th of November, 1977 of the Assistant Secretary of the Veterinary Department that in the matter of acquisition, the Land Utilisation and Reforms and Land and Land Revenue Department wanted the following information, namely.

a) Whether religious, educational and charitable institutions are affected.

b) Number of persons will be affected from their--

(i) residence (ii) business establishment.

c) Number of industries, if any to be affected.

d) Number of structures to be affected.

4. It does not appear from the said file of the Land Acquisition Collector that pursuant to the said Memo dated 15th of November, 1977 from the Assistant Secretary to the Government of West Bengal, Veterinary Services Department, information sought for in the said letter dated 28th of February, 1977 and the said four subsequent reminders had been given. It does not appear from the said file and also from the preliminary inspection report placed before the requisitioning authority that he was ever apprised of the fact that the department was not at all interested in the existing three structures but was interested only in the vacant land. From the affidavit-in-opposition filed on behalf of the respondents Nos. 1 to 6 it also does not appear that the Requisitioning Authority, namely, Additional District Magistrate, 24-Paranas (North) had any occasion to know that the Veterinary Department was not at all interested in the existing structures. As a result, the order

of requisition was passed for both lands and structures. The correctness of the inspection report was seriously challenged at the hearing and the allegation that inspection of the premises in question if any, must have been made behind the back and without any notice to the owner could not be controverted by any material on record. Admittedly before say decision by the Requisitioning Authority, the Land Acquisition Collector started writing letters to the Urban Land Ceiling Authority requesting the said authority to refuse permission to transfer the lands. The Collector also wrote to the Chairman, South Dum Dum Municipality requesting him to stop construction of roads on the lands in question when admittedly there was no requisition of the disputed lands. Dr Mukherjee rightly contended that the overjealousness on the part of the Land Acquisition Collector is quite unusual. The Government has certainly right to acquire land of its subject in the exercise of its right of eminent domain but such exercise of right should be made cautiously and on proper consideration of relevant facts and circumstances and strictly in accordance with law relating to such acquisition or requisition. It will be unfortunate if the requisitioning authority mechanically passes an order of requisition or if such order of requisition is procured from him without placing before him all relevant facts and circumstances justifying the order of requisition. In the aforesaid facts and circumstances of the case, it is evident that all relevant facts and circumstances germane for passing the impugned order of requisition were not placed before the requisitioning authority and the said authority had also not properly applied his mind as to justification and bonafide of the requirement and also the extent of requirement of the concerned Department. Accordingly the impugned order of requisition is not maintainable in law. The Rule is, therefore, made absolute but there will be no order as to cost.