

Mahadeb Halder and Others Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: March 30, 2010

Acts Referred: West Bengal Fisheries (Requisition and Acquisition) Act, 1965 & Section 5, 5(1)

Citation: (2010) 3 CALLT 653 : (2011) 1 CHN 394

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Sadhan Kumar Haider, for the Appellant;

Judgement

Soumitra Pal, J.

Let a photocopy of the affidavit-in-opposition on behalf of Collector, Nadia and Special Land Acquisition Officer, Nadia, the Respondent Nos. 4 and 5 respectively, and reply thereto be kept on record.

2. In this writ petition, the Petitioners stated to be the joint owners of a fishery comprised in plot No. 798 of Mouza Nebutala, J.L. No. 37 in

Hanskhali, Nadia, have challenged the order of requisition dated 14th June, 1979 and the show-cause notice dated 24th July, 1979 calling upon

the Petitioners to show cause why the plot of land in question should not be acquired for the purpose stated therein. It is submitted that though an

attempt was made to acquire the fishery requisitioned in the year 1979, for a public purpose, however, the move seems to have been dropped as

no attempt was made to acquire the requisitioned fishery since no notice was published in the Official Gazette u/s 5 of the West Bengal Fisheries

(Requisition and Acquisition) Act, 1965. Since the acquisition proceedings have been dropped, requisition cannot continue for thirty years.

Submission has been made that pursuant to the directions contained in the order dated 3rd February, 1999 in C.R. 2574(W) of 1983 a sum of Rs.

9,692/- was paid as compensation for the period under requisition, that is, from 18th June, 1979 to 31st October, 2002. Therefore, submission is

that order may be passed directing the Respondents to derequisition the fishery in question and to quash the acquisition notice, if any.

3. Admittedly, by an Order dated 14th June, 1979 the fishery in question was requisitioned, Thereafter, a notice dated 24th July, 1979 u/s 5(1) of

the Act of 1965 for acquiring the fishery was issued. However, the affidavit-in-opposition is silent about the acquisition proceedings raised in

paragraph 23 of the petition. The question is whether the requisition can continue for more than thirty years. The Supreme Court in H.D. Vora Vs.

State of Maharashtra and Others, while holding that requisition cannot continue indefinitely held that ""If requisitioning of property could legitimately

continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for

all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership

would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially

take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894"" , The Apex Court

further held that ""If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property but

it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the Government only for a public

purpose which is of a transitory character"". Therefore, an order of requisition though it may continue for some time is not permanent and cannot

partake of the character of an acquisition. In the instant case though it is evident from the requisition notice dated 14th June, 1979 that the purpose

was to augment fishery production in the State, nothing transpires from the affidavit-in-opposition whether the public purpose still continues. Since

the affidavit filed on behalf of the State is silent regarding the continuity of the public purpose even after thirty years, the order of requisition dated

14th June, 1979 cannot survive and thus it is set aside and quashed. Since there is no gazette notification regarding acquisition and as the affidavit-

in-opposition is silent relating to acquisition proceedings, action, if any, regarding acquisition is also set aside and quashed. The writ petition is, thus,

allowed. Hence, the Secretary, Department of Fisheries, Government of West Bengal, the Director of Fisheries, West Bengal, the District Fishery

Officer, Nadia, the Collector, Nadia and the Special Land Acquisition Officer, Krishnanagar, Nadia, the Respondent Nos. 1, 2, 3, 4 and 5

respectively are directed to pass appropriate order derequisitioning the fishery in question and shall hand over the possession of the fishery to the

Petitioners within a week from the date of presenting the certified copy of this order. The compensation for requisitioning for the period from 1st

November, 2002 till the date of handing over the possession of the fishery to the Petitioners shall be released by the Respondents, particularly by

the Respondent Nos. 4 and 5 within eight weeks from the date of presenting the certified copy of this Order in accordance with law.

4. There will be no Order as to costs.

5. Let urgent photostat certified copy of this order, if applied for, be furnished to the Petitioners on priority basis.