

Sk. Wahad Hossain Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Sept. 8, 1987

Acts Referred: Constitution of India, 1950 " Article 161, 162

West Bengal Land (Requisition and Acquisition) Act, 1948 " Section 3, 4

Citation: 92 CWN 698

Hon'ble Judges: Monoranjan Mallick, J

Bench: Single Bench

Advocate: Arun Prokash Chatterjee, for the Appellant;K. Bhattacharjee, Sadhan Gupta and Shiblal Bose for the State Electricity Board and Manjari Gupta for the State, for the Respondent

Final Decision: Dismissed

Judgement

Monoranjan Mallick, J.

The petitioner prays for a writ in the nature of Mandamus, commanding the respondent to forbear from giving

effect or further effect to the notice being annexure "H" to the writ petition so far as the land of the petitioners is concerned and not to adopt any

measure for taking possession of the land of the petitioner and for consequential reliefs. The facts as disclosed in the writ petition and several

supplementary affidavits are as follows:

2. The petitioner is in bakery business for the last 32 years and has been running two bakery factories. By an advertisement published in the

Bengali daily Aajkaal dated 19.1.86 the Government of West Bengal invited applications in requisite form all concerned for grant of licence for

flour mill in different parts of West Bengal and the petitioner felt interested in the same. In response to the said advertisement the petitioner

hastened to apply in February 1986 and as an essential requisite purchased land measuring 67.5/8 acres in a portion of C.S. Plot No. 329 R.S.

Plot No. 133 J.L. No. III of mouja Purba Ichapur. Immediately on purchase the petitioner obtained necessary sanction from the local panchayat to

erect structure and constructed a boundary wall round the plot purchased and put up a sign board "site for Flour Mill". By a letter dated 21.8.86

the Deputy Secretary, inspection and quality control. Govt. of West Bengal, Directorate of Inspection and Quality Control informed the petitioner

that the application for licence for establishment of flour mill has been duly forwarded to the Deputy Secretary, Government of India, Food and

Civil Supplies. The petitioner advanced Rs. 51,000/- for purchase of machines. The United Bank of India agreed to sanction the necessary loan

for setting up the Flour Mill. In view of the assurance of the State Govt. that there was no objection to the setting up a flour mill in the proposed

area the petitioner invested more than a lakh of rupees in establishing the said factory. Suddenly on September 6, 1987 the petitioner was served

with a notice of requisition by the Govt. of West Bengal u/s 3 of the W.B. Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as

Act II of 1948) in respect of the above land purchased for establishment of a flour mill and he was intimated that possession would be taken on

8.9.86 for establishment of sub station of West Bengal State Electricity Board. The petitioner immediately thereafter filed this writ petition on

8.9.86 and obtained an interim injunction restraining the respondents from interfering with his possession. By supplementary affidavit the petitioner

alleged that subsequently the petitioner has been granted a registration number by the Central Government for the purpose of facilitating the petitioner

in establishing a flour mill and the State Govt. has also called for a report from the petitioner as regards the progress of the project. It is also alleged

that even if the land of the petitioner is left out the State Electricity Board would have sufficient frontage for construction of the sub station.

3. Though all the respondents have contested the writ petition yet affidavit in opposition has been filed by the respondent No. 4 alone. The

contentions of the respondent No. 4 are stated below :

4. The land under requisition is urgently required for setting up of 132 KV sub station at Barasat by respondent No. 4 to relieve the load of the

other existing sub stations of the area. That Barasat now being a district the load requirement of the area for electricity is likely to be increased in

near future. On a survey of the area, the area concerned including the petitioner's land has been found to be most suitable. The land is situated just

by the side of the Taki Main Road which will facilitate carrying heavy construction materials and equipment necessary for construction of the sub

station. One H.T. line exists on the proposed plots which will provide for power for construction readily and will enable the respondent to

complete the important project quickly. Any change of the proposed land will cause major set back in completion of the vital project and will lead

to irreparable loss and damage. The State Govt. did not invite application for licence for opening of flour mill. The petitioner did not raise any

boundary wall nor did he set up any notice board at the material time. Neither the State Government nor the Central Govt. did not give any

assurance to the petitioner. No portion of the land can be left out and it is not correct to say that the project can be completed without the land in

question being acquired.

5. The petitioner has challenged the order of requisition on the following five grounds:-

a) The Act II of 1948 does not empower the State to requisition any land for the benefit of West Bengal State Electricity Board, a company.

b) The requisition being permanent in nature, Government should have taken recourse of Act 1 of 1894 and should have acquired the land.

c) By virtue of requisition the possession only is vested in the State not the title and as such the transfer of land in favour of W.B.S.E.B., a

company, by the State who has no title to the land is illegal. The transferee can not have a better title than the transferor and as such the vesting of

property in favour of West Bengal State Electricity Board is illegal.

d) If the said land measuring about two bighas is left out of requisition, the purpose of requisition should not be frustrated.

e) The said requisition is bad in law in view of the principles of promissory estoppel.

6. The first point which needs decision is whether the requisition of land under Act II of 1948 is permissible under the law for the purpose of the

State Electricity Board. The petitioner contends that it is not legal for the L.A. Collector to order requisition of the property for the purpose of a

company and that purpose is not a public purpose within the meaning of section 3 of Act II of 1948. The decision of Sandhya Mukherjee v- State

in 1977(2) Cal.L.J. 375 has been relied upon in support of this contention. On the side of the respondents two division Bench decisions of this

Court being 1980(2) Cal.L.J. Surmila Devi v. State and Dr. Nilkamal Bez Boruah and Another Vs. The State of West Bengal and Others, , has

been referred and it is submitted that the purpose of State Electricity Board is a public purpose. The division bench of this court in 1980 Cal.L.J.

19 presided over by M.M. Dutt, J. who also delivered the judgment in 1977(2) Cal.L.J. 375 has distinguished his own judgment in 1977(2)

Cal.L.J. 375 and has held that the L.A. Collector u/s 3 of Act II of 1948 can requisition a property for the purpose of State Transport

Corporation, a statutory corporation for making construction for the use of the said corporation and the said corporation being entrusted with the

maintenance and supply of essential service to the community as agent of the State Government requisition of land for its purpose is a public

purpose. In 86 CWN 1046 the Division Bench of this court also presided over by M.M. Dutt, J. has also held that the requisition, of land under

Act II of 1948 for Calcutta Electricity Supply Corporation is a public purpose. The reason is that the Calcutta Electricity Supply Corporation is

maintaining the electric supply which is a supply essential to the community for and on behalf of the State. The Calcutta Electric Supply

Corporation is a private company. Even the Division Bench has held as above. The State Electricity Board is a statutory corporation. So this

decision very much applies to the present case. Therefore, in my view, regard being had to its above division bench judgments the requisition of

land u/s 3 of Act II of 1948 for State Electricity Board must be held to be for a public purpose. Therefore the first contention fails.

7. The second point urged by the petitioner is that no order u/s 3 of the Act II of 1948 can be made in respect of property for which the purpose is

permanent in nature.

8. The petitioner relies on two decisions of Supreme Court namely, H.D. Vora v. State of Maharashtra, AIR 1984 SC 886 and Jiwani Devi

Paraki Vs. First Land Acquisition Collector, Calcutta and Others, .

9. On behalf of the respondents it is submitted that the above contention is not acceptable. It is contended that similar contention has been rejected

by this court in the case reported in 1979(1) Cal.L.J. 212 and the Supreme Court has also rejected such a contention in respect of similar

requisition under the Bombay Land Requisition Act, 1949 in AIR 1963 SC 244. It is also submitted that under Act II of 1943 there has to be a

requisition first to be followed by acquisition u/s 4 of the Act. Therefore, even when the purpose is permanent in nature requisition will have to be

made first and it will be followed by the acquisition u/s 4 and regard being had to the fact that immediate possession has to be taken for the

purpose of construction of sub station of the State Electricity Board requisition u/s 3(1) of the Act 11 of 1948 has been made and the State

respondent will follow it immediately by proceeding u/s 4 of the Act.

10. I have carefully considered two decisions of the Supreme Court referred to by the petitioner. It is true that in H.D. Bora's case P.N. Bhagabati

J. in para 5 (page 870) has made observation that requisition of land by the Govt. is only for a public: purpose which is of a tangible character and

when the property is requisitioned for a public purpose which from the beginning was known to be of permanent nature there should be an

acquisition proceeding. However, on a careful perusal of the judgment it will be clear that this above observation were made in connection with a

case in which property requisitioned in 1951 was kept under requisition for more than thirty years without acquiring the property. In para 5 of the

judgment the Ld. Judge had observed that requisition of the property for public purpose which is of permanent nature has to be followed by

acquisition within a reasonable period otherwise the order of requisition shall be cancelled.

11. Therefore, in the above decision the Supreme Court has not taken the view that the order of requisition cannot be validly made in respect of a

purpose which is permanent in nature but has condemned the keeping of the property under the requisition for an indefinite period without taking

the recourse to acquisition proceeding. This view of the Supreme Court has been re-iterated in the next decision of the Supreme Court, namely,

Jiwani Kumar v. 1st Land Acquisition Collector, Calcutta, Sabya-sachi Mukherjee 3, who delivered the judgment of the Supreme Court has

observed that it will not be correct to say that in no case the order of requisition cannot be made in respect of a purpose which is permanent in

nature. Therefore in none of the two decisions the Supreme Court has declared the order of requisition as illegal if the purpose were permanent in

nature. In that view of the matter, I am unable to accept the contention of the petitioner that the respondent has no legal right to requisition property

of the petitioner u/s 3 Act II of 1948 as the requirement of the State Electricity Board is permanent in nature. However, if the respondent keeps the

property under requisition for an indefinite period and does not acquire the property within a reasonable time then in view of the Supreme Court

judgment in H.D. Vora's case, the petitioner will be at liberty to apply before the court to set aside the order of requisition. But at the present

moment the order of requisition can not be held to be invalid on ground alleged by the petitioner. Therefore, his contention also fails.

12. The third contention of the petitioner is that as possession only is to be vested with the State under an order of requisition passed u/s 3 of the

Act II of 1948 the State does not acquire title to the same to transfer the same to State Electricity Board until and unless the property is validly

acquired and title passes to the State.

13. The above contention of the petitioner has been repelled by the respondents. It is contended that the State has the right to possess the

property for the purpose for which the same has been requisitioned and can also handover possession to the agency through which its purpose is

to be achieved. Reliance has been placed to the two division bench decisions of this court, namely, 1980(2) Cal.L.J. 19 and Dr. Nilkamal Bez

Boruah and Another Vs. The State of West Bengal and Others, .

14. In my view once it is held that the State Govt. can requisition the property for the purpose of the State Electricity Board so that the board can

construct a sub station at Barasat area then it is difficult to accept that the State cannot handover the property to the Board immediately on

requisition. If the view of the petitioner be accepted, then the whole purpose of requisition of the property and immediate taking of possession on

the ground that the necessity is emergent in nature will be frustrated. Therefore, this contention is not also acceptable.

15. The fourth contention of the petitioner is that the land of the petitioner being only two bighas in area can be left out for construction of the sub

station and the purpose of the requisition will not be frustrated if the said land is spared.

16. Mr. Arun Prokash Chatterjee on behalf of the petitioner submits that even if the two bighas of land which is in the middle of the whole land

requisitioned with its frontage on the Taki Road be spared, there shall still remain enough frontage for the State Electricity Board for construction of

the sub station and their construction work will not be in any way hampered nor will the sub-station have any difficulty in running without the said

two bighas of land.

17. The respondent No. 4 in this affidavit in opposition has refuted the contention of the petitioner that the project will not be hampered if two

bighas of land are spared. It is contended that for construction of the sub-station the frontage of the road is vital for the project and if the land of

the petitioner be left out that will create a wedge and divide the sub station in two parts so far as the frontage is concerned and will not be beneficial

for the construction of the 132 K. V. Sub station of the State Electricity Board.

18. In my view, regard being had to the position of the land of the petitioner the leaving out of the said land will not be beneficial for the

construction of the sub station and the land of the petitioner cannot be spared without hampering the work of the 132 KV Sub Station of the State

Electricity Board.

19. The fifth contention of the petitioner is that the order of requisition is bad in law as it has been passed violating principle of promissory estoppel.

The petitioner has urged that the advertisement annexure "A" to affidavit in reply of the petitioner indicates that the State Govt, invited application

for license for setting up a flour mill within February 7, 1986 and indicated that the same would be forwarded to the Central Government. The

petitioner submitted the application in the proper form sometime in February. 1986. He thereafter, purchased the land on 14th March, 1986. The

State Govt. on making proper enquiry recommended the case of the petitioner to the Central Govt. on 21st August, 1986. The Petitioner also took

further steps to purchase machines and obtained sanction of the bank loan. Then suddenly he received the order of requisition, dated 21.8.86 on

6.9.86. It is also the further case of the petitioner that after the above requisition order has been made the Central Govt. has given the registration

number to its application, and the State Govt, has also made enquiry about the progress of the project, that the State Govt. acknowledged the

establishment of the flour mill on the self same land requisitioned by same State Government and the Central Government has allotted the

registration number for setting up the flour mill in that land and the petitioner in view of the above promise of the State Government has altered his

position and spent nearly two lakhs of rupees and the State Govt. is bound by promissory estoppel not to requisition and acquire the land of the

petitioner and order of requisition is liable to be set aside and cancelled. It is further contended that since the State Govt has made specific

recommendations, in favour of the petitioner for establishment of the flour mill in respect of the said land and since the State Government was fully

aware that on the basis of the promise the petitioner would also alter his position, the principle of promissory estoppel is very much attracted to the

present case and that the State Govt, was acting as agent of the Central Govt. with regard to the establishment of flour mill and/or grant of licence

and they cannot avoid the consequence of the promise or of their role on the basis of which the petitioner altered his position to his detriment and

the State Government is liable to keep its promise and is estopped from denying it. In support, the petitioner relies on the two Supreme Court

decisions in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and Express Newspapers Pvt. Ltd. and Others Vs.

Union of India (UOI) and Others,). On behalf of the representation or conduct on the side of the State Govt. amounting to any promise to grant

licence and to any promise not to requisition the particular land, that there is no alternation of position on the basis of the referred land, that there is

no alteration of position on the basis of referred promise, that assuming thought not admitting that there is promise, there is no estoppel because

there can be no estoppel against exercise of statutory function or duty, that, promise, if any, by the State Government is unauthorised because it is

the Central Government who is alone competent to grant license to set up a flour mill and the purported promise even if granted cannot but be

unauthorised, that the power of requisition flows from the power of Emient Domain which is undoubtedly a part of executive power of the State

under article 162 of the constitution and there can be no estoppel against the exercise of -sovereign power or executive power of the State and

that there cannot be any estoppel when special considerations apply. The decision of the Supreme Court reported in Jit Ram Shiv Kumar and

Others Vs. State of Haryana and Others, has been relied upon in support of the above submissions. It is, next, contended that there is nothing to

show that any promise has been made by representation or conduct not to requisition the particular land, that there was no assumption or conduct

not to requisition the particular land, that there was no assumption that the particular land would not be taken by requisition in the public interest

that there is nothing to indicate that the petitioner would not procure any other suitable land in the area and can purchase any other suitable land in

the area with the compensation money awarded for the land in question if he actually obtains licence from the Central Govt.

20. In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, P.N. Bhagwati, J. as His Lordship then was, has in clear

terms observed that the true principle of promissory estoppel seems to be that where any party has by his words or conduct made to other a clear

and unequivocal promise which is intended or effects a legal relationship to arise in future knowing or intending that it would be acted upon by the

other party to whom the promise is made and it is in fact acted upon by the other party the promise would be binding on the party making it and he

would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place

between the parties and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The Learned

Judge has also observed that the doctrine of promissory estoppel has also been applied against the Govt. So far as the applicability of the principle

of promissory estoppel to Government is concerned Mr. Sadhan Gupta appearing for respondent No. 4 concedes that the same is applicable

against Govt. no doubt. But he submits that in this case no promise was made by the State Govt. for an estoppel to arise against it. It is also

contended that even if any promise be assumed to have been made by the State Govt. it had no authority to give that promise and more so no

promise was given that the land of the petitioner purchased for setting up a flour mill would not be acquired for a public purpose.

21. Mr. Arun Prakash Chatterjee has urged that the State Government received the application for Central Govt. and forwarded it to Central

Govt. with recommendation and held out the promise that it recommends setting up a flour mill on the land in question and therefore the same State

Govt. cannot requisition the self same land for a public purpose for construction of a sub-station for State Electricity Board, West Bengal.

22. On perusal of the application failed by the petition for granting a licence for setting up a flour mill in Barasat Area, I find that in that application

no mention was made as regards the plot where the flour mill would be set up by the petitioner. As a matter of fact the petitioner purchased the plot

in question on 14.3.86 i.e. subsequent to the date on which he submitted the application to the office of the State Government, The application

annexure "B" is addressed to the Deputy Secretary Govt. of India and licencing authority, Ministry of Food and Supplies. Krishi Bhawan New

Delhi. The letter dated 21.8.86 of Deputy Director Inspection and quality control Directorate of Inspection and Quality Control, West Bengal

11A, Mirza Gaalib Street, Calcutta-87, Annexure "1" shows that the deputy Director intimates the petitioner that the application of the petitioner

along with such other applications have been forwarded to the Deputy Secretary to the Govt. of India, Department of Food, Ministry of Food and

Civil Supplies. Krishi Bhawan, New Delhi. That letter does not indicate that the application of the petitioner was forwarded with any

recommendation or not. It shows that the application of petitioner and all such applications have been forwarded. It is not disputed what granting

of license for setting up a flour mill in any part of India is the exclusive Jurisdiction of the Central Govt. and the State Govt. has no part to play in

that respect. Only the applications have to be submitted in the office of the State Govt. simply to be forwarded and the letter annexure "1" shows

that the authority of the State Govt. only performed that part. As the State Govt. had no part to play in the matter of industrial license for starting a

flour mill by the petitioner the State Govt. does not become the agent of the Central Govt. in this respect. So by forwarding the petitioner's

application the State Govt. did not by its conduct hold out any promise to the petitioner that his application for licence would be granted. The

granting and refusing the license is a matter for Central Govt. So the State Govt. cannot make any promise in the matter and even if it made any

promise that would be illegal and unauthorized. The petitioner filed the application himself. It was addressed to the Central Govt. So he knew from the

beginning that the State Govt. by forwarding the application did not hold out any promise to him. So the State Govt. cannot be said to have held

out any promise to the petitioner that his application for licence shall be allowed or that he would be entitled to set up the flour mill on the plot which

he purchased subsequent to the date on which he filed the application for license, Annexure "B". Mr. Sadhan Gupta, has drawn my attention to the

decision of Supreme Court in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, and has submitted in that decision the Supreme

Court has made it clear that the principle of promissory estoppel was not available against the Govt. in exercise of legislative sovereign and

executive power, that the requisition of land of the petitioner has been made by the State Govt. in the exercise of its sovereign power of Eminent

Domain i.e. to acquire the property of the subject for a public purpose on payment of compensation which is an executive power of the State

Govt. under Article 161 of the Constitution and in order to acquire land under that power by the State Govt. it cannot be bound by any promissory

estoppel. It is also urged by Mr. Gupta that requisition and acquisition of land for construction of a sub-station of the State Electricity Board, to

augment power in the area is a special consideration and the State cannot be bound by any promissory estoppel in exercising" that power. Mr.

Arun Prokash Chatterjee submits that he does not agree that the State is not bound by principle of promissory estoppel in exercise of his

executive function. He refers to the decision of Supreme Court in Express Newspaper Private Ltd. v. Union of India, AIR 1986 SC 892 and

submitted that. A.P. Sen, J. of the Supreme Court in that decision has doubted the validity of the proposition laid down by Kailasham J. in AIR

1980 SC 1285 and has seen the apparent conflict in between the judgment of P.N. Bhagwati, J. in Motilal Padampat Sugar Mills Co. Ltd. Vs.

State of Uttar Pradesh and Others, and Kailasham, J. in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, . It is therefore,

submitted the principle of promissory estoppel would be applicable to the State Govt even if the State Govt. exercises its power u/s 3 of Act II of

1948 to Requisition of land of the petitioner for a public purpose. On perusing the judgment of A.P. Sen, J. in AIR 1986 SC 892 I find that the

learned Judge noted the apparent conflict between the above two decisions but did not express any opinion on the validity of the decision of

Kailasham, J. in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, as it was not necessary for him to do for the purpose of the

decision of the case (vide para 182 page 948). There-can be no doubt that when the State Govt. requisitions or acquires property for a public

purpose it does it in exercise of its power of Eminent Domain, the power to acquire land of the citizen for a public purpose on payment of

compensation. The West Bengal Act II of 1948 is one such Act by which such power is exercised. Another such Act is the Land Acquisition Act.

I am of the view if the State can be held bound by principle of promissory estoppel to exercise its power of Eminent Domain, then important State

functions cannot be performed. As the requisition of land for establishment of a sub-station in Barasat area by the State Electricity. Board is an act

of the State Govt. to argument the supply of electricity in Barasat area which has now become a district headquarters special consideration also

arises in this case to uphold the State Act. Moreover the petitioner has not been able to satisfy that the State Govt. by its conduct has held but

promise to the petitioner that the land which he has purchased for setting up the flour mill would not be acquired for a public purpose. Moreover it

is not known if the Central Govt. would grant the petitioner the industrial license to start a flour mill. The petitioner has purchased the land so that

his application for licence can be favourably considered by the Central Govt. and not being emboldened by any promise. There is nothing to

indicate that he would not get any other suitable land in the area for setting up the flour mill if he actually gets the licence. In that view of the matter I

am unable to hold that "the State Govt, is estopped by promissory estoppel not to acquire for a public purpose the petitioner"s land which he has

purchased for setting up a flour mill if he obtained the industrial license from the Central Government.

In the result all the contentions raised by the petitioner fails. The writ petition be dismissed. All interim orders be vacated. In the circumstances I

direct the parties to bear the respective costs themselves.