(1974) 04 CAL CK 0016

Calcutta High Court

Case No: Civil Rule No. 900 (W) of 1970

Sanat Kumar Gupta		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: April 11, 1974

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: 78 CWN 706

Hon'ble Judges: S.K. Mukherjea, J

Bench: Single Bench

Advocate: A.M. Mitra, P.N. Chatterjee and Rina Gupta, for the Appellant;G.P. Kar, R.N. Das, S.K. Biswas and Subimal Kumar Mitra, for the Respondent

Judgement

S.K. Mukherjea, J.

This. Rule is directed against a notice by which certain properties requisitioned under Sub-Rule (i) of Rule 75A of the Defence of India Rules and section 3 of the Requisitioned Land (continuance of powers) Act, 1947 were acquired for the purpose of the Central Government u/s 5 of the requisitioned Land (continuance of powers) Ordinance, 1946 (Ordinance XIX of 1946). The Rule is also directed against an award by an arbitrator appointed in exercise of powers conferred by Clauce (b) of sub-section (i) of section 8 of the Requisitioning and Acquisition of Immovable property Act, 1952 read with section 24 of the said Act and section 6 of the Requisitioned Land (continuance of powers) Act, 1947. It appear that on March 14, 1942 C.S. plot no. 133 and a portion of the contiguous C.S. plot no. 123 belonging to the petitioner, were requisitioned by the Union of India through the Land Acquisition Collector, 24-pargan-as by a notice issued under the provisions of Rule 75(A), 76 and 78 of Defence of India Rules.

2. On the 25th September, 1946 an Ordinance, namely, Requisitioned Land (Continuance of powers) Ordinance 1946 being Ordinance No. XIX of 1946 was

promulgated by the Governor General under which all lands requisitioned under the Defence of India Act 1939 were to continue to be requisitioned until the expiry of the Ordinance notwithstanding the expiration of the Defence of India Act and the Rules made thereunder. On the 24th March, 1947 the Requisitioned Land (Continuance of power) Act came into force. By that Act, Ordinance No. XIX of 1946 stood repealed. It was provided, however, by section 3 of the said Act that notwithstanding the expiration of the Defence of India Act, 1939 and the Rules made thereunder and the repeal of the Ordinance all requisition lands were to continue to be subject to requisition until the expiry of the Act and the appropriate Government might use or deal with any requisitioned land in such a manner as might appear to it be expedient. Section 10 of the said Act provided as follows :

The Requisitioned Land (Continuance of powers) Ordinance, 1946, is hereby repealed, and anything done in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done in exercise of powers conferred by or under this Act, as if this Act had commenced on the 1st day of October, 1946.

3. It appears that by a notification published on March 24, 1947 or on March 27, 1947, in the official gazette the said lands were acquired by the Union of India by serving a notice u/s 5 of the Requisitioned Land (Continuance of Powers) Ordinance, 1946. Section 5 of the said Ordinance provided as follows :

(i) Subject to the provisions sub-sec. (3), the appropriate Govt. may, at any time when any requisitioned land continues to be subject to requisition u/s 3, acquire such land by publishing in the official Gazette a notice to the effect that such Government has decided to acquire such land in pursuance of this section.

(2) When a notice as aforesaid is published in the official Gazette, the requisitioned land shall on and from the beginning of the day on which the notice is so published, vest absolutely in the appropriate Government free from all encumbranees and the period of requisition of such land shall end.

(3) No requisitioned land shall be acquired under this section except in the following circumstances, namely : --

(a) Where any works have during the period of requisition been constructed on, in or over the land wholly or partly at the expense of Government and the appropriate Government decides that the value of, or the right to use, such works should be preserved or secured for the purposes of Government, or

(b) where the cost of restoring the land to its condition at the time of its requisition would, in the determination, of the appropriate Government, be excessive having regard to the value of the land at that time, or

(c) where the appropriate Government decides that such acquisition is necessary for any purpose connected with the maintenance of the defence services or with maintenance of supplies and services essential to the life of the community.

(4) Any decision or determination of the appropriate Government under sub-section (3) shall be final, and shall not be called in question in any Court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvements of every description

4. Thereafter, the claimant having refused to accept the compensation money computed by the Collector, the question of assessment of compensation was referred to arbitration of Mr. N.L. Shome by an order dated July 20, 1959. On February 3, 1960, the Arbitrator made his award enhancing the amount of compensation. On March 16, 1960 the Union of India, the respondent before me, filed an appeal in this Court being First Appeal No. 268 of 1960 for a declaration that the Arbitrator''s award was void and also made an application under Article 227 of the Constitution for setting aside the said award. On the 18th September, 1970 the appeal as well as the Rule was dismissed and discharged. On February 13, 1970, the application in which the present Rule was issued under Article 226 of the Constitution was made. While the application was pending, the petitioner withdrew part of the compensation money payable under the award.

5. Objections have been taken to the notice by which the lands have been acquired under the notification published on March 24, 1947 or March 27, 1947. It appears from the petition that the notification was published in the Official Gazette on March 24, 1947. The Arbitrator in his award has stated that the notification was published on March 27, 1947. If the publication was on March 24, 1947, the notification must have been issued prior to that date, that is to say, at a point of time when the Ordinance was in force and therefore the notification by which the lands were acquired was validly made under the Ordinance. No copy of the notification could be produced at the hearing and it is therefore not possible to say with certainty on which date the notification was in fact issued. The petitioner''s case is that the notification was issued on March 24. In my opinion, nothing turns on which date the notification was issued. It was submitted by the learned advocate appearing on behalf of the petitioner that no notification u/s 5 of the Ordinance for acquisition of the petitioner''s lands could have been validly issued on March 24 because by Act No. XVII of 1947, the said Ordinance was repealed on that date.

6. Assuming that the notification was published on March 27, 1947 and was issued on March 24, 1947 the question will arise whether such a notification was valid having regard to the fact that it was made at a time when the Ordinance had ceased to be in force.

7. Learned Advocate, appearing on behalf of the petitioner, claimed that the notice was issued on the 24th March, 1947 and published in the official gazette on the 27th March, 1947. Act No. XVII of 1947 received the assent of the President on the 24th March 1947. As the said Act is not expressed to come into operation on a particular date, u/s 5 of the General Clauses Act it must be regarded as having come into

operation on the date on which it received the assent, that is to say, on March 24, 1947. Under sub-section (3) of section 3 of the General Clauses Act, the Act must be construed to have come into operation immediately on the expiration of the day preceding its commencement, that is to say, on the zero hour when March 23 expired and March 24 began. The moment the Act came into operation, the repeal of the Ordinance took effect. Assuming that the Act came to be in operation by a legal fiction at the zero hour and the notification under the Ordinance was issued on March 24, the notification will have been made within a few hours after the Act came into operation and the Ordinance ceased to have any force. In the light of the maxim that the fraction of a day is to be ignored, the notification, in my opinion, will have been validly made under the Ordinance. Assuming that the rid of such a principle is not available, even then the notification will remain valid even if it was made u/s 5 of the Ordinance and not u/s 5 of the Act under which provision, the notification ought to have been made. The fact remains that on the 24th March, 1947 the Collector had the power to issue and on the 27th March, to publish, the notification in question. He could have certainly done so u/s 5 of the Act No. XVII of 1947. The fact that he did so under the Ordinance and not under the Act will not, in my judgment, render the notification invalid. In this connection reference may be made to the decision of the Supreme Court in the case of (4) J.K. Steel Ltd. Vs. Union of India (UOI), , where at paragraph 45 of the Report Sikri. J. observed that if the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question. His Lordship described the principle as a well-settled proposition of law and referred to the earlier decisions of the Court in (2) P. Balakotaiah Vs. The Union of India (UOI) and Others, , and (1) Afzal Ullah Vs. The State of Uttar Pradesh, . In the case reported in P. Balakotaiah Vs. The Union of India (UOI) and Others, it was said in paragraph 10 of the report that no exception can be taken to the proposition that when an authority passes an order which is within its competence, the order cannot fail merely because it is purported to be made under a wrong provision, if it can be shown to be within its powers under any other rule. The validity of an order should be judged on a consideration of its substance and not its form.
In the view I have taken I must held that the notification is valid.

8. It was then contended that none of the circumstances specified in Clauses (a) or (b) of sub-section (3) of section 5 exists in the facts and circumstances of this case to enable the Collector to acquire the petitioner''s requisitioned lands u/s 5 of the relevant Ordinance or of the relevant Act. In the notification itself it is recited that during the period of requisition, works have been constructed on/in/over the said land wholly at the expense of the Central Government and the Central Government has decided that the value of the right to use such works should be preserved, or secured for the purpose of the Central Government. It is also stated that the cost of restoring the said land to its original condition at the time of requisition would in the

opinion of the Central Government be excessive, having regard to the value of the said land at that time. These are precisely the circumstances specified in Clauses (a) and (b) of sub-section (3) the existence of which enables the appropriate Government to acquire requisitioned lands under sub-section (i) of section 5 of the Act XVII of 1947 and the cognate provisions of the Ordinance.

9. Sub-section (4) of section 3 provides that any decision or determination of the appropriate Government under Sub-section (3) shall be final and shall not be called in question in any Court.

10. In the absence of malafides, the existence of which has to be established by the petitioner by evidence, or in the absence of defect of jurisdiction, the determination of the appropriate Goverment is final. The petitioner has of course by his affidavit denied the existence of any of these circumstances. The question, however, is a question of disputed fact which has to be decided on evidence. In these proceedings these disputed questions of fact ought not to be permitted to be raised. Apart from that principle, it appears that the petitioner himself in paragraph 10 of the affidavit-in-reply has stated that the land is being used for cultivation of paddy. It is therefore quite clear that the land will have to be restored to its original condition and the cost of restoration will be considerable. Whether it will be excessive having regard to the value of the land at the relevant time is again a debatable question which cannot be decided in this application assuming that such a question can be raised at all having regard to sub-section (4) of section 5 of the Act. I am, therefore, of opinion that the petitioner''s contention that the acquisition is bad because of non-complience with the provisions of sub-section (3) is not tenable.

On behalf of the respondents it was contended that the application is barred by unconscionable delay. The notification by which the land was acquired was published on the 27th March, 1947. The Rule was obtained on the 13th February, 1970. that is to say, after nearly a quarter of a century. In my opinion, no satisfactory explanation of the delay has been given. There could be no reason for the petitioner waiting so long to allow the award to be made before moving this Court. Learned Counsel on behalf of the petitioner relied on the decision of the Supreme Court in (3) Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, . At paragraph 9 of the report Bhagwati, J. said

It must be remembered that the rule which says that the Court may not inquire into belated and state claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts.

11. In my judgment, these observations are of no assistance to the petitioner in the facts and circumstances of this case. The delay is so unconscionable that in my judgment he Court, in exercise of its discretion, ought not to permit the petitioner to

challenge the validity of the notification in a proceeding under Article 226 of the Constitution. A further point was taken by Mr. G.P. Kar, learned Counsel appearing on behalf of the respondent, namely, that the petitioner having accepted payment of a part of compensation payable under the award is precluded from challenging the award under which the compensation has been made. It may be pointed out that the part of the compensation money was withdrawn on September 8, 1971 during the pendency of the Rule. It is hardly necessary for me to go into this particular argument of Mr. Kar, having regard to my conclusions on other points. No other point was urged on behalf of the petitioner.

In the view I have taken, the Rule is discharged but there will be no order for costs.