

Rajendra Kumar Gupta and anr. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-02-1984

Reported in : AIR1984All262

Judge : A.N. Varma and ;A.S. Srivastava, JJ.

Acts : Defence and Internal Security of India Act, 1971 - Sections 23, 30 and 30(1)

Appeal No. : Civil Misc. Writ Petn. No. 2538 of 1977

Appellant : Rajendra Kumar Gupta and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : A.P. Singh, Standing Counsel

Advocate for Pet/Ap. : V.B. Upadhya and ;V.B. Singh, Advs.

Disposition : Petition dismissed

Judgement :

A.S. Srivastava, J.

1. The District Magistrate, Kanpur, exercising powers under Section 23 of the Defence and Internal Security of India Act, 1971 (hereinafter referred to as the Act) conferred on him by the U. P. Notification No. 88 (1)/4-I (2)/76 dated 3-6-1976 requisitioned 777 Sq. vds and 7 1/3 Sq. ft. of land comprising of plot Nos. 36 and

36-A situate on the Mall, Kanpur on 29-10-1976 for enabling the State Handloom and Powerloom Finance and Development Corporation Ltd., Uttar Pradesh, Kanpur (hereinafter referred to as the U. P. State Handloom Corporation) for constructing shops and show-rooms over it for its handloom products as it was necessary for maintaining supplies of these products to the business community and thereby rendering services essential to weaving community and protecting them from exploitation by the middle traders. The U.P. State Handloom Corporation, after this requisition, took possession of this land and incurred expenses and constructed show rooms over it. These plots are in fact 'Nazul' plots. The State Government had leased them to Late Sri Jeewan Nath Mehrotra. His adopted son Harihar Nath Mehrotra was the lessee on the date of requisition.

2. The petitioners claim to be in possession of this land as transferees from Harihar Nath Mehrotra. By this writ petition filed on 21-7-1977 they have challenged this requisition of the land by the order dated 29-10-1976 by the District Magistrate, Kanpur. The delay in filing this writ petition has been explained by the petitioner by allegations made in the writ petition that their representation dated 11-11-1976 made to the District Magistrate and to the Chief Minister and another representation dated 15-12-1976 made to the Chief Minister are still pending.

3. It is contended on behalf of the petitioners that the requisition of the land is not justified inasmuch as the purpose for which it has been requisitioned is not a public purpose. The shops and show-rooms established on this land are in no way necessary for maintaining supplies and services essential to the life of any community.

4. Besides maintaining their stand that the land was requisitioned for public purpose, the respondents have further alleged that the petitioners have no right over this land and maintain this petition.

5. Having considered the above contentions of the parties, we do not agree that the purpose of establishing of shops and show-rooms on the requisitioned land by the U. P. State Handloom Corporation has no nexus to the maintenance of supplies and services essential to the life of the community. These shops and show-rooms are intended to be used by the State obviously for extending help to a

particular class of small and cottage industry of U. P. involving poor weavers by protecting them from exploitation by middle traders and by marketing their products directly to the public through these shops and show-rooms. Therefore, it cannot be said that the shops and show-rooms established on this land have no nexus to the maintenance of supplies and services essential to the life of weaving community.

6. The learned counsel for the petitioners, however, raised another question during arguments. According to him the shops and show-rooms established on this land are of permanent nature. The purpose for which these constructions are made cannot, therefore, be of a temporary nature. Section 23 of the Act empowers the District Magistrate to requisition land only for purposes which are of a temporary nature. If the purpose is of a permanent nature, the land, instead of being requisitioned under the Act, has to be acquired. In his support he relied upon the decision in *Speedcrafts Pvt. Ltd. v. District Magistrate* (AIR 1976 Pat 129). No doubt in this case the Patna High Court has held that where the real purport for the exercise of power is to take possession of property, not for a temporary or fixed period, but for a use which is of a permanent nature, Section 23 is not applicable. The Patna High Court has come to such a conclusion on a consideration of Sections 24, 29 and 30 of the Act. The Patna High Court has reasoned thus. Section 24 envisages payment of compensation essentially in the form of rent. Section 29 relates to the manner and method of release from requisition. Section 30 deals with the acquisition of requisitioned property under two circumstances mentioned therein. Since Section 30 does not contemplate acquisition of requisitioned property except under the two circumstances mentioned in the section, it has been observed in this case that the absence of power to acquire property (subject to the exception indicated) is a strong ground for holding that it is only requirement of a temporary character which is within the purview of Section 23.

7. With respect, we are unable to share this view. In order to appreciate this controversy, it will be necessary to refer to Section 23 (1), 24, 29 (1) and 30 (1) of the Act, the relevant portions of which are extracted as under:--

'23. Requisitioning of immovable property.--(1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India, Civil defence (internal Security), public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property.....'

'24. Payment of compensation.--Whenever in pursuance of Section 23 the Central Government or the State Government, as the case may be, requisitions any immovable property, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration.....

(i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality.....'

'29. Release from requisition.--(1) Where any property requisitioned under Section 23 is to be released from such requisition, the Government by which or under whose authority the property was requisitioned or any person generally or specially authorised by it in this behalf may, after such inquiry, if any, as it or he may in any case, consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far practicable, be given to the person who appears to the Government or as the case may be, the person authorised as aforesaid, to be entitled to the possession of the property at the time such order is made.....'

'30. Acquisition of requisitioned property.--(1) Any immovable property which has been requisitioned under Section 23 may, in the manner hereinafter provided, be acquired in the circumstances and by the Government specified below, namely:--

(a) Where any works have, during the period of requisition, been constructed on, in or over the property wholly or partly at the expense of any Government, the property may be acquired by that Government if it decides that the value of or the right to use such works shall, by means of the acquisition of the property, be preserved or secured for the purposes of any Government, or

(b) Where the cost of any Government or restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at that time, the property may be acquired by that Government.... .."

8. It is urged that Section 23 speaks of 'requisition' and not 'acquisition'. This itself shows that the requisition can be for a purpose of temporary nature only. This intention is, it is urged, further clear in the provisions of Section 24 which envisages payment of compensation, not in a lump sum, but in the shape of 'rent' indicating that right of owners in the land requisitioned is not affected by the requisition. Then Sections 29 (1) and 30 (1) envisage restoration of the land to the owners after completion of the purpose of the requisition. Sections 29 (1) and 30 (1) further provide for acquisition of the land also in some circumstances further indicating that the requisition under Section 23 was meant only to be temporary. Therefore, if the purpose for which a requisition is made is of a permanent nature, the District Magistrate has no jurisdiction to resort to Section 23 of the Act and requisition a land for such purpose. This exactly is the reason on which the decision of the Patna High Court in *M/s. Speedcrafts Pvt. Ltd.* (AIR 1976 Patna 129) (*supra*) rests. We will deal with this controversy after setting out other submissions of the parties:

9. It is contended that the purpose for which the land has been requisitioned in this case i.e. for opening shops and show-rooms for the use of U. P. State Handloom Corporation, as contended by the petitioners, is not for a limited period but permanently. The shops and show-rooms which are intended to be constructed by the State over the land after incurring expenses, which must be considerable. Such expenses are not generally incurred when the intention is to restore the land to the owners because the restoration of the land to the condition existing at the time of its requisition involves further huge unnecessary, expenses. All these facts clearly indicate that the purpose for which this land is sought to be requisitioned was not of a temporary character. It is argued that the District Magistrate had, therefore, no jurisdiction to requisition this land under Section 23 of the Act. The impugned order is, therefore, liable to be quashed.

10. It has, however, been contended on behalf of the respondents that the Requisitioning Authority has every jurisdiction to resort to Section 23 of the Act to requisition a land for purposes mentioned therein, even if it may not be of a temporary nature provided at the time of such requisition the Requisitioning Authority only desires to deprive the owner of the right of possession or enjoyment for the time being and not to deprive him of his title and ownership. If the Requisitioning Authority subsequently feels the necessity of the land permanently (on account of not getting any other more suitable land or for any other reasons), Sub-section (b) of Section 30 gives him power to acquire the land permanently.

11. After careful examination of the two contentions, we do not agree with the contention of the petitioners that the District Magistrate had no jurisdiction to resort to Section 23 of the Act for requisitioning land in question for the purpose hereinbefore mentioned. The language of Section 23 is clear and unambiguous, and we see no indication in Sections 24, 29 and 30 to restrict its application only to temporary purpose or temporary structures. What is to be seen is whether the purpose for requisition is one which falls within, the ambit of Section 23.

12. Assuming, therefore, that the setting up of constructions of permanent character on a requisitioned land determines the nature of the purpose of the requisition also, Section 23 does not take away the jurisdiction of the Requisitioning Authority to requisition it under Section 23 of the Act. This section rather confers jurisdiction on the Requisitioning Authority to proceed under this section to requisition land even for such a purpose if he for some reason as pointed above only desires to deprive an owner of his right of possession or enjoyment of the land for the time being, the title being unaffected. One such reason may be the anxiety of the Requisitioning Authority to requisition the land only for experimental purposes and for experimental period. In case of such a requisition, compensation will have to be paid in the manner provided under Section 24 of the Act as the title of the owner over the land, despite requisition, remains intact.

13. We do not agree with the Patna High Court, with respect, that Sections 29 (1) and 30 (1) of the Act have the effect of taking out the jurisdiction of the

Requisitioning Authority of requisitioning a land for such a purpose under Section. 23 merely because Section 29 provides for restoration of the property to the owner. Instead they, as hereinafter discussed, fulfill the objects of Section 23. As already seen above, the object of Section 23 is to requisition the property for purposes enumerated in the section itself, whether temporary or otherwise when the Requisitioning Authority does not, for any reason, find it necessary to acquire it. The provision for acquisition of such property is an additional power to be exercised in the circumstances specified in Section 30 (1) when the release of the property is not found expedient. Section 29 and 30 provide:-- .

(a) release of the property requisitioned and the delivery of its possession to the person entitled to it,

(b) at the time of delivery of such possession restore the property to the condition to which it was on the date on which it was requisitioned OR

(a) to acquire it permanently if:--

(i) the constructions made over the requisitioned property during the period of requisition are so valuable and useful that they should be preserved and secured further for the Government of

(ii) where the cost of restoration of the property to its condition at the time of its requisition is, in determination of the Government excessive.

14. Evidently, Section 29 merely empowers the Requisitioning Authority to release the property requisitioned and deliver its possession to the person entitled thereto as well as to restore the property to its original condition. The purpose of Section 29 is nothing else.

15. Now, when the property has merely been requisitioned, a provision contained in Section 29 for its release after the purpose for which the property was requisitioned has been accomplished cannot mean that resort to Section 23 can be had only when the purpose of requisition is temporary.

16. For the same reason, a provision contained in Section 30 vesting discretion or power in the Requisitioning Authority not to release that property in the circumstances mentioned therein and acquire the same cannot possibly lead to the conclusion that under Section 23 property can be requisitioned only for a temporary purpose. In the circumstances contemplated by this section, the Authority may decide not to release the property but to acquire it instead. On account of such a provision it cannot possibly be said that the power conferred under Section 23 is really a substitute for the power of acquisition and, therefore, cannot be invoked for taking possession of a property for use of permanent nature. In fact the purposes for which this section can be utilised are enumerated in the section itself. They may be temporary or otherwise.

17. It is in this view of the matter that we do not subscribe to the view expressed in *M/s. Speedcrafts Private Limited (AIR 1976 Patna 129)* (supra). We do not agree that the absence of power under the Act to acquire requisitioned property except under the circumstances enumerated in Section 30 indicates that under Section 23 requisition can be made only for a temporary purpose. If the State desires to acquire any property for a public purpose, it can do so under other enactments e.g., Land Acquisition Act, in spite of Section 30 of the Act.

18. On the other hand, the view taken by us finds support from some decisions of this Court as well as that of the Supreme Court taken in cases involving U.P. Rural Development (Requisitioning of Land) Act, 1948 and Bombay Land Acquisition Act. These cases are *State of U.P. v. Sri Thakurji (1975 All LJ 390)*, *Ram Prasad Singh v. State of U.P. (AIR 1980 All 250 FB)* and *The Collector, Akola v. Ram Chandra (AIR 1968 SC 244)*. While requisition in the first two cases was done under Section 3 of the U.P. Rural Development (Requisitioning of Land) Act, it was done under Section 5 of the Bombay Land Requisition Act in the last case. In the first case, the purpose of requisition was the construction of a Sahayak Bund Road for maintaining a link between Ballia--Bairiya Bund Road. In the second case, the purpose of requisition was for the construction of a drain for flowing flood water. In the last case, the purpose of requisition was for providing a village site for the victims of food. The purposes of requisition in all these three cases were not of temporary nature. The U.P. Rural Development (Requisitioning of Land) Act also

contain a provision in Section 10 for the release of the property. Section 9 of Bombay Land Requisition Act also provide for the release of the property requisitioned. In these facts, in all these cases it has been held that requisition under these Acts does not contemplate requisition for a purpose of temporary nature only. The requisition contemplated in these Acts is merely opposed to acquisition of the property irrespective of the nature of the purpose of requisition provided the purpose is one of the purposes provided in the Act. In the first case State of U.P. v. Sri Thakurji (supra) it has been held that the concept of requisitioning property under that Act is not dependent upon the purpose or object to achieve for which the property is requisitioned being temporary. In the second case Ram Prasad Singh v. State of U.P. (supra), the Full Bench of this Court observed :

'The Act does not impose any limitation on the power of the Requisitioning Authority by making any express or implied provision that the purpose for which the property may be requisitioned must be of a temporary character. In our opinion the view taken by the Division Bench in State v. Sri Thakurji (supra) lays down correct law'.

In the third case The Collector, Akola v. Ram Chandra (AIR 1968 SC 244 at p. 246) (supra). The Supreme Court observed:--

'Except for the limitation that the purpose must be a public purpose the sub-section also imposes no restriction as to the manner in which the land which is requisitioned is to be used. It may be used for a temporary purpose or for a purpose which is not temporary in nature. It is for the requisitioning authority to judge and not for a Court of law to decide how best the land is to be used. If the requisitioning authority uses the land for a purpose which is not temporary such as settling a new village site and for construction of houses it is for the Government and those who put up such structures to contemplate the possibility of having to return in future the land to the owner in its original state. But that does not mean that the power is restricted to a temporary purpose only.

19. The ratio of these cases is fully applicable even if the enactments are different. Its basic reasoning applies with full force to the present controversy as well.

20. In the result, we do not find that the impugned order of requisition dated 29-10-1976 suffers from any illegality.

21. The writ petition, therefore, fails. It is accordingly dismissed. There will be no order as to costs. Interim order, if any, shall stand vacated.

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