

Kripali and Others Vs. State of U. P. and Others

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Court : Allahabad

Decided On : Apr-26-1999

Reported in : 1999(3)AWC2001

Judge : D.S. Sinha and ;Lakshmi Bihari, JJ.

Acts : Uttar Pradesh Acquisition of Property (Flood Relief) Act, 1948 - Sections 3, 7 and 15; Uttar Pradesh Acquisition of Property (Flood Relief) Rules, 1949 - Rules 4 and 5

Appeal No. : C.M.W.P. No. 15494 of 1991

Appellant : Kripali and Others

Respondent : State of U. P. and Others

Advocate for Def. : Madhu Tandon, Adv.

Advocate for Pet/Ap. : V.B.L. Srivastava and;Prakash Chandra Srivastava, Advs.

Judgement :

D.S. Sinha, J.

1. Heard SriPrakash Chandra Srivastava, holding brief of Sri V. B. L. Srivastava. learned counsel appearing for the petitioners and Dr. Mahdu Tandon, the learned Brief Holder of the State of U, P., representing the respondents.

2. Notices dated 19th January, 1991, under the provisions of the U. P. Acquisition of Property (Flood Relief) Act, 1948 (hereinafter called the Act), are under challenge in this petition under Article 226 of the Constitution of India.

3. The learned counsel of the petitioners contends that the Impugned notices are invalid inasmuch as they are composite notices under Sections 3 and 7 of the Act, which is not permissible in law.

4. Refuting the contention of the learned counsel of the petitioners, Dr. Madhu Tandon, the learned Brief Holder of the State of U. P., appearing for the respondents, submits that the impugned notices are not composite notices for requisition and acquisition. According to her, indeed, the impugned notices are notices only for requisition.

5. The State Legislature has enacted the Act to empower the State Government to requisition and acquire the land for building sites and building materials for relief to the sufferers in the flood affected areas of the State.

6. Section 3 of the Act provides that if in the opinion of the Requisitioning Authority, it is necessary or expedient to do so for a public purpose, it may, by order, requisition any land or building material by serving on the owner and the person in possession thereof and, when the owner or person in possession thereof is not readily traceable, or the ownership or the right to possession is in dispute or owing to the number of persons entitled to the ownership or to the possession thereof, it is not reasonably convenient to serve every one of them separately, by publishing in such manner as may be specified in that behalf, a notice stating that the Requisitioning Authority has decided to such land or building material In pursuance of this section, etc. etc.

7. Under Section 7 of the Act, where any land or building material has been requisitioned under Section 3, the Requisitioning Authority may, at any time, acquire it by publishing, in such manner as the said Authority may specify, a notice to the effect that it has decided to acquire in pursuance of the section. Upon publication of the notice, the requisitioned land or building material shall from the beginning of the day on which the notice is so published, vest absolutely in the

Government free from all encumbrances and the period of requisitioning of such land or building material shall end forthwith.

8. In exercise of powers conferred under Section 15 of the Act, the relevant Authority has framed Rules called the U. P. Acquisition of Property (Flood Relief) Rules, 1949 (hereinafter called the Rules).

9. Rule 4 of the Rules provides that when it is decided to requisition any land or building material under Section 3 of the Act, the Requisitioning Authority shall issue a notice in Form I to the owner of the land or building material, as the case may be.

10. Rule 5 of the Rules envisages that when it is decided to acquire any land or building material under Section 7 of the Act, the Requisitioning Authority shall issue a notice in Form II to the owner of the land or building material, as the case may be.

11. Requisition and acquisition are two different modes for different purposes. The power of requisition under Section 3 of the Act is exercised for and has the effect of depriving the owner of the land or building material of its possession temporarily during the period of requisition. The owner is only deprived of the possession, but not of the title. The title continues to vest in the owner.

12. The power of acquisition under Section 7 of the Act is exercised for and has the effect of depriving the owner of the land or building material of the title and divest him of the possession of the land or building material and vest the same in the State Government free from all encumbrances permanently. But the power cannot be exercised unless there has been requisition of the land or building material. It is necessary that such land or building material should have first been requisitioned. There can be no acquisition of the land or building material under Section 7 of the Act without its being first requisitioned under Section 3 of the Act.

13. Notice for requisition has to be given under Rule 4 in Form I and for acquisition, notice has to be issued under Rule 5 in Form II. The notice issued under Rule 4 Form I is a notice for requisition and cannot be read as a notice for

acquisition under Rule 5 From II.

14. The heading of the impugned notices which are Annexure-II and III is as follows :

'Form-I Rule 4'

15. Rule 4 and Form I are relatable to Section 3 of the Act and not to Section 7 of the Act. Thus, the intention of the concerned Authority is clear that the land in question was being requisitioned only.

16. The learned counsel of the petitioners draws the attention of the Court to the fact that in the impugned notices, expression 'under Section 3/7' is noted at three places. On this premise, it is submitted by him that the impugned notices are composite notices under Section 3 and 7 of the Act. The Court is unable to accept the submission. In its opinion, the impugned notices are not composite notices as submitted by the counsel of the petitioner. A perusal of the impugned notices shows that the notices are in the printed proforma. and perhaps a common proforma was prepared for being utilised for the purpose of requisition as well acquisition, and the section not . relevant for the purpose was to be scored out. But irrelevant section was not scored out in the impugned notices incidentally. The intention of the authority concerned is clear from the heading of the impugned notices which clearly show that they are in Form I under the provisions of Rule 4 referable to Section 3 of the Act which provides for requisition and not acquisition.

17. In the backdrop of what has been said above, the impugned notices cannot be held to be composite notices under Sections 3 and 7 of the Act. The impugned notices are held to be under Section 3 alone. Therefore, the contention of the learned counsel of the petitioners fails. No other point has been raised for consideration.

18. In the result the petition fails and is hereby dismissed. The interim order dated 17th May. 1991 is vacated. There is no order as to costs.