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Court : Kolkata

Decided On : Jan-20-1976

Reported in : AIR1976Cal282

Judge : Bimal Chandra Basak, J.

Acts : West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 3

Appeal No. : C.R. No. 19844 (w) of 1975

Appellant : Saktipada Mandal and ors.

Respondent : Collector, District Hooghly and ors.

Advocate for Def. : P.K. Sengupta, ;G.N. Roy and ;S. Gupta, Advs.

Advocate for Pet/Ap. : Rathindra Nath Bhattacharjee and ;Amalbaran Chatterjee, Ads.

Disposition : Application dismissed

Judgement :

ORDER

Bimal Chandra Basak, J.

1. In this application under Article 226 of the Constitution of India, the petitioners are challenging an order of requisition of land under Section 3(1) of West Bengal

Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the said Act) passed by the respondent No. 1. The petitioners' case as made out in the petition is as follows :

The petitioners are inhabitants of the village named Anur situated in the district of Hooghly on the border line of the district of Bankura. The said village was a non-irrigated area and there was a lot of difficulties in cultivation of paddy. On the representation of the villagers of the said village, the State Government has installed, about 8 years ago, a deep tube well in the northern part of the village for irrigation facilities in the said village. It is stated that the said deep tube well is the only source of irrigation in the said village and because of the said tube well, the taxes are being regularly collected by the State Government from the said villagers. The lands which are provided with the irrigation facilities from the said tube well have been set out in the petition. It is alleged that the Government of West Bengal has brought out a scheme of digging a canal from the river Kangsabati which is popularly known as Kangsabati Project. The canal dug out from the river Kangsabati has been numbered as canal No. 25 from which various sub-canals are being taken inside the village of that part of the district of Hooghly and also Bankura. One of such sub-canals has now been determined to be taken through the area where the aforesaid deep tube well was installed. It is alleged that excavation of the canal would undoubtedly provide irrigation facilities to the villagers but not better than the deep tube well. It is alleged that from the deep tube well, water is available throughout the year, whereas in the case of canal it will be a case of regulated and limited supply of water and that also not throughout the year. It is alleged that the decision of the Government to remove the deep tube well is detrimental and prejudicial to the interest of the villagers. The villagers including the petitioners met the Block Development Officer, Gohat, Hooghly and represented before him whereby they demanded a change of the route of the said canal so that the areas where the deep tube well is already providing sufficient irrigation facilities are not affected. It appears that by his letter dated 28th February, 1973, the Block Development Officer forwarded the mass petition submitted by the cultivators of the Anur Deep Tube Well Centre to the Executive Engineer, Kangsabati Project. In the said letter he expressed his opinion that the existing alignment of the proposed sub-canal falls within command area of Anur

Deep Tube Well Centre and in the event of execution of the same through the said alignment, good quality multiple cropped agricultural lands will be affected. The Block Development Officer also requested the Executive Engineer to consider the case and arrange change of alignment suitably to avoid the common area of the Deep Tube Well Centre as far as possible for more agricultural production. It further appears that there were further representations to that effect including a representation by one Nemai Chandra Mondal and one Chandi Das Mandal who are Government nominees to the Irrigation Committee of the said deep tube well, It appears that the Assistant Engineer, Agri-Irrigation Hooghly, II, Arambagh, also wrote a letter to the Executive Engineer, Kangsabati Project Bishnupur Division on 9th October, 1975 stating that it has been reported that the Executive Engineer is going to excavate a drainage channel from the main canal of Kangsabati river which is to be passed through commanding area of Anur Deep Tube Well Centre. In that event the Assistant Engineer requested the Executive Engineer to look into the matter personally so that the alignment of the proposed canal is changed in such a way that the existing commanding area of the said deep tube well is not affected. Even thereafter, there was a mass petition and a representation against the proposed scheme for construction of the said canal. In spite of the same, it appears that by an order dated 2nd December, 1975 the Additional District Magistrate Hooghly, as Collector under the said Act, requisitioned the lands specified in the said order under Sub-section (1) of Section 3 of the said Act for excavation of the said canal in connection with the Kangsabati Project. When the possession was sought to be taken on behalf of the respondents pursuant to the same, this application was moved before this Court and a Rule nisi was issued by me on 19th December, 1975.

2. Mr. Bhattacharjee, learned Advocate appearing in support of the Rule, raised threefold submissions before me in challenging the said order of requisition. He firstly contended that the order suffers from non-application of mind because the authority was not aware for what reason the property was required and he did not form the requisite opinion which is condition precedent to the exercise of power under Section 3 of the said Act. It is necessary for the purpose here to set out the provisions of Sub-section (1), of Section 3 of the said Act which is as follows:

'Section 3 (1)--If the State Government is of opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being ***** an industrial or other area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places for people residing in such areas, the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning.'

In this connection Mr. Bhattacharya drew my attention to the annexure to the petition which contains according to him the relevant order, the relevant portion of which is as follows:

'Whereas in my opinion it is necessary for maintaining supplies and services essential to the life of the community/communication/irrigation/drainage viz., for Excavation of Dist No. 25 (M-1) of the B. C. from CH. 79.40 to CH. 145.11 in connection with Kangsabati Project..... to requisition the land(s) described in the schedule below/overleaf.'

Mr. Bhattacharya submitted that the section contemplates that such requisition can be made provided the State Government forms the opinion that it was necessary to requisition the land for the objects stated therein. The section provides for alternative objects and requisition can be made for one or more of the same. The authority concerned has in his order merely quoted the section and put the objects of requisition in alternative manner. Various objects have been specified with an oblique. That shows that the authority concerned did not apply his mind but has blindly set out all the purposes in the order. Accordingly, there was non-application of mind in making the said order and the condition precedent for the exercise of the power under Section 3 has not been complied with.

3. The real submission of Mr. Bhattacharya centres around the language of the order. Accordingly. I asked Mr. Bhattacharya to produce the copy of the order served on the petitioner in this case. From the copy so produced, it was clear that the copy annexed to the petition was not the correct copy of the order served.

Having regard to the same, I called for the original order of requisition in this case from the records of the, respondents which was produced before me. From there it appears that the language of the order was to the following effect. I have produced the same as it is, including the crossed out (here underlined) portion :--

'Whereas in my opinion it is necessary for the purpose of maintaining supplies and services essential to the life of the community providing proper facilities for transport/communication/irrigation/drainage viz. for excavation of Distributory No. 25 (Minor N. 1) of Kotulpur Branch Canal from Chainage 79.40 to Chainage 145.11 to requisition the lands in connection with the Kangsabati Reservoir Project described in the schedule below/overleaf.'

From it is quite clear that the contention of Mr. Bhattacharya to this effect is not well-founded and it is misconceived. This requisition was made and the required opinion was formed on the basis that the requisition of the lands concerned is necessary for the purpose of a canal in connection with Kangsabati Project and that is for the purpose of providing proper facilities for irrigation/drainage. Accordingly, there is no merit in this contention of the petitioner and I reject the same. I hold that the condition precedent to the exercise of power under Section 3 has been duly complied with in this case and that the order has been passed on proper application of mind.

4. The second contention of Mr. Bhattacharya was to the effect that this land could not be acquired for the purpose as alleged in the order because it would not serve the alleged purpose for which it is sought to be requisitioned. On the other hand, it was alleged that the persons in the area in question would suffer as a result of such project for various reasons e. g. they will have to pay two taxes, one for the project and another for the canal, they would not be provided with water during the summer season; the deep tube well would be removed. Accordingly, he submitted that the order was made in colourable exercise of power. In this connection Mr. Bhattacharya relied on the decision of *M.A. Rasheed v. State of Kerala* reported in AIR 1975 SC 2249.

5. Before I deal with the allegations made by the petitioner to this effect I should point out that whether the purpose of requisition or acquisition is 'public purpose'

and whether the purpose is within the scope of the Act in question or not may be examined by the Court But if the requisition or acquisition is for public purpose and the order is passed for a purpose within the scope of the Act, then that is an end to the matter so far as the Courts are concerned. It is not for the Court to examine whether that object or purpose can be achieved by acquiring or requisitioning a particular land or not It is a matter entirely for the Government and its officers to ascertain. The Courts cannot interfere in such a case and say whether a particular object would be achieved by the particular land or not. Reference may be made in this connection to the case of Sachindra Nath Mukherji v. State of West Bengal reported in : AIR1958 Cal510 .

6. It may be that in particular cases it can be shown that the power exercised was totally in colourable exercise of power. However, that is not the case here. In this connection I may set out certain materials as disclosed by the respondents in their affidavit which would clearly show that this project has been started and the canal is being excavated with the bona fide object of benefiting the public at large. I make it quite clear that I am not going into the said facts for the purpose of scrutinising or ascertaining the correctness of the same, which I cannot do. I am merely setting out the same for the limited purpose of showing that there is enough material on record to show that this is not a colourable exercise of power.

'4. This deponent states that the petitioners are all residents of the Anur village which is one of about eight villages whose cultivators will be benefited by the supply of water from the said canal if it is allowed to the construction of the proposed alignment,

5 (a). This deponent states that sub-canal in question is named as minor one of distributory No. 25 of Kotalpur branch canal. The length of the canal is about 3 miles of which excavation of a considerable portion is already in progress. The net irrigable area is 1343 acres of land on both the sides.

(b) The alignment of the said proposed canal was made after spot enquiry as regards land survey to ensure uniform distribution of water on both the sides of the canal and 'Reduced naval' of the land, minimum cost, advantage of the peasants under the command area etc. This deponent further states that all the pros and

cons of the advantages and disadvantages of the said alignment of the canal were taken into consideration at the time of selecting the site for the said canal and the said alignment was considered as the best, convenient, less expensive and only possible site for the said canal from the technical point of view. The alignment of the said canal is more or less running over the ridge which will ensure even supply of water to both sides of the ridge. Otherwise the ridge would be an obstruction to the flow of water to one side resulting in water logging.

(c) This deponent states that the Kangsabati project authorities are proceeding with the excavation work of the said canal in full swing with a view to complete the said canal within two months from this date. So that it would be possible for the department to make the irrigation water available on the lands on both sides of this canal during the ensuing Kharif season i.e. from 1st July 1976 to 31st October. This deponent further states that the quantity of water to be supplied through the canal will be regulated as per field requirements for optimum growth and maturity of the aman paddy. There is no proposal for supplying water from this canal during the 'Rabi' or summer seasons.

(d) This deponent states that the irrigation water is being supplied from deep Tube Well to only about 100 acres of land. The tax on supply of irrigation water is imposed on the basis of seasons and crop. The successful supply of irrigation water by the deep Tube well depends on many factors which are beyond the control of operation viz. failure of machines, shortage of electricity, disorder of pump etc. This deponent states that the said canal will not in any way affect the existing facilities enjoyed by the people of 'Anur' Deep Tube well area as suitable action will be taken by the irrigation and water works department. On the contrary this will provide additional irrigation facility in addition to the existing one and one can be kept as standby for others failure.

(e) This deponent further states and submits that there is no basis for any apprehension of double payment for supply of water for irrigation of one seasonal crop since once the cultivators will pay the amount for a supply of irrigation water for a particular season from any of two sources, will not be required to pay any more for the supply of water for the same seasonal crop. There is also no basis for

any apprehension that the deep tube-well will be removed and the supply of water from the said deep tube well will be stopped immediately after the Kangsabati project. Neither the petitioners referred to any decision of Government for removal of deep tube well and stoppage of the supply of water from the same after starting the supply of water from the Kangsabati project, nor your petitioner has any knowledge of the decision of the removal of the deep tube well by the Government.

(f) This deponent states that the said huge area of land i. e. 1343 acres to which water will be supplied for irrigation from this canal includes lands of about 8 villages and there is no reason why these people should be deprived of such facilities.

(g) This deponent states that the said alignment of the canal is at different points about 1000 to 1500 yards away from the deep tube well in the said village and at the nearest point when it passes to plot No. 767, the same is about 300 yards away from the said deep tube well. It is further evident from the plan which has been submitted by the Petitioners along with their representation dated 15-9-1975 addressed to respondent No. 3 that the distance at the nearest point on the map is about 3 inches and the said map was drawn on the basis of the scale of standard mouza map whose scale is 1'=330ft. and as such the alignment of the said land is already placed more than 300 yds. (approx) away from the said tube well.

This deponent craves leave to refer to the said map along with the standard Mouza Map (alignment land plan) at the time of hearing.

(h) This deponent states that the cultivators of about 8 villages will be benefited if the said canal is excavated in the proposed alignment. This deponent received a mass petition dated 19-9-1975 from the cultivators of the said villages raising objection against any change in proposed alignment which according to them will adversely affect the cultivators of the said villages.

(i) This deponent craves leave to refer the same at the time of hearing. This deponent has already stated hereinbefore that the excavation in a considerable part of the said alignment is already in progress, and the rest is expected to be

completed by next two months. This deponent further states that all steps have already been taken to complete the said canal on the proposed alignment including the requisition proceeding and change of alignment at this stage will bring in more complications and delay and defeat the purpose of the supply of water for the irrigation purpose for another considerable period due to which large number of cultivators of the said area will suffer resulting in less food production. This deponent further states that the change of alignment of the said canal at this stage will raise the following complications :--

(i) Only one side of the land will get water.

(ii) there will be possibility of water logging.

(iii) Arrangement for the drainage and cross drainage structure has to be made.

(iv) Much more lands will be required.

(v) that the ground level would be 4 to 6 ft. approximately below the present alignment.

(vi) an extra expenditure will be involved for construction of high embankments.

(vii) that the length of the canal will have to be increased by about 2000 ft. and a huge extra cost to the tune of about Rs. one lakh for earth work, cross drainage, additional acquisition of land, etc, will have to be incurred.'

This affidavit explains by itself and needs no comment. However, I may point out one or two things which come out of the affidavit.

(a) This sub-canal would benefit the inhabitants of eight villages instead of one as in the case of the said deep tube well concerned.

(b) The net irrigable area by this sub-canal would be 1343 acres of land whereas it is only about 100 acres by the deep tube well.

(c) The alignment of the canal was made after proper enquiry to ensure uniform distribution of water. The chain-age of alignment would raise various

complications.

(d) The canal would not in any way affect the existing facilities enjoyed by the people of Anur Deep tube well. On the contrary this would provide additional irrigational facility in addition to the existing one. The deep tube well will not be removed and the supply of water from the same will not be stopped.

(e) There will be no question of double payment i. e. one for the canal and one for the deep tube well.

7. The case of M. A. Rasheed, (AIR 1975 SC 2249) (supra) relied upon by Mr. Bhattacharya has no application in the facts of this case. I am satisfied that the authorities concerned have complied with the obligation reposed upon them as observed by the Supreme Court in this decision.

8. Accordingly I reject this contention of Mr. Bhattacharya. I hold that the order was not passed in colourable exercise of power.

9. The last contention of Mr. Bhattacharya was that the petitioners-were not given a reasonable opportunity of showing cause before this order of requisition was made. Accordingly there has been a violation of the principles of natural justice. In this connection, reliance is placed on an observation of the Supreme Court in the case of Government of Mysore v. J.V. Bhat reported in : [1975]2SCR407 to the following effect:

'It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but, on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the 'audi alteram partem' rule could be imported. The nature of the hearing would, of course, vary according to the nature of the function and what its just and fair exercise required in the context of rights affected.'

The other decision referred to by Mr. Bhattacharya was (he case of Sukdev Singh v. Bhagatram reported in : (1975)ILLJ399SC . Mr. Bhattacharya relied on the following observations of the Supreme Court:

'This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute.'

The question whether the principles of natural justice applied to the facts and circumstances of a case has been the subject-matter of controversy for quite a long time. It is not necessary to refer to any decision earlier than the case of Union of India v. J.N. Sinha reported in : (1970)11LLJ284SC wherein it was observed by the Supreme Court as follows:

'Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in Kraipak v. Union of India, : [1970]1SCR457 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it'. It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules or principles of natural justice, then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.'

Therefore it is clear that it would all depend on the facts and circumstances of each case and a decision on this point in the peculiar facts of one case or one Statute cannot be an authority in respect of another case or another Statute. In the present case it is not a question of an administrative order affecting only one person. This is an Act empowering requisition and acquisition for public purpose.

The preamble of the Act shows that it was enacted to provide for the requisition and speedy acquisition of land for the purposes of maintaining supplies and services essential to the life of the community, for providing proper facilities for transport, communication, irrigation or drainage and for the creation of better living conditions, in urban or rural areas by the construction or reconstruction of dwelling places for people residing in such areas. In view of the same and in view of the language of Section 3 it is quite clear that the principles of natural justice cannot be imported as a condition precedent to the exercise of power under the said Act. The object of the said Act would be completely frustrated if the concept of natural justice is introduced therein. Further, having regard to the scope of jurisdiction of the Court to examine the validity of an order of this nature, as discussed above, in my opinion the principles of natural justice cannot be read consistently with the provisions of the said Act. It is needless to deal with this matter in detail having regard to a Division Bench decision of this Court in the case of *Mihir Kumar Sarkar v. State of West Bengal* reported in : AIR1972 Cal8 . In that case it was contended that the said Act permits a requisition without giving even a hearing or opportunity to the person whose land is requisitioned, Accordingly it was submitted that it is a most unreasonable interference with the rights to property. After referring to various decisions of the Supreme Court the appeal Court held that the absence of notice cannot violate an order passed under the said Act. I am told that this decision of the Calcutta High Court has been affirmed by the Supreme Court subsequently. Having regard to the same it is not necessary to deal with the several observations of the Supreme Court relied upon by Mr. Bhattacharya which are general in nature and made in a completely different set of circumstances. Accordingly, I must hold that the Act does not contemplate giving of a notice before an order of requisition is passed, and accordingly if an order is passed under the said Act without giving such notice then the order cannot be challenged in this proceeding on the ground of violation of the principles of natural justice. For the aforesaid reasons I reject this contention of Mr. Bhattacharya.

10. Accordingly, I dismiss the application, discharge the Rule. All interim orders are vacated. No order as to costs.

