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S. M. NANDY & ORS.

v..

STATE OF WEST BENGAL & ORS.

February 19, 1971

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[S. M. SIKRI, C.J., G. K. MITTER, K. S. HEGDE, A. N. GROVER
AND P. JAGANMOHAN REDDY, JJ.]

West Bengal Land (Requisition and Acquisition) Act, 1948—If ultra vires Constitution under Art. 19(1) (f) and (5).

C

On the question whether the West Bengal Land (Requisition and Acquisition) Act, 1948, was *ultra vires* the Constitution under Art. 19(1)(f) read with 19(5).

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HELD : The State of West Bengal was faced with many emergent problems created by the partition of India and the impugned Act was enacted in order to provide for requisitioning and speedy acquisition of land under s. 3 for a number of public purposes mentioned therein. The necessity for requisitioning must necessarily be left to the State Government. Though there is no express provision to make a representation against an order of requisition under s. 3(2) there is no bar to such a representation being made and to its being considered by the State Government or appropriate Governmental Authorities. If, however, any order is made for any collateral purpose, or has been made for purposes not mentioned in s. 3 of the Act, or is *mala fide*, it can always be challenged in a civil court. Under ss. 7(3) and (4), 8 and 8A of the Act, fair compensation has been provided for requisitioning which is determinable by a civil court, if there is a dispute regarding the amount, and ultimately by the High Court and this Court. Therefore, the restrictions imposed by the impugned Act are not unreasonable. [792 C, D; 794 D-F]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 500 of 1967.

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Appeal from the judgment and order dated January 13, 1965 of the Calcutta High Court in Appeal from Original Order No. 104 of 1963.

Arun Kumar Datta and D. N. Mukherjee, for the appellants.

Niren De, Attorney-General and P. K. Chakravarti, for the respondent.

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The Judgment of the Court was delivered by

Sikri, C.J. The following question has been referred to the Constitution Bench under the proviso to art. 145(3) of the Constitution :

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“Whether the West Bengal Land (Requisition and Acquisition) Act 1948 is *ultra vires* the Constitution under art. 19(1)(f) read with art. 19(5) ?”

The learned counsel for the appellant, Shri Arun Kumar Dutta, challenges the West Bengal Land (Requisition and Acquisition) Act, 1948—hereinafter referred to as the impugned act—on the ground that it does not impose reasonable restrictions within art. 19(5) of the Constitution. He urges three grounds in this respect. First, he says, that there is no provision for a notice to the owner or the occupier of the property before an order of requisition is passed, secondly, there is no provision for an appeal against the order of requisition, and thirdly, a civil suit is barred under s. 11 of the impugned Act.

In order to appreciate the points raised by the learned counsel it is necessary to set out the scheme of the Act. The impugned act was enacted in order to provide for requisitioning and speedy acquisition of land for a number of public purposes. These purposes are: (1) maintaining supplies and services essential to the life of the community; (2) provide proper facilities for transport, communication, irrigation or drainage; and (3) creation of better living conditions in urban or rural areas by the construction or re-construction of dwelling places in such areas. The State of West Bengal was faced with many emergent problems created by the partition of India, and this Act was designed to meet these problems in a speedy manner. Section 3 enables the State Government to requisition land for the purposes mentioned above. A Collector of a district, an Additional District Magistrate or the First Land Acquisition Collector, Calcutta, when authorised by the State Government in this behalf, may exercise within his jurisdiction the powers of requisitioning conferred by sub-s. (1). Sub-s. (2) of s. 3 provides for service of this order in the prescribed manner on the owner of land and also on the occupier not being owner of land. Under sub-s. (3) of s. 3 the Collector, or any person authorised by him in writing in this behalf is entitled to execute the order in the manner mentioned therein, if the order passed under sub-s. (2) is not complied with by any person. There is nothing in the impugned Act which prevents a person on whom an order has been served under sub-s. (2) to make a representation to the Collector or the State Government against the order of requisition. Section 4 enables the State Government to use or deal with the land for the purposes aforesaid.

We are not concerned with acquisition in this case but we may mention that the State Government may acquire any land requisitioned under the Act by publishing a notice in the official gazette that such land is required for a public purpose referred to in sub-s. (1) of s. 3.

Section 6 enables the State Government to derequisition or release from requisition any land.

A The impugned Act provides for fair compensation in respect of the requisitioned land under s. 7(3) and s. 7(4). Sub-s. (3) provides that where any land is requisitioned under s. 3, there shall be paid to every person interested compensation in respect of—

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- (a) the requisition of such land; and
 - (b) any damage done during the period of requisition to such land other than what may have been sustained by natural causes.

C Sub-s. (4) lays down the principles to be followed in determining the compensation. If the Collector and the person interested agree to the compensation the Collector is enabled to make an award ordering payment of the agreed compensation. If there is disagreement, sub-s. (4) provides that the compensation payable shall be the amount determined by the Court on reference made by the Collector under cl. (b) of sub-s. (1) of s. 8. Under s. 8 the Collector is obliged to refer the matter to the decision of the Court if there is any disagreement with regard to compensation, and sub-s. (2) of s. 8 prescribes the same procedure as the Land Acquisition Act, 1894, in this regard, and the State Government is directed to apply the principles set out in sub-s. (1) of s. 23 of that Act, and in cl. (a) of sub-s. (2) of s. 7 of the impugned Act, which provides :

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“7(2)(a) When the compensation has been determined under sub-section (1) the Collector shall make an award in accordance with the principles set out in section 11 of the Land Acquisition Act, 1894, and no amount referred to in sub-section (2) of section 23 of that Act, shall be included in the award :

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Provided that interest at the rate of six per centum per annum on the amount of compensation under the award from the date of the publication of the notice under sub-section (1a) of section 4 until payment shall be included in the amount payable under the award.”

G It seems to us that these provisions give fair compensation and enable a Civil Court to determine the question in case of a dispute. An appeal lies under s. 8A from the award made by a Court on a reference under s. 8 as if such award was an original decree passed by the Court in exercise of its civil jurisdiction. Not only therefore fair compensation is provided but the determination of the amount of compensation rests with a Civil Court in case of a dispute. Although the learned counsel took objection to the court which has to make an award, we see nothing

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wrong with the definition of the word "Court". The word "Court" has been defined to mean : A

" "Court" means a principal Civil Court of original jurisdiction, and includes the Court of any Additional Judge, Subordinate Judge or Munsif whom the State Government may appoint, by name or by virtue of his office, to perform concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits and, in the case of a Munsif, up to the limits of the pecuniary jurisdiction with which he is vested under section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887." B

Section 11 provides that "save as otherwise expressly provided in this Act, no decision or order made in exercise of any power conferred by or under this Act shall be called in question in any Court." It seems to us that if any order is made for any collateral purpose or has been made for purposes not mentioned in s. 3 or is *mala fide*, it can always be challenged. C

We are, therefore, of the opinion that it is difficult to hold that restrictions imposed by the impugned Act are unreasonable. Fair compensation has been provided for requisitioning, which is determinable by a Civil Court and ultimately by the High Court or the Supreme Court. Regarding the necessity for requisitioning it must necessarily be left to the State Government. It is true that there is no express provision to make a representation against an order of requisition but there is no bar to a representation being made after an order is served under s. 3(2) of the Act. We have no doubt that if the representation raises a point which overrides the public purpose it would be favourably considered by the State Government or other Government authorities as the case may be. D

Accordingly the question referred to us is answered in the negative. The case will now go back to the Division Bench for disposal according to law. E

V.P.S.

Act held intra vires. F