

A

STATE OF WEST BENGAL AND ORS.

v.

SAMARENDRA NATH PAUL AND ORS.

JULY 9, 1997

B

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

*Land Acquisition :*

C

*West Bengal Land (Requisition and Acquisition) Act 1948—Section 3—Requisition of land for housing project—No allegation that the power exercised by the State was mala fide or outside the scope of the Act—Held, order of requisition not bad in law.*

D

*West Bengal (Requisition and Acquisition) Rules—Rule 3(c) & (d)—Service of Order of requisition under Section 3(1)—Service by way of affixation—Held, valid.—Sending the order under certificate of posting—Held, under Rule 3(d) order is to be served by registered post with acknowledgment due.*

E

*Constitution of India—Arts. 226 and 32—Scope of—Held, not to set aside the orders of the authorities on some supposed grounds when facts clearly speak for themselves and the authorities act within the scope of their power—Judicial review.*

F

The plots of land belonging to the Respondents were sought to be acquired for which notice was served by way of affixation on a conspicuous part of the land as well as in the Collector's office. The same was challenged before the High Court which directed the State to issue fresh notice. When fresh notice was issued by the State, it was again challenged before the High Court on the ground that no notice had been served on the respondents as required under the Act and the Rules before taking over the possession, which was dismissed by the Single Judge. On appeal, the

G

Division Bench set aside the order of requisition and directed restoration of possession of the land to the respondents. Hence this appeal.

Allowing the appeal, this Court

H

HELD : 1. Order under sub-section (1) of section 3 of the West Bengal Land (Requisition & Acquisition) Act 1948 can be served by any

method prescribed in Rule 3 of the West Bengal (Requisition & Acquisition) Rules. The State in its affidavit which is based on records, had categorically stated that copy of the order was served on the respondents. By affixing a copy thereof on a conspicuous part of the land in question and in the Collector's office as well, it could not be disputed that clause (d) of Rule 3 was not complied in toto. This, of course, according to the State, was in addition to the orders having been sent under certificate of posting. However, sending the order under certificate of posting is meaningless when the rule requires that the order is to be served by registered post with acknowledgement due. [167-F-H]

2. It is a matter of common knowledge that there is acute paucity of accommodation both in urban and rural areas in the country. It is not the case of the respondents that the power of requisition exercised by the State was mala fide or outside the purview of the Act. It was not thought that the court in exercise of its constitutional powers of judicial review should hasten to set aside the order of the authorities on some supposed grounds when the facts clearly speak for themselves and the authorities act within the scope of their powers as conferred upon them by law. [170-D-F]

*West Bengal Housing Board v. Bhawar Lal Mundhra & Ors.*, [1997] Supplementary 2 SCR, *West Bengal Housing Board v. Brijendra Prasad Gupta & Ors.*, [1997] Supplementary 2 SCR, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4339 of 1997

From the Judgment and Order dated 3.7.96 of the Calcutta High Court in F.M.A. No. 861 of 1989

V.R. Reddy, Additional Solicitor General, T.C. Ray, Rajesh Srivastava, P. Basu and H.K. Puri, for the Appellants.

N.K. Poddar, Ms. Radha Rangaswamy and Ms. Zoya Hadke for the Respondents.

The Judgment of the Court was delivered by

D.P. WADHWA, J. Special Leave granted.

This appeal is directed against the judgment dated July 3, 1996 of

A the Division Bench of Calcutta High Court allowing the writ petition of the respondents and thus setting aside the judgment of the learned single Judge dated July 13, 1988 by which the writ petition was dismissed. The respondents, it would appear from the judgment of the learned single Judge, had challenged the requisition of land measuring 0.57 acres falling in plot nos. 1787 and 1788 Mouza Monoharpur, P.S. Chanditala, District Hooghly, in the State of West Bengal by order dated May 9, 1984 of the Collector and Additional District Magistrate, Hooghly passed under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (for short 'the Act').

B

C Section 3 of the Act empowers the State Government or an authorised Collector of a District (an Additional District Magistrate or Land Acquisition Collector, Calcutta) to requisition any land for the objects mentioned therein and Section 4 authorises the State Government to acquire that land for those very objects. Under Section 5 public notice is to be issued by the Collector inviting claims for compensation after the publication of notice acquiring the land. As to how an order under subsection (1) of Section 3 is to be served is provided under Rule 3 of the West Bengal Land (Requisition) and Acquisition Rules, 1948 (for short 'the Rules'), Sections 3, 4 and 5 of the Act are as under :

D

E "3. Power to requisition :- (1) If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community (or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas) 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 areas excluded by the State Government by a notification in this behalf, by the construction or re-construction of dwelling places in such areas (or for purposes connected therewith or incidental thereto), 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:

F

G

H Provided that no land used for purpose of religious worship or used by an educational or charitable institution shall be

requisitioned under this section.

A

(1A) 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 conferred by sub-section (1).

B

(2) An order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation (of an occupier, not being the owner of the land, also on such occupier),

C

(3) If any person fails to comply with an order made under sub-section (1) the Collector or any person authorised by him in writing in this behalf shall execute the order in such manner as he considers expedient and may :-

D

(a) If he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or

(b) if he is not a Magistrate, apply to a Magistrate or, in Calcutta as defined in clause (ii) of Section 5 of the Calcutta Municipal Act, 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of such land to him.

E

4. Acquisition of Land -(1) Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of Section 3 as may appear to it to be expedient.

F

(1a) The State Government may acquire any land requisitioned under Section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of Section 3.

G

(2) Where 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 (State)

H

A Government free from all incumbrances and the period of requisition of such land shall end.

5. Notice to persons interested -

B (1) After the publication of a notice under (sub-section (1a) of section 4), the Collector shall cause public notice to be given at convenient places on or near the land (acquired), stating that the (State) Government has acquired the land, and that claims to compensation for all interests in such land may be made to him.

C (2) (Such public notice) shall state the particulars of the land so acquired, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests. The  
D Collector may in any case require such statement to be made in writing and signed by the party or his agent.

E (3) The Collector shall also serve notice in the manner prescribed on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

F (4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by registered post in a letter addressed to him at his last known residence, address or place of business.

G Rule 3 of the Rules reads as under :

H "3. Manner of Service of Orders- An order under sub-section (1) of section 3 shall be served on the owner of the land and where the order relates to land in occupation of an occupier not being the owner of the land, also on such occupier.

(a) by delivering or tendering a copy thereof, endorsed either by the person authorised by the Act to make the order or by the Collector, to the person on whom the order is to be served or his agent, or A

(b) by fixing a copy thereof on the outer door of some conspicuous part of the house in which the person on whom the order is to be served ordinarily resides or carries on business or personally works for gain, or B

(c) by sending the same to the person on whom the order is to be served by registered post with acknowledgment due, or C

(d) by fixing a copy thereof in some conspicuous part of the land to which the order relates and also in some conspicuous place of the office of the Collector".

The land in plot nos. 1787 and 1788 mentioned above was stated to have been purchased by the respondents on July 7, 1981 and it is claimed that purchases was for the purposes of erecting and/or constructing a factory. Earlier this land was requisitioned by the Collector, Hooghly by his order dated December 28, 1981 passed under Section 3 of the Act. This requisition was challenged in writ petition in the Calcutta High Court on the ground that no notice had been served upon the petitioners (the respondents herein) as required under Rule 3 aforesaid. The writ petition was disposed of by order dated July 13, 1988 by a learned Single Judge of the High Court with a direction that no effect was to be given to the notice requisitioning the land. Liberty was, however, given to the State to proceed in the matter afresh after serving fresh notice on the proper person. Then by order dated May 9, 1984 the Collector and Additional District Magistrate, Hooghly again directed requisition of the land in question by order passed under sub-section (1) of section 3 of the Act. Relevant portion of this order is as under :

"Whereas in my opinion it is necessary for the propose of maintaining supplies and services essential to the life of the community viz. for implementation of the Housing project at Monoharpur to requisition the land(s) described in the schedule below/overleaf.

D

E

F

G

H

**A** And whereas State Government has by notification No. 20500 L.A. dated 3-12-63 published in the Calcutta Gazette Part I of the 26th December 1963, at page 2578 authorised me to exercise the power conferred by Sub-section (1A) of section 3 of the West Bengal Land (Requisition and Acquisition) Act 1948 (West Bengal Act II of 1948).

**B**

Now therefore, in exercise of the power conferred by sub-section (1A) of section 3 of the West Bengal Land (Requisition and Acquisition) Act 1948 West Bengal Act II of 1948 read with the authority so vested in me as aforesaid I do hereby requisition the land's mentioned in the schedule below overleaf and make the following further order namely :

**C**

(1) that possession of the land will taken on 14-5-84 at 11 AM and....."

**D** This order was again challenged by filing writ petition on the ground that no notice had been served on the owners as required under the Act and the Rules before taking over of possession. This writ petition was dismissed by judgment dated July 13, 1988 by the learned Single Judge. An appeal against that judgment by the owners (respondents herein) was allowed by the Division Bench by judgment dated July 3, 1996 setting aside the order of requisition and directing restoration of the possession of the land to the owners. Against this judgment of the Division Bench the appellants have come up in appeal before this Court.

**E**

**F** The learned Single Judge noticed that the owners had not challenged the order of requisition on the ground that the object of requisition was not covered by the provisions of the Act. However, the learned Single Judge also noticed that from the respective affidavits of the parties it appeared that during the pendency of the writ petition before him an application was filed by the owners stating that project of the West Bengal Housing Board (constituted under the West Bengal Housing Board Act, 1972) for which land had been requisitioned had since been completed and the land in question being surplus land an order derequisitioning the same be passed. The learned Single Judge, therefore, noticed that after perusal of the respective affidavits of the parties it appeared that two contentions

**G**

**H** had been raised by the writ petitioners and these being (1) no notice under

section 3(1) of the Act was ever served and (2) the purpose of which the requisition was made was not covered by the Act. After examining the record of the State respondents the learned Single Judge was of the view that there was proper service and that providing residential accommodation was certainly a service essential to the community. The learned Single Judge also examined the housing project. Monoharpur known as Dankuni Housing Project to be executed by the Housing Board as to how the same was to be executed and how it would benefit the economically backward community. The learned single Judge was thus of the view that requisition of the land was for the purpose of the housing which was a purpose covered by sub-section (1) of Section 3 of the Act.

The Division Bench of the High Court, however, did not favour the views and reasoning of the learned Single Judge. According to the Division Bench three questions arose for consideration in the appeal before it and these were :

"(1) whether the entire requisition proceeding is vitiated in law owing to non-service of notice upon the petitioners;

(2) whether the purported Order dated 9-5-84 is valid in law; and

(3) whether the Judgment of the learned Trial Judge can be upheld by reason of the subsequent events as stated by the respondent housing board in its affidavit in opposition to the stay application".

The Division Bench held that "Admittedly, no notice was affixed in some conspicuous place of the office of the Collector". We don't think that observation is quite correct. Order under sub-section (1) of section 3 of the Act can be served by any of the four methods prescribed in Rule 3. When the State-respondents in the affidavit which is based on the record categorically stated that copy of the order dated May 9, 1984 was served on the respondents (owners) by affixing a copy thereof on conspicuous part of the land in question and in the Collector's Office on May 11, 1984 as well, it could not be disputed that clause (d) of rule 3 was not complied in toto. This, of course, according to the State respondents, was in addition to the order having him sent to the owners under certificate of posting. However, sending the order under certificate of posting is meaningless when rule requires that the order is to be served by registered post with

**A** acknowledgment due. As noted above the record of the State respondents was examined by the learned Single Judge and the affidavit filed by the State respondents was on the basis of the record maintained by them. The Division Bench therefore could not say that "admittedly no notice was affixed in some conspicuous place in the office of the Collector".

**B** On the face of the order passed under sub-section (1) of section 3 of the Act which has been extracted above it is difficult to understand and appreciate as to how it could be said that the order was not in accordance with the law. Nobody disputed that there was a housing project at Monoharpur for which purpose the land was requisitioned. One of the purposes for which the land to be requisitioned is certainly by providing services essential to the life of the community which would also mean to include construction of housing for the community at large. The order under section 3(1) of the Act need not itself spell out the details of the purpose for which the land is sought to be requisitioned. The Housing Board which is to execute the scheme has stated as to how funds have to be generated for construction of houses for the weaker sections of the society. The Housing Board has also taken loan from the Housing Urban Development Corporation, New Delhi and also raised funds by selling certain houses meant for High Income Group (HIG) people, the income from which would be utilised for subsidising the houses meant for weaker sections of the society. This in effect is the stand of State respondents.

The land in question has since been acquired under Section 4 of the Act by notification published in Calcutta Gazette, Extraordinary on July 6, 1991. This notification reads as under :

**F**

"HOOGHLY : No. 4353- LA (II)/4H-3/99 - 2nd July, 1991; Whereas 0.4390 Hectare (1.07 acres), more or less, of land situated in the village of Monoharpur, described below, have been requisitioned under Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act 1948 by the person authorised under Section 3 (1a) of the Act for the Public purpose of creation of better living condition in Urban or Rural areas by construction or re-construction of dwelling places in such areas or for purposes concerned therewith and incidental thereto, namely, for housing project at Dankuni;

**G**

**H**

Now, therefore, notice is hereby given that in pursuance of Section 4 of the said Act, the Governor acquires such land being required for public purpose as aforesaid. A

This notice is given under the provisions of Sub-Section (1a) of Section 4 of the West Bengal Land (Requisition and Acquisition) Act 1948 (West Bengal Act II of 1948) to all whom it may concern. B

A plan of the land may be inspected in the office of the Collector, Hooghly.

Description of the land C

Mouza Monoharpur Jurisdiction List No. 98.

Police Station Chanditala, District Hooghly.

Revisional Survey plots in full 1787, 1788 and 1812. D

By Order of the Governor  
S.K. Gupta

Dy. Secy. to the Govt. of  
West Bengal". E

Any land so acquired can be transferred by the State Government to the Housing Board under Section 29 of the West Bengal Housing Board Act, 1972. While so transferring the land the State Government can impose such terms and conditions as may be prescribed. The Housing Board has been constituted for the framing and execution of such housing schemes as it considers necessary and such housing schemes may include housing scheme in relation to lands and buildings vested in or in the possession of the State Government. F

Section 17 of the Housing Board Act is as under : G

"17. Powers and duties of Board to undertake housing schemes.  
(1) Subject to the provisions of this Act, the Board may, from time to time, incur expenditure and undertake works for the framing and execution of such housing schemes as it consider necessary and such housing scheme may include housing schemes in relation H

A to lands and buildings vested in or in the possession of the State Government.

B (2) The State Government may, on such terms and conditions as it may think fit to impose, entrust to the Board the framing and execution of any housing scheme whether provided for by this Act or not and the Board shall thereupon undertake the framing and execution of such scheme.

C (3) The Board may, on such terms and conditions as may be agreed upon with the previous approval of the State Government, take over for execution any housing scheme, on behalf of a local authority or cooperative society, or on behalf of an employer, for building houses mainly for the residence of the employees of such local authority, cooperative society or employer as the case may be or for the residence of the member of such cooperative society.

D In view of the clear statement of law as aforesaid it is difficult to concur with the judgment of Division Bench under appeal that the acquisition order was bad in law. It is a matter of common knowledge that there is acute paucity of accommodation both in urban and rural areas in the country. It is not the case of the respondents that the power of requisition which were exercised by the State respondents was mala fide or outside the purview of the Act. We do not think that the Court in the exercise of its constitutional powers of judicial review should hasten to set aside the order of the authorities on some supposed grounds when the facts clearly speak for themselves and the authorities act within the scope of their powers as conferred upon them by law.

F We may also note that the land in question forms part of total 21.41 acres of land in the same area and comprising in Dankuni Housing Project. By a separate judgment delivered today in the appeal filed by the West Bengal Housing Board (arising out of S.L.P(C) No. 524 of 1997 title *West Bengal Housing Board v. Bhanwar Lal Mundhra & Ors.*), which also pertained to this very Dankuni Housing Project, we have considered the scheme which is one whole and the land, subject-matter of this appeal is also required for completion of that housing project. In yet another judgment delivered today in batch of appeals (arising out of S.L.P. (C) No. 12914 of 1996 title *West Bengal Housing Board v. Brijendra Prasad Gupta & Ors.*) we have considered the relevant provisions of the Act both the

G

H

West Bengal Land (Requisition and Acquisition) Act, 1948 and the West Bengal Housing Board Act, 1972 as amended and the scope of judicial review. In coming to the conclusion arrived at in the present judgment we have relied on the judgments mentioned above. A

We would, therefore, set aside the impugned judgment of the Division Bench, uphold the order of the learned Single Judge and dismiss the writ petition filed by the respondents. The appeal is accordingly allowed. Parties to bear their cost throughout. B

R.K.S.

Appeal allowed.