

Collector Of Akola & Ors vs Ramchandra & Ors on 30 August, 1967

Equivalent citations: 1968 AIR 244, 1968 SCR (1) 401, AIR 1968 SUPREME COURT 244, 1968 (1) SCJ 525, 1968 (1) SCR 401, 1968 (1) SCWR 104, 1968 MAH LJ 358, 1968 SCD 61, 1970 BOM LR 128

Author: J.M. Shelat

Bench: J.M. Shelat, J.C. Shah, S.M. Sikri

PETITIONER:
COLLECTOR OF AKOLA & ORS.

Vs.

RESPONDENT:
RAMCHANDRA & ORS.

DATE OF JUDGMENT:
30/08/1967

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1968 AIR 244 1968 SCR (1) 401
CITATOR INFO :
D 1972 SC2656 (11)
E 1984 SC1707 (10,12,22)

ACT:
Bombay Land Requisition Act (Bom. 23 of 1948), s. 5(1)--Requisition for permanent public purpose--lf can be made.
Land Acquisition Act (1 of 1894)--Power to requisition and acquisition--If action under one bar action under other.

HEADNOTE:
The land owned by the respondents were requisitioned by the first appellant under the Bombay Land Requisition Act for a public purpose viz., for establishing a new village site to

resettle victims of flood. The respondents filed a writ petition in the High Court challenging the validity of the order on the ground that since Act was a temporary Act extended until then upto 1963, the power to requisition thereunder would inhere to the Government only during the time that it subsisted; so an order passed for a permanent purpose could not be in the contemplation of the Act. The High Court accepted the objection and, quashed the order.

In a appeal to this Court:

Held: The power to requisition under the Act could be exercised whether the public purpose was temporary or not and the exercise of that power for the purpose for the purpose of rehabilitation of flood sufferers was neither in abuse of nor unjustified under the Act. The words for any public purpose in s. 5(1) are wide enough to include any purpose of whatsoever nature do not contain any restriction regarding the nature of that purpose. It places no limitation on the words competent authority as to what kind of "for any public purpose in s. 5(1) are wide enough to include any purpose of whatsoever nature and do not contain any restriction regarding the nature of that purpose. It places no limitation on the competent authority, as to what kind of Public purpose it should be for the valid exercise of its power nor does it confine the exercise of that power to a purpose which is a temporary one. [404E-F; 405AB]

There is no antitheses between the power to requisition and the power of compulsory acquisition under the Land Acquisition Act. Neither of the two Acts contains any provision under which it can be said that if one is acted upon, the other cannot. [405D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1012 of 1964.

Appeal by special leave from the judgment and order dated August 28, 1962, of the Bombay High Court, Nagpur Bench in Special Civil Application No. 373 of 1961.

R. M. Hazarnavais, K. L. Hathi and S. P. Nayar, for the appellants.

S G. Patwardhan and A. G. Ratnaprkhi, for the respondent Nos. 1--10 and 12.

The Judgment of the Court was delivered by Shelat, J. This appeal by special leave is directed against the order. of the High Court of Maharashtra quashing the order dated November 20, 1961 passed by the first appellant under section 5(1) of the Bombay Land Requisition Act 23 of 1948 as 401 extended to the Vidarbha area by the Bombay Land Requisition (Extension and Amendment) Act 33 of 1959 The respondents are the owners of the land in question situate in the village Kasarkhed, District Akola. It appears that in 1959 there were floods in the are which affected the

resident living in the gaathan of Kasarkhed. Once again there were floods in 1961 more serious than in 1959 affecting as many as 470 persons whose houses were either washed away or seriously damaged. There was therefore an urgent necessity of rehabilitating those sufferers at some other place where they could build their houses and complete them before the arrival of the next monsoon. In these circumstances the first appellant under powers conferred on him by section 15 of the Act passed the impugned order. The order stated that the lands set out in the Schedule therein were needed or were likely to be needed for the public purpose, viz., for a new gaathan at Kasarkhed for the victims of floods, the old village site where they lived having been rendered unsuitable by floods and that it was therefore necessary to requisition the said lands for the said purpose. It is not in dispute that land was needed for settling a new gaathan where the victims of the flood could be resettled. At a later stage the State Government also initiated proceeding, -, under the Land Acquisition Act 1 of 1894 in respect of those very lands and issued a notification under section 4 thereof. On December, 14, 1961 the respondents filed a Special Civil Application in the High Court challenging the validity of the said order on the grounds inter alia that it was passed without giving them an opportunity of being heard, that it contravened Art. 19(1)(f) and (g) of the Constitution, that the competent authority had no power to invoke the Land Requisition Act inasmuch as the purpose for which it was exercised was of a permanent character, viz., construction of houses and settling a new village site, that the proceedings under the Act amounted to acquisition of lands, that invoking the Requisition Act was not in bona fide exercise of power under the said Act, that though there were moire suitable lands for the said purpose the lands of the respondents were deliberately selected as a result of influence exercised by the President of Balapur Municipal Committee, and that there were buildings and a factory situate on the said lands, and therefore the procedure laid down in section 5(2) of the Act should, have been followed. In the return filed by the appellants these allegations were -traversed and it was submitted that the order was valid and competent under section 5(1) of the Act.

The High Court allowed the petition and quashed the order. In the opinion of the High Court the purpose for which the impugned order was passed was a permanent purpose viz., establishing a new village site, that since the Act was a temporary Act extended until then up to 1963 and the power to I requisition thereunder would inhere to the Government only during the time that it subsisted an order passed for a permanent purpose such as for establishing a village gaathan could 'not be in the contemplation of the Act and therefore could not be justified as one passed under the Act. The High Court observed:-

"The Bombay Land Requisition Act was, in our opinion, :never intended to be used for the permanent acquisition of the lands of citizens as is being sought to be done in, the instant case. We can only characterise the attempt to take the lands of the petitioners under that Act as an abuse of the provisions of that Act..... It is patent that if a gaathan or abadi is allowed' to rise upon the lands of the petitioners, the lands can never revert to them at any future time. It is not to be supposed nor is it alleged in the return that the respondents seriously thought that at some future date they would raise to the ground all the houses they were allowing to be constructed in the new gaathan. We hold that the impugned order is unjustified under the Bombay Land Requisition Act, is illegal and amounts to an abuse of the provisions of that

Act."

Counsel for the appellants challenged the validity of the High Court's order on the ground principally that the High Court's view of section 5(1) of the Act was incorrect and that it failed to appreciate the scope of the provisions of section 5(1). The only question arising in this appeal thus is whether the Act authorises an order of requisitioning even if the purpose for which it is made is not a temporary purpose, in the present case rehabilitation of flood sufferers and settling for that purpose a new village site. The validity of section 5(1) is not challenged and therefore it is not necessary to inquire into the genesis of the power of the State legislature to enact the Act. Indeed the question on which the High Court's decision rests is on the scope of the power rather than its validity. Section 4(5) provides that the expression "to requisition"

means in relation to any land, to take possession of the land or to require the land to be placed at the disposal of the State Government. Section 5(1) under which the impugned order was made provides that "if in the opinion of the State Government it is necessary or expedient so to do the State Government may by an order in writing requisition any land for any public purpose." It is clear that the only requirement of section 5(1) is that the State Government must form an opinion that it is necessary or expedient to requisition any land. It can do so of course only for a purpose which is a public purpose. On the face of it the sub-section does not contain any express limitation to the power to requisition, the only limitation being that an order thereunder can be passed for a public purpose only. It is not challenged that rehabilitation of flood sufferers is a public purpose. The question then is does the sub-section contain by implication any restriction viz., that the requisitioning authority has no power thereunder to pass an order where the purpose is not temporary.

It appears that the High Court thought that since the Act itself is of a temporary character in the sense that it was to enure for a particular period and that period had to be extended from time to time and on the Act ceasing to be in force when it is no more extended the requisitioned land would have to return to the owner it follows that the Act does not envisage requisitioning for a purpose which is not temporary. In the opinion of the High Court the temporary character of the Act postulates a temporary purpose for which alone power under section 5(1) can be exercised. The High Court also appears to be of the view that there is an antithesis between the power to requisition and the power of acquisition that the authority realised that the power to requisition cannot be exercised where the purpose is not temporary and realising this difficulty the State Government had to have recourse to its power under the Land Acquisition Act. In this view the High Court held that settling a new village site for the flood-sufferers was a permanent purpose, that once houses and other structures were built on the requisitioned land it would be impossible for the authority to return the land to its owner as provided under s. 9, and: therefore the Act could not have contemplated the exercise of the power thereunder for a purpose which would render the operation of s. 9 impossible. The exercise of power for such-

a purpose must, therefore amount to an abuse of and cannot be justified under the Act.

In our opinion the High Court's view on the scope of the power under section 5(1) cannot be sustained. On a plain reading of the section it is clear that the only limitation to the power which it confers is the temporary life of the Act. But the words "any land for any public purpose" are sufficiently wide enough, to include any public purpose whether temporary or otherwise. To read into the section a limitation that the purpose contemplated by it is only temporary is to 'confound the temporary life of the statute with, the character of the purpose for which the power thereunder can be exercised. Sub-section (1) speaks of no restriction except, as aforesaid, that the purpose must be a public purpose. Section 9 no doubt provides that when the land in question is derequisitioned and that would happen when the statute comes to an end or the land is otherwise released, it has to be restored to the owner as far as possible in the same condition in which it was when it was put into possession of' the authority. That is so because the Government acquires only the right of possession and user of the land and 'not any proprietary right therein and since the ownership is still retained in the owner the land must revert to him as soon as it is released either by the lapse of power or when the purpose of requisitioning is over, whatever use to which such land has been put to during the period of such requisitioning. Section 9 therefore has nothing to do with the nature or character of the purpose for which an order under s. 5(1) is passed. The life of the power and the purpose for which it is exercised are two distinct ingredients of section 5(1) and ought not to be confused. The words "for any public purpose" in the sub-section are wide enough to include any purpose of whatsoever nature and do not contain any restriction regarding the nature of that purpose. It places no limitation on the competent authority as to what kind of public purpose it should be for the valid exercise of its power nor does it confine the exercise of that power to a purpose which, is temporary only. 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. We do not also see any antithesis between the power to requisition and, the power of compulsory acquisition under the Land Acquisition Act. Neither of the two Acts contains any provision under which it can be said that if one is acted upon, the other cannot. Indeed, Part VI of the Land Acquisition Act provides for temporary occupation of waste or arable land needed for a public purpose or for a Company and empowers the appropriate Government to direct the Collector to procure the occupation and use of the same for such purpose as it shall think fit, not

exceeding three years from the commencement of such occupation. Apart from these provisions in the Land Acquisition Act there are several State Acts which empower the appropriate Governments to acquire property which is subject to requisitioning orders. If there is an emergency to meet which the power to requisition is exercised there is nothing in the Act to prevent the authority at a subsequent date to initiate proceedings in a suitable case for permanent acquisition. The exercise of power under the Requisitioning Act does not exhaust or make incompatible the exercise of power under the Land Acquisition Act. The initiation of proceedings under the Land Acquisition Act after requisitioning the lands under s. 5(1) of the Act does not and cannot mean abuse 'of the power under the provisions of the Act. In our view the High Court was in error in holding that the power to requisition under the Act cannot be exercised where the public purpose is not temporary or that the exercise of that power for the purposes of rehabilitation of flood sufferers was either in abuse of or unjustified under the Act. We therefore allow the appeal and set aside the order passed by the High Court. Since the High Court decided the petition only on the question of the validity of the exercise of power and did not decide the other questions raised in the petition, we remand the matter to the High Court to decide those questions in accordance with law. In the circumstances of the case, we make no order as to costs.

Y.P. Appeal allowed.