

Collector of Kamrup and Others

Vs

Kamakhya Ram Barooah and Others

Civil Appeals Nos. 412-414 of 1962

(CJI P. B. Gajendragadkar, J. C. Shah JJ)

11.09.1964

JUDGMENT

SHAH J.

These three appeals raise a common question as to the validity of certain acquisition proceedings commenced by the Collector of Kamrup, state of Assam, under s. 4 of the Assam Land (Requisition and Acquisition) Act, 1948.

We may in dealing with these appeals set out the facts which give rise to appeal No. 412 of 1962. The respondents in this appeal are owners of a plot of land at Bharalumukh, Gauhati, on which stands a residential building. In exercise of the powers conferred by rule 75-A of the defence of Indian Rules, 1939, the Government of India in 1943, requisitioned the land and the building for the use of the defence forces. Since the date of the requisition the land and the building continued in possession of the Government of India. The Collector of Kamrup passed an order on February 9, 1949 for acquisition of the land and building purporting to exercise powers under s. 4 of the Assam (requisition and Acquisition) Act. 1948. At this time the requisition order made by the Government of India was subsisting. Thereafter by order dated August 4, 1949 the Collector requisitioned the land in exercise of the power conferred by s. 3 of the Assam Act 1948, and ordered that the requisition do take effect from February 7, 1949. The Collector assessed compensation payable to the respondents under s. 7 of the Act. The respondents applied for a reference to the Civil Court under s. 8 of the Act and simultaneously challenged the authority of the Collector to acquire the land in the manner he had done. The Subordinate Judge, Gauhati to whom the reference was made, held that at there was no valid acquisition of the land and the building of the respondents. He, however, assessed compensation which would be payable to the respondents if the acquisition was valid. In appeal to the High Court of Assam, the order passed by the Subordinate Judge, holding that the acquisition was invalid was confirmed. The State of Assam has field this appeal with certificate granted by the High Court.

Acquisition of the land and building belonging to the respondents was not made under the provisions of the Assam Land (Requisition and Acquisition) Act, 1948. The Act was enacted, as the preamble states, for certain purposes. By s. 3 if in the opinion of the Provincial Government, it is necessary so to do, for maintaining supplies and services, essential to the life of the community or for providing proper facilities for accommodation, transport, communication, irrigation or drainage, to requisition land, the Provincial Government or the person authorised may by order in writing, do so and make such further orders as appear to it or to him to be necessary or expedient in connection with the requisition. Section 4 by sub-s. (1) provides :

"Where any land has been requisitioned under section 3, the Provincial Government may use or deal with it in a manner as may appear to it to be expedient and may acquire such land by publishing in the Official Gazette, a notice to the effect that the Provincial Government has decided to acquire such land in pursuance of this section."

Sub-section (2) provides :

"Where a notice as aforesaid is published in the Official Gazette, the requisitioned land and premises shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the Provincial Government free from all incumbrances and the period of requisition of such land shall end."

The power to acquire land under s. 4 may, it is plain from a bare perusal of sub-s. (1), be exercised where the land has been requisitioned under s. 3 and not otherwise. In the present case, an order for acquisition of the land was made in the first instance and presumably because it was realized that the order was defective and irregular, it was sought to be rectified by passing an order on August 4, 1949, requisitioning the land with effect from February 7, 1949. By this expedient, an illegal order of acquisition could not be validated.

It is true that at the date when the order of acquisition was passed under s. 4, the land was under requisition and was passed not under s. 3 of the Assam Act, but under Rule 75-A of the Defence of India Rules, 1939. The previous requisition under the Defence of India Rules which was at the date of the order of acquisition outstanding could not confer any authority upon the Provincial Government of Assam to acquire the land belonging to the respondents under s. 4 of the Act.

It was urged that notwithstanding the illegality in the acquisition, the order of acquisition was saved by s. 11 of the Assam Act, which provides :

"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 cannot, however, be said that the order passed under s. 4 acquiring the land of the respondents was made in exercise of the power conferred by or under the Act. The power which was exercisable under s. 4 being expressly a power to acquire land which is under requisition under s. 3, and there being no effective order of requisition under that section, s. 11 is no bar to the maintainability of the objection raised to the validity of the acquisition. The High Court was, therefore, in our judgment, right in holding that the acquisition was illegal.

The appeals fail and are dismissed with costs.

Appeals dismissed.

</html