CALCUTTA HIGH COURT

Pasupati Roy

Vs.

State of W.B

F.M.A. No. 329 of 1972

(Bimal Chandra Mitra and Amiya Kumar Mookerji, JJ.)

03.10.1972

JUDGMENT

Bimal.Chandra. Mitra, J.

1. The subject-matter of challenge in the writ petition, out of which this appeal arises, is the constitutional validity of the West Bengal Fisheries (Requisition and Acquisition) Act, 1965, hereafter referred to as the Act. The appellant is the owner of a Fishery in the District of 24-Parganas and claims to have spent Rs. 15,000/- in repairing embankment and in clearing weeds. He also claims to have spent a large sum of money to make the Fishery fit for pisciculture and also claims to have spent other sums for maintenance of the Fishery.

2. On November 11, 1966, he received a Notice that the Fishery had been requisitioned under Section 4 of the Act, directing him to deliver possession of the Fishery to representative of the Land Acquisition Department on November 13, 1966. Symbolic possession of the Fishery was taken on that late. Thereupon the appellant obtained rule nisi on a writ petition. This rule was discharged by a judgment and order dated April 17, 1972* which is the subject-matter of this appeal.

*Reported in AIR 1972 Calcutta 366

3. The constitutional validity of the Act is challenged on two main grounds, namely, violation of Article 19(1)(f) and also Article 31(2) of the Constitution. The object of the Statute, as it appears from the preamble to the Act is to provide for the requisition and speedy acquisition of fishery for the purpose of improvement or development of such fishery and supplying fish to the public therefrom.

4. Several points were urged before us by Mr. P.N. Mitra, appearing for the appellant. The first point canvassed was that he Act purports to requisition fish in the fishery, as fish has been included in the definition of "Fishery" in Section 2(3) of the Act. It was submitted that fish which was a perishable commodity, could not from its very nature, be the subject-matter of requisition. Fish was an article, it was submitted the requisition of which would really mean expropriation of

the Fish itself. It was contended that once requisitioned, the property in the fish would be lost to the owner for ever and could not be restored after the period of requisition was over. We are not impressed by this argument of Mr. Mitra. Fish no doubt is a perishable commodity and once taken out of water it cannot survive for long. But that by itself would not make an order for requisition of fishery illegal. By the Constitution (7th Amendment) Act acquisition and requisition of property have been included in Entry No. 42 of List III of Schedule VII to the Constitution. This amendment has conferred jurisdiction upon the State Legislature to make laws relating to acquisition and requisition of property. Fish as defined in the Act it property which is capable of being owned, possessed and transferred and as such it may be the subject-matter of an order of requisition like any other property.

5. There are two other reasons why the contention of Mr. Mitra cannot be accepted. In the first place there is nothing in the order of requisition, to suggest that the State Government has requisitioned the fishery for the purpose of catching and supplying fish to consumers. It may as well be, that the fishery has been requisitioned for the purpose of improvement and development of such fishery, as the Preamble of the Act specified.
The State Government may be interested only in rearing the fish by providing better nourishment for the fish in the fishery. It cannot be assumed that the object of the requisition is to catch fish and dispose of the came. In the second place the requisition of a fishery must necessarily include the fish. If the fishery is allowed to be requisitioned without the fish the owner of the fishery would undoubtedly be put to great loss, because while he will not be entitled to any compensation for the fish, he certainly will trot be able to catch all the fish in the fishery before possession is taken by the State Government, nor will be in a position to catch fish after the order of requisition. To exclude fish from an order of requisition of a fishery would, therefore, inevitably mean expropriation of the fish without payment of compensation. The owner of the fishery would much a case be deprived of the fish altogether, without getting any compensation. For all these reasons the appellant's contention that fish in a fishery cannot be requisitioned, cannot in our view be accepted.

6. Before proceeding any further it is to be noticed that we are concerned in this appeal with an order of requisition only and the principles involving acquisition of property and payment of compensation for such acquisition, are not involved in this case.

7. The next question canvassed before us was that the provisions in the Act relating to payment of compensation for requisition of fishery contravened Article 31(2) and Article 19(1)(f) of the Constitution. The argument on behalf of the appellant was that the provisions for compensation in the Act were violative of Article 31(2) and that the compensation provided for would be altogether illusory. It was argued that the principle specified in the Act on which the compensation was to be determined would not enable the appellant to get any compensation at all. Mr. Mitra said that this was not a question of adequacy of the compensation provided for, but it was a case where the compensation provided for was altogether illusory and therefore no compensation at all. This point was argued at great length and I than now proceed to examine it.

8. The provisions for compensation an to be found in Section 8 of the Act and the Sub-Sections there under. Sub-Section (1) of this section provides that whenever fishery or lands are requisitioned under Section 4 of the Act or under Section 5, compensation shall be paid to every person interested in such compensation, as may be determined by the Collector. Sub-Section (3)

provides that where any fishery off lands are requisitioned compensation shall be paid to the persons interested in respect of the requisition of such fishery or lands any damage done during the period of requisition to such fishery or lends other what may have been sustained by natural causes. Sub-Section (4) says that the principles to be followed in determining compensation shall be as follows, namely :

> "(i) Where the Collector and the persons interested agree as to the compensation, the Collector shall make an award ordering payment of the agreed compensation.
> (ii) Where the Collector and the person interested do not agree as to the compensation, or where the person interested cannot be traced or does not appear before the Collector when called upon to be present for the purpose of the determination of the compensation, the compensation to be determined by the Collector shall include the amount calculated for the period of requisition of the fishery or land at the rate of net average annual income from such fishery or land and the amount which the Collector considered necessary to compensate the persons interested for any damage referred to in Clause (b) of Sub-Section (3) and the Collector shall make an award ordering payment of the compensation to determined."

9. The net average annual income which is the basis of the compensation to be paid under clause (ii) of Sub-Section (4) has been defined in the explanation to Sub-Section (4) and so far as it relates to the fishery is as follows :

> "Explanation : Net average annual income to be determined by the Collector for the purpose of Sub-Sections (2) and (4) shall mean :
> (a) .....
> (b) .....
> (c) In the case of a fishery. 1/3rd of the average income from the fishery during a period of five years immediately preceding the date of requisition."

10. Referring to the above provision for compensation, Mr. Mitra contended that the compensation provided for is altogether illusory and was no compensation at all. It was submitted that the compensation contemplated by Article 31(2) was money intended to compensate the owners of the fishery for the loss or deprivation which he would suffer for the requisition of the fishery. An award of 1/3rd of the average income during the period of five years preceding the requisition, was no compensation at all. Secondly it was argued that 1/3rd of the average income during the period of five years was fixed arbitrarily and there was no justification for knocking off as much as 2/3rd of the income. It was submitted that nothing was said as to why 2/3rd of the average income should be knocked off and the trial Court was in error in holding that 2/3rd was knocked off for meeting expenses of the fishery. It was argued that the question of compensation in a statute providing for requisition, would be immune from challenge only if the statute fixed the amount of compensation or specified the principles or the manner in which the compensation was to be determined and given. In this case Mr. Mitra argued neither the amount of compensation was fixed, nor were any principles laid down or the manner in winch the compensation was to be determined. The provisions in the statute providing for

reducing the compensation by 2/3rd of the average income was not a principle relevant in calculating the compensation payable to the owner. In other words it was argued that one could understand if the statute provided that certain sums should be deducted for releasing spawns in the fishery, for providing for nourishment of the spawns, wages of a keeper or watchman of the fishery etc. These are the principles, it was argued, which would have been relevant in the matter of compensation. But arbitrarily knocking off 2/3rd of the average income was not a principle relevant for consideration in calculating the compensation payable to the owner.

11. In support of the above contention Mr. Mitra has relied on the decision of the Supreme Court in *Rustom Cavasjee Cooper v. Union of India*[1], This decision was relied on firstly for the proposition that the compensation should not be illusory and secondly for the proposition that in order to satisfy the test of constitutional validity a Statute must be in conformity not only with Article 31(2) but also Article 19(1)(f). In this case the requisition admittedly is for a public purpose, as it is in the public interest to provide for the improvement and development of fishery and applying of fish to the public therefrom. It was held by the Supreme Court on this question that if the acquisition was for a public purpose, substantive reasonableness of the restrictions which included deprivation might, unless otherwise established, be presumed, but enquiry into the reasonableness of the procedural provision would not be excluded. It was also held in that case that existence of a public purpose and provision for a compensation for acquisition of property were conditions for the exercise of the power and if either condition was absent the guarantee under Article 31(2) would be impaired and the law providing for compensation would be invalid and that the jurisdiction of the Court to question the law on the ground that compensation provided thereby was not adequate was (not ?) excluded. The Supreme Court thereafter referred to the earlier decision of that Court which dealt with the question of compensation. It was noticed that in Mrs. Bela Banerji's case AIR 1954 Supreme Court 170 which was decided before the Constitution (4th Amendment) Act, it was held that the owner was entitled to receive a "just Equivalent" or "fun Indemnification." In P. Vajravalu Mudaliar's case AIR 1965 Supreme Court 1017 it was held that even after the Constitution (4th Amendment) Act by which the words "and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate", the word "Compensation" occurring in Article 31(2) continued to have the save meaning as before, namely, that it must a "Just Equivalent" or "Full compensation". Notice thereafter was takes of the later decision in Supreme Court in Shantilal Mangaldas' case AIR 1969 Supreme Court 634 at p. 635 in which a different view was taken on this question, namely, that while in P. Vajravelu Mudaliar's case it was held that the constitutional guarantee was satisfied only if a just equivalent of the property was given to the owner, in Shantilal's case it was held that compensation being itself incapable of any precise determination no definite connotation could be attached thereto by calling it "just equivalent" or "full indemnification" and in Acts enacted after the 4th Amendment of the Constitution it was not open to the Court to call in question the law providing for compensation on the ground that it was inadequate, whether the amount of compensation was fixed by the law or was to be determined according to the principles specified therein. A reference way also made to the observation in Shantilal case that when Parliament had expressly enacted under the amended clause of Article 31(2) that no law should be called in question on the ground that the compensation provided by that law was not adequate, it was intended clearly to exclude from the jurisdiction of the Court an enquiry that what was fixed or determined by the application of the principles specified as

[1] AIR 1970 SC 564

compensation did not award to the owner a just equivalent of what he was deprived of. After referring to the earlier decisions mentioned above, it was held that it could not be accepted that a principle specified by Parliament for determining the compensation of property was conclusive, because if that view be accepted. Parliament would be invested with a Charter of arbitrariness and by abuse of the legislative process, the constitutional guarantee of the right to compensation might be impaired. It was thereafter held at page 609 of the report as follows :

> "The principle specified must be appropriate to the determination of compensation for the particular class of property sought to be acquired. If several principles are appropriate and one is selected for determination of the value of the property to be acquired selection of that principle to the exclusion of other principles is not open to challenge for the selection must be left to the wisdom of the Parliament."

It was thereafter held that the constitutional guarantee of the right to compensation, meant an equivalent in money of the property acquired and the law must provide compensation and in determining compensation relevant principles must be specified and if the principles were relevant, the ultimate value determined could not be questioned. In that case, however, it was found that in the method adopted for determining valuation of the undertaking important items of assets had not been included and principles some of which were irrelevant and some not recognised were adopted. It was therefore held in that case that in determining compensation certain important classes of assets were omitted and the methods specified for determining valuation of land and building were not relevant to the determination of compensation and the value determined thereby in certain circumstances was illusory as compensation and further that the principle for determining the aggregate value of liability war also irrelevant. It was on this finding that it was held that the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 violated the guarantee of compensation under Article 31(2) as it provided for giving certain, amount determined according to the principles which were not relevant in the determination of compensation of the undertaking and by the method so prescribed the amount declared could not be regarded as compensation.

12. In my view the decision in Cooper's case is not of any assistant to the appellant in this case. There is no dispute that, in this the requisition of the fishery is for a public purpose. Nor is there any dispute that provision has been made for payment of compensation and therefore both the conditions required by Article 31(2) have been fulfilled. Provision has been made for compensation by the Act and the Rules framed thereunder and these provisions say that in the case of a fishery compensation will be 1/3rd of the average income of the fishery during a period of five years immediately preceding the date of requisition. I shell refer to the Rules later. This is not a case where any item of asset of the requisitioned property has been left out. The ratio of 1/3rd of the average income during the preceding five years has been fixed by the legislature. But what is of much greater importance in this case is that in the rules framed by the State Government under the Article (Act ?) to which our attention was drawn by Mr. P.K. Sengupta for the respondents elaborate provision has been made for determination of the compensation. The relevant part of Rule 6 of this Rule is at follows :

> "For the purpose of determination of net average income the Collector may require the owner to produce evidence of his annual income from the fishery and lands for five years

immediately preceding the date of requisition. If no such evidence is available or if the owner does not produce such evidence the Collector shall determine the annual income by making such enquiry as he considers necessary and after having taken into account the general production of fish in a similar fishery and the produce or income from land with similar advantages in the vicinity or if there is no such fishery or land in the vicinity, in any area within his jurisdiction."

13. In my view definite and clear principles have been laid down for determination of compensation for requisition of a fishery. The principles defined cannot in my view be said to be irrelevant for the purpose of determination of compensation. On the other hand in so far as the owner is required to produce evidence of his annual income from the fishery for five years preceding the date of requisition and in so far as upon failure of the owner to produce such evidence the Collector is requited to take into consideration the general production of fish in a similar fishery, in the vicinity or if there is no such fishery in the vicinity, in any area within the jurisdiction of the Collector, it seems to me that the principles which are most relevant to determine the compensation for requisition of a fishery have been laid down. The criticism on behalf of the appellant that 2/3rd of the average income has been deducted arbitrarily, cannot be accepted as that raises the question of adequacy of compensation, a question which is beyond the court's purview. It is also to be borne in mind that what the Supreme Court was considering in Cooper's case AIR 1970 Supreme Court 564 was the question of compensation of a Banking Company as a going concern, which bad assets and liabilities of diverse varieties. Besides it was found that some of the assets bad been left out altogether for the purpose of computing the compensation. Such is not the case in this appeal. It is not the appellant's contention that there is anything in the Act which has excluded any part of the assets of the fishery for the purpose of compensation.

14. The next case relied on by the appellant was the decision of the Supreme Court in *State of Gujarat v. Shantilal Mangaldas, AIR 1969 Supreme Court 634* (supra). This decision was relied upon for the proposition that the provision for compensation in the Act was illusory and therefore was not compensation at all under Article 31(2) of the Constitution. But in my view the decision of the Supreme Court is altogether against the contention of the appellant. In dealing with the question of compensation it was held at page 650 of the report as follows :

"Reverting to the amendment made in clause (2) of Article 31 by the Constitution (4th Amendment) Act, 1955 it is clear that adequacy of compensation fixed by the Legislature or awarded according to the principles specified by the legislature for determination is not justiciable. It clearly follows from the terms of Article 31(2) as amended that the amount of compensation payable, if fixed by the Legislature is not justiciable, because the challenge in such a case, apart from a plea of abuse of legislative power, would be only a challenge to the adequacy of compensation. If compensation fixed by the Legislature and by the use of the expression "compensation" we mean what the Legislature justly regards as proper and fair recompense for compulsory expropriation of property and not something which by abuse of legislative power though called compensation is not a recompense at alt or is something illusory - is not justiciable, on the plea that it is not a

> just equivalent of the property compulsorily acquired, it is open to the Courts to enter upon an enquiry whether the principles which an specified by the Legislature for determining compensation do not award to the expropriated owner a just equivalent ? In our view, such an enquiry is not open to the Courts under the statutes enacted after the amendments made in the Constitution by the Constitution (Fourth Amendment) Act. If the quantum of compensation fixed by the Legislature is not liable to be canvassed before the Court on the ground that it is not a just equivalent, the principle specified for determination of compensation will also not be open to challenge on the plea that the compensation determined by the application of those principles is not a just equivalent. The right declared by the Constitution guarantees that compensation shall be given before a person is compulsorily expropriated of his property for a public purpose."

15. It seems to me that the decision in Shantilals case AIR 1969 Supreme Court 634 is entirely against the contention of the appellant so far Article 31(2) is concerned. The observation of the Supreme Court in the earlier decision in P. Vajravelu Mudaliar's case AIR 1965 Supreme Court 1017 was explained by saying that it was held in that case that the amended Act did in fact specify principles for ascertaining the value of the property acquired and those principles were not irrelevant in the determination of compensation and also that if there was inadequacy in the compensation awarded by the application of those principles it was not open to question in view of the expressed provisions made in the last clause of Article 31(2) of the Constitution. In differing from the decision in P. Vajravelu's case on the question of inadequacy of compensation it was held :

> "If by that observation it is intended that the attack on the principles specified for determining compensation is excluded only when it is founded on a plea of inadequacy of compensation, a restricted meaning is given to Article 31(2) which practically nullifies the amendment. Whatever may have been the meaning of the expression "compensation" under unamended Article 31(2) it was further held that when Parliament expressly enacted under the amended clause that, no such law shall be called in question in any Court on the ground that the compensation provided by that law was not adequate, it was intended clearly to exclude the jurisdiction of the Court from an Enquiry that what was fixed or determined by the application of the principles specified as compensation did not award the owner a just equivalent of what he was deprived."

It seems to me that the decision in Shantilal's case is a complete answer to the contention of the appellant that the Act violates Article 31(2) inasmuch as 2/3rd of the average income has been excluded from the compensation to be awarded to the owner of the fishery.

16. Let me now tram to the decision of the Supreme Court to AIR 1965 Supreme Court 1017 (supra). In that cue the question before the Supreme Court was whether the Land Acquisition (Madras Amendment) (Act ?) infringed Article 14 of the Constitution. It was considered whether by enacting this law the Legislature had made a reasonable classification. Such a classification, it was held had to pass two tests, namely (i) the classification must be founded on an intelligible differentia which distinguished persons and things left out of a group and (ii) the differentia must

have a reasonable relation to the object sought to be achieved by the Statute in question. On a comparison of the provisions of the Land Acquisition Act, 1894 and the Land Acquisition (Madras Amendment) Act, 1961 it was found that if land was required for a housing scheme under the amending Act the owner got a smaller value than what he would get, for the same land or a similar land if it was acquired for a public purpose under the 1894 Act. It was therefore held that the classification sought to be made by the amending Act between persons whose lands were acquired had no reasonable relation to the object sought to be achieved and therefore discrimination was writ large on the amending Act. It was in these facts that it Was held that the amending Act infringed Article 14 of the Constitution and was void. With regard to Article 31(2) of the Constitution it was held that even after the 4th Amendment of the Constitution if a legislature intended to make a law for a compulsory acquisition or requisition, it must provide for compensation or specify the principle for ascertaining the compensation and that the legislature in making provision for compensation should provide for just equivalent of what the owner had been deprived of or specify the principle for the purpose of ascertaining the just equivalent. It was further observed that what was excluded from the Court's jurisdiction was the question of adequacy of compensation fixed by the legislature and that neither the principles prescribing the "Just Equivalent" nor the "Just Equivalent" would be questioned by the Court on the ground of inadequacy of the compensation fixed or arrived at by the operation of the principles. It was further observed that if a law laid down a principle which was not relevant to the property acquired or to the value of the property at the time when it was acquired, it might be said that they were not principles contemplated by Article 31(2) of the Constitution. Unit decision of the Supreme Court, as I have noticed earlier, was explained and interpreted in Shantilal's case AIR 1969 Supreme Court 634 and keeping in mind the view expressed in the latter, decision, on the question whether compensation could be said to mean a "just equivalent", it is not necessary for me to deal with this decision any further. It is to be noticed however that it was held that when principles were laid down by the law providing for acquisition or requisition, the law could not be challenged, if the principles were relevant in determining compensation payable for the property. In this case, as I have noticed earlier, elaborate provisions have been made in the rules framed under the Act for determining compensation payable for requisition of fishery and it cannot be said that those principles are not relevant in determining such compensation. For these reasons we are unable to accept the contention on behalf of the appellant that the compensation provided for by the Act was illusory or way no compensation at all and therefore the statute violated Article 31(2) of the Constitution.

17. The next attack on the Act was founded on Section 2(5)(iii) of the Act Section 2 of the Act deals with the definition of various terms used in the statute. Sub-Section (5) of this section reads as follows :

> "(5) The expression "public purpose" means purpose having, or being connected with, any of the following objects, namely -
> (i) The improvement or development of a fishery,
> (ii) Supplying fish to the public from such fishery, or
> (iii) Any other object which the State Government may, by notification in the Official Gazette, declare as ancillary or incidental to the aforesaid objects."

18. Mr. Mitra argued that there was excessive delegation of legislative power to the State

Government by clause (iii) of Sub-Section (5) inasmuch as unguided discretion had been left with the State Government to declare any object as ancillary or incidental to the objects set out in clauses (i) and (ii). He argued that there was nothing in the Act to show that the State Government was to act on any principle laid down by the legislature in the matter of declaring any object as a "public purpose" for the purpose of the Act. We are unable to accept this contention on behalf of the appellant. In construing Sub-Section (5) the doctrine of ejusdem generis should be applied and on the application of that principle there is no scope for arguing that the State Government was at liberty to declare any object to be a public purpose for the. purposes of the Act. The particular words and the objects in clauses (i) and (ii) are followed by the general words in Clause (iii) and the general words must be construed to mean only such other things or objects as come within the genus of things and objects enacted in clauses (i) and (ii). This principle is so well settled that I do not think it necessary to linger any further on this branch of this case.

19. The next attack of Mr. Mitra was relating to the provision for appeal in Section 11 of the Act. It was argued firstly that the provision for appeal is nugatory, as it was an appeal from Caesar to Caesar. In other words it was submitted that the award was to be made by agent of the executive Government or by an officer subordinate to him. An appeal from the order was to be heard, in the case of an order of the Collector, by the Commissioner of the Division and in the case of an order by an officer other than, the Collector, an appeal was to be heard by the Collector. It was argued that it was really the executive Government who was taking the property of the owner and who again had been invested with the power of not only making the award for compensation but also of hearing of an appeal from the order awarding compensation. It was submitted that the State Government and its officer in effect became a judge in their own cause. It was, therefore, argued that rules of natural justice were violated by the provision regarding appeal the Act. In my view there is no merit in this contention. Rules of natural justice are not embodied principles and a statute cannot be struck down on the ground that it is violative of the principles of natural justice. Where the Legislature in its wisdom provides that appeal from an order of a particular officer would be heard by another officer, even if both of them belong to the same limb of the Government who is interested in the order made, it cannot be said that the provision for appeal is bad on the ground that the department interested is a Judge in its own cause. To cite only two instances, namely, the provisions for appeal in the Income-tax Act and the Custom Act of cases where an appeal is to be taken from an officer of the lower rank to an officer of the higher rank of the same Department, would be sufficient to repel this contention of the appellant. For this reason, this contention on behalf of the appellant cannot be sustained.

20. The next contention of the appellant was that the Act was violative of Article 14 of the Constitution inasmuch as it denied to the appellant equality before the law and equal protection before the law. The argument was that there was another statute in force in West Bengal, namely, the West Bengal land (Requisition and Acquisition) Act, 1948 under the provisions of which the fishery could have been requisitioned and if the fishery was requisitioned under this Statute the appellant would have got larger compensation and would have been entitled to a reference to the Court on the question of compensation, in the event of disagreement between the Collector and the owner under Section 7(4)(iii) of the West Bengal Land (Requisition and Acquisition) Act, 1948. It was, therefore, submitted that since the appellant had been deprived of the right to approach the Court in the matter of compensation, he had been denied the equal protection of laws and therefore the Act was violative of Article 14. I do not think there is any substance in this

contention on behalf of the appellant for two reasons. A similar question came up for consideration before this Court in *Mihir Kumar Sarkar v. State of West Bengal*[2], The question in that case was the application of the provisions of two Statutes, namely, the West Bengal Land (Requisition and Acquisition) Act, 1948 and the Land Acquisition Act, 1894. It was held that if two Statutes covered the same field there was no constitutional law which prevented the application of the one or the other or compelled the preference of one to the other and that if both could be applied, either the one or the other could be invoked by the State Government empowered to do so. It was further held that if the two Statutes prescribed unequal procedures the only way they could be challenged was on the ground of infringement of Article 14 of the Constitution and if the test of Article 14 of the Constitution was satisfied, no further question of constitutional preference m the application of one or the other statute on the ground of discrimination could any longer arise. This decision is a complete answer to the contention on behalf of the appellant. But quite apart from that decision there is one other more formidable obstacle to the appellant's contention. This relates to definition of "land" in the Went Bengal Land (Requisition and Acquisition) Act 1948. "Land" in this Act has been defined to have the same meaning as land in the Land Acquisition Act, 1894 and in the definition of the "land" in the latter Act, fishery bad not been included. It was argued that fishery should be construed to be a benefit arising from land and therefore it should be held that fishery came within the definition of land in the Land Acquisition Act, 1894. We are unable to accept this contention. A fishery does not come within the purview of the Land Acquisition Act, 1894 as the definition of land in that Act does not include a fishery as such. In that view of the matter it cannot be said that the West Bengal Land (Requisition and Acquisition) Act, 1948 could be invoked by the State Government for the purpose of requisition of the appellant's land and that not having been done, the appellant had been denied the equal protection of laws under Article 14 of the Constitution. Before passing I should refer to one decision of the Supreme Court relied upon on behalf of the appellant on this question. *Dy. Commr. and Collector Kamrap v. Durganath Sharma*[3], In that case the State legislature of Assam passed an act known as Land or Flood Control and Prevention of Erosion Act, 1955 and the question before the Supreme Court was whether the provisions of this Act violated Article 14 of the Constitution. It was held that the Land Acquisition Act, 1894 was in force in Assam and under this Act land might be acquired for a public purpose on payment of market value of land. But while this Act was in force the Assam Legislature passed the above Act for speedy acquisition of the land or the public purpose of carrying out works or other development measures for flood control or prevention of erosion on payment of compensation assessed on the basis of multiple on the annual land revenue. It was therefore held that in the State of Assam one plot of land might be taken under the State Act on payment of nominal compensation, while an adjoining land might be taken for other public purpose under the Land Acquisition Act on payment of adequate compensation. It was, in these facts, that it was held that Article 14 was violated. We do not see how this decision is of any assistance to the appellant, as I

[2] AIR 1972 Cal 8

[3] AIR 1968 SC 394

have noticed earlier the West Bengal Land (Requisition and Acquisition) Act, 1948 could not be invoked for the purpose of requisition of the appellant's fishery.

21. I should refer to one other decision on which reliance was placed by learned Advocate for the appellant for the proposition that compensation for a requisition of a property is reasonable when it is to be determined by the Civil Court. The decision on which reliance was placed in support of this proposition is *S.M. Nandy v. State of West Bengal*[4], That decision is no authority for the

proposition that compensation becomes reasonable only if it is to be determined by the Civil Court or if there it a provision for a reference to the Civil Court as in the Land Acquisition Act, 1894 and that compensation would become illusory if it is to be determined according to the provisions in the Statute providing for requisition of the property. On the same question reliance was placed by Mr. Mitra on a decision of the Judicial Committee : *Ezra v. Secretary of State for India*[5]. I do not think that that decision is any authority either for the proposition that compensation prescribed by the statute would become illusory if there is no provision for an appeal to the Civil Court and if such compensation is awarded by an executive authority in accordance with the provision in the Statute. On the question as to an award of the Collector regarding compensation under the Land Acquisition Act, 1894 reliance was placed by Mr. Mitra on a decision of the Supreme Court : *Raja Harish Chandra Raj Singh v. Dy. Land Acquisition Officer*[6], It was held in that case that the award made by the Collector could not be treated as a decision and in law it was an offer or tender of compensation and if the owner accepted the offer no further proceedings were required and the compensation proceedings came to an end, but if the owner did not accept the offer Section 18 of the Act gave him a statutory right of having the question determined by Court and it was the amount of compensation which the Court might determine that would bind both the owner and the Collector. This decision is again of no authority for the proposition that an award for compensation under the Act cannot be treated as valid award because there was no provision for determination by the Civil Court.

22. Mr. P.K. Sengupta appearing for the respondent contended that the Act could not be struck down on the ground of excessive delegation of legislative power. He argued that the policy of the Legislature was amply indicated in the preamble to the Act namely improvement or development of fishery and supplying of fish to the public therefrom. He further that these objects were specified in Section 2(5)(i) and (iii) of the Act and all that was left to the State Government was to give effect to toe legislative policy indicated in various provisions of the Act. In support of this contention reliance was placed on a decision of the Supreme Court *State of Madhya Pradesh v. Champalal*[7], In that case the Supreme Court considered the vires of the Bhopal Reclamation and Development of Land (Eradication of Kans) Act 1954. The question was whether absence of provision for an opportunity to the owner of land to contend that his land was not kans infested was arbitrary. It was held that absence of such a provision was arbitrary in nature and imposed an unreasonable restriction on the right to hold and enjoy the property. On the question of excessive delegation of legislative power it was held that the Preamble and Title of the Act made it clear that the enactment was for reclamation and development of lands by eradication of kans weeds in certain areas and that the legislative policy behind the provision was clear and what remained and was left

[4] AIR 1971 SC 961
[5](1905) 32 Ind App 93 (PC)
[6] AIR 1961 SC 1500
[7] AIR 1965 SC 124

to the executive was to carry out that mandate and to give effect to the law so as to achieve the purposes of the Act. The observations of toe Supreme Court were made on the basis of the provisions in the particular Statute mentioned above and cannot be applied in considering the question of excessive delegation to all statutory provisions. As I have already held on a construction of Section 2(5) of the Act it cannot be said that there is excessive delegation of legislative power to the State Government. On this question reliance was placed by Mr. Sengupta on another decision of the Supreme Court reported in AIR 1957 Supreme Court 478. Reliance was also placed on another decision of the Supreme Court on this question reported in AIR 1964 Supreme Court 1260. In that case it was held that a Statute empowering the State Government to

issue certain notification was conditional legislation. I do not think that this decision is of any assistance to the respondent in this case.

23. A reference was made by Mr. Sengupta to a decision of the Supreme Court : *Durga Sankar Mehta v. Raghuraj Singh*[8], for the proportion that there is no right to prefer an appeal from every judgement and order and that right to appeal is a creature of Statute.

24. In our view Mr. Sengupta is right in his contention that the provisions in the Statute for compensation in regard to requisition of property are not illusory and therefore not violative of Article 31(2) of the Constitution nor of Article 19(1)(f) of the Constitution. We also accept Mr. Sengupta's submission that the principles laid down for computing compensation in the Act and in the rules framed thereunder are relevant to the matter of determining compensation for requisition of a fishery. We canned, however, accept Mr. Sengupta's alternative contention that the Statute fixed the compensation payable to owner of a fishery.

25. On a careful consideration of the provisions in the Act and in the rules, we cannot but come to the conclusion that the principle for determination of, compensation as laid down in the Act and in the rules, such a they are, cannot be said to be irrelevant in determining the compensation. It is clear to us that what the appellant in seeking to do by diverse and circuitous methods is to question the adequacy of compensation, a question which is beyond the jurisdiction of the Court after the Constitution (4th Amendment) Act. If no principles for determining compensation are laid down, or if the principles prescribed are not relevant, with the consequence that what the owner would get for expropriation of his property would be something illusory, it would be no compensation at all. But such is not the case here, we cannot hold that the principles, such as they are, the such that by their application what would be arrived at would be altogether illusory and therefore it would not be the compensation contemplated by Article 31(2) of the Constitution. All in all it seems to us that the Trial Court was right to the conclusion to which it arrived and we see no reason to interfere with it.

26. For reasons mentioned above this appeal fails and is accordingly dismissed. No order as to costs.

27. As prayed, let operation of this Order remain stayed for three weeks after the. long vacation.

[8] AIR 1954 SC 520

Amiya Kumar Mookerji, J.

28. I agree.

Appeal dismissed.