

Nil Kamal Bejbaruah Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Jan-18-1982

Reported in : AIR1982Cal180,86CWN502

Judge : B.C. Ray, J.

Acts : West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 3(1); ;West Bengal Land Requisition and Acquisition Rules, 1948 - Rule 3; ;[Constitution of India](#) - Article 226

Appeal No. : Writ Appln.

Appellant : Nil Kamal Bejbaruah

Respondent : State of West Bengal and ors.

Advocate for Def. : S. Gupta and ;A. Chakraborti, Advs.

Advocate for Pet/Ap. : S.D. Banerjee, ;P. Mukherjee and ;A. Roy, Advs.;S. Gupta, ;Ruma Pal and ;Suchit Banerjee, Advs.

Judgement :

ORDER

B.C. Ray, J.

1. The petitioners who claimed to be the owners of the property being premises No. 2, Park Lane, Calcutta has come up before this Court with the instant writ application assailing the validity of the order of requisition made under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act, II of 1948) on the ground that the order of requisition has not been served on the petitioners as required under the Act framed thereunder and that the order was made under colourable exercise of power as there was no formation of opinion and there was no application of mind. The said order has also been challenged on the ground that there was no public purpose for requisition of this land and the said land being previously notified for acquisition and the same being pending the order of the requisition was also illegal and bad.

2. The facts in brief are that the petitioners jointly purchased the property at premises No. 2, Park Lane on or about Aug. 1, 1952 out of their joint funds. The petitioner No. 2 was the first wife of the petitioner No. 1 being married in 1940 under the Special Marriage Act and she obtained a decree of divorce in a suit from the High Court at Madras. A partition suit was instituted on or about Jan. 7, 1980 at the

instance of the petitioner No. 2 in the court of the 4th Bench of City civil Court, Calcutta and on Jan. 8. 1980, on the basis of a compromise decree the petitioner No. 1 was allotted Schedule 'C' property and the petitioner No. 2 was allotted Schedule 'B' property the detail description of which was given in paragraph 4 of the petition. It has also been stated that after the partition was affected, the petitioner No. 2 had applied on or about Sept, 13, 1980, before the Assessor of the Calcutta Corporation for mutation of her name in respect of her half share in the entire property and such mutation was accordingly granted. It has also been further stated that there is a pucca structure on the said premises No. 2, Park Lane, Calcutta and there is an office accommodation for petitioner No. 1. A Darwan of the petitioner No. 1 is residing in one of the rooms in the said premises. Negotiations between the petitioner No. 1 and the Calcutta Electricity Supply Corporation (India)' Ltd., respondent No, 6, for sale of the premises were carried on and the price was settled, A draft agreement was prepared and it was sent with letter dated June 14, 1978 to M/s. Talbot and Company, the land agent of the Calcutta Electric Supply Corporation (India) Ltd. but the said negotiation, however, did not materialise and it was ultimately abandoned on or about Jan. 9, 1979 because of the adamant attitude of the respondent No. 6. A notification being No. 9346 -- L. A./K. S./1979 dated June 22, 1979 under Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) was published in Calcutta Gazette (Extraordinary) for acquisition of the said land for the alleged public purpose 'for construction of House for 'Urdhu Academy', The land notified for acquisition as mentioned in the said notice was more or less 0.1063 Hectare or 0.2627 acre. A copy of the said notice was annexed as annexure 'C' to the petition. The petitioner submitted an objection against the said proposed acquisition under Section 5(A) of the said Act and prayed for personal hearing. The objections were heard but the determination on the same was never communicated to the petitioner. As such the petitioner could not know about the results of the said land acquisition proceedings. The petitioner is under the belief that the said proceeding is still pending. During the pendency of the said land acquisition proceedings on or about Oct. 16, 1981 another order of requisition being No. 12/81/11/48 dated Oct. 16, 1981 was purported to be passed by the First Land Acquisition Collector, Calcutta, the respondent No. 3, under Section 3 (1) of the West Bengal Land (Requisition & Acquisition) Act, 1948 (West Bengal Act II of 1948)' for requisition of premises No. 2, Park Lane. Calcutta for the public purpose of establishment of power distribution station. It has been stated that this order has not been served on the petitioners in the manner prescribed by Rules 3 (a) to 3 (d) of the West Bengal Land (Requisition and Acquisition) Rules, 1948. The petitioner No. 1 had received the said order which was handed over to the adjoining Ration Shop owner on his return from Madras on October 22, 1981. A copy of the said notice has been annexed as annexure 'F' to the petition. It has been specifically ordered that the possession of the said premises, would be taken, on Oct. 17. 1981 in terms of Section 3 (2) of the said Act. It has been stated therein that the order was not served on any of the 'Recorded joint owner' and no attempts were made to be served upon them the said order. It has been further stated that the petitioner No. 1 was away in Madras from Oct. 7, 1981 till Oct. 22, 1981 and on receiving information through telegram dated Oct. 9. 1981 from his darwan, Sri Sitaram Singh be returned back from Madras on Oct. 22, 1981. On returning back from Madras on Oct. 22, 1981 the petitioner No. 1 came to know for the first time from his Darwan that an order had been handed over on the adjoining Ration Shop on or about Oct. 16. 1981 at 8 P. M. and the petitioner No. 1 was further informed by the said Darwan that some persons claiming themselves to be the employees of the Calcutta Electric Supply Corporation (India) Ltd.. respondent No. 6, had broken open the lock of the main gate of the premises No. 2. Park Lane, Calcutta at about 11 A. M. on 17-10-1981 and drove

out the Darwan by physical force from his room for which the Dardwan had lodged a complaint with the Officer-in-Charge, Park Street, police Station.

3. On these allegations and facts the instant writ application has been moved in this Court with a prayer for a writ of or in the nature of Mandamus commanding the respondents not to give any effect or further effect to the impugned order of requisition dated October 16, 1981 (annexure F' to the petition). There was also a further prayer for release of the premises and a prayer for a writ of certiorari directing the respondents to certify and transmit the records relating to the land acquisition proceedings as well as the requisition proceedings so that the same may be quashed and set aside,

4. On Oct. 30. 1981, the instant Rule was issued and an interim order was made restraining the respondents from changing the nature and character of the premises by way of demolition or new construction till two weeks after the long vacation with liberty to the petitioners to apply for extension of the same upon notice to the respondents, The interim order dated 19-11-1981 was extended till Wednesday next and leave was granted to respondents to file an application for vacating the interim order, pursuant to the leave two applications for vacating the interim order was filed -- (1) one by the Calcutta Electric Supply Corporation (India) Ltd.. respondent No. 6 and (2) another on behalf of the respondents Nos. 1, 2 & 3, that is, the State respondents. By order dated 25th Nov. 1981, both these applications along with the Rule were directed to be placed for hearing.

5. Mr. Sankardas Banerjee, learned Counsel, with Mr. Paritosh Mukherjee, learned Advocate appearing on behalf of the petitioner contended in the first place that the order of requisition is illegal and bad being not in compliance with the mandatory provisions of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 read with the Rules framed thereunder as the order has not been served on the petitioners in their residences nor on the premises purported to be requisitioned. It has been further submitted in this connection that the petitioner No. 1 was away from his residence from Oct. 7, 1981 as he was then in Madras and was there till Oct. 22. 1981. The copy of the order was also not served on 2, Park Lane, Calcutta but it was handed over to the nearby ration shop. As such it has been contended that the purported order of requisition is wholly bad and illegal and the requisition proceedings should not be proceeded with. It has been next submitted that the order of requisition was made in a mala fide manner and it was a colourable exercise of power because the premises in question which was notified for requisition was previously proposed by the respondent No. 6 to the petitioner No. 1 for purchase of the same, Negotiations were carried on and price was fixed, agreement was prepared but the said transaction could not be materialised due to the adamant attitude of the respondent No. 6 and the negotiation failed in 1979, It has been submitted that in these circumstances there is in fact no existence of any public purpose which necessitates the making of the order of requisition by the Government as has been done here. The order of requisition in question is therefore mala fide and it has been made on a total non-application of mind. The formation of opinion by the respondent No. 3 in this circumstance is also bad as conditions precedent for forming such an opinion and the existence of relevant circumstance are completely absent. It has also been submitted that the formation of opinion though subjective can be challenged on the ground of opinion being formed on a non-application of mind and/or on a consideration of irrelevant and extraneous materials and circumstances. It has been thirdly submitted that the order of requisition is also bad inasmuch as a portion of the

said premises were notified for requisition for construction of the House for 'Urdhu Academy' and the said acquisition proceedings had not been abandoned and/or dropped, it has been lastly submitted that the principles of natural justice which is applicable in this case as the purported order of requisition has civil consequences has not been observed as no opportunity of hearing was given to the petitioner before the order was made nor any opportunity of hearing Was given to file objections against the purported order of requisition. It has been further submitted that the order though an administrative order affects civil rights of the petitioner and as such the principles of natural justice are applicable. Non-observation of these rules of natural justice renders the proceeding as well as the order invalid and inoperative in law.

6. Mr. Gupta, learned Additional Advocate General appearing on behalf of the State has submitted that the order of requisition has been served as required under the West Bengal Land (Requisition and Acquisition) Rules, 1948 on the petitioners both at his residence at 60, Lake Place, Calcutta as well as on the requisitioned premises No. 2, Park Lane, on 16th Oct. 1981. The allegation that there was no service of the order of requisition as required under the rules is without any foundation. It has also been submitted by Mr. Gupta that the order of requisition is not made mala fide nor it was made on a total non-application of mind. The land was urgently required for implementation and/or establishment of a power distribution station in order to provide electricity to the tall buildings which are coming up in that area. Though the entire vacant land comprising in premises No. 2, Park Lane cannot be retained by the petitioners under the Urban Land (Ceiling and Regulation) Act, 1976 still in view of the urgency of the need the Government thought it fit to requisition the entire premises instead of proceeding under Urban Land (Ceiling and Regulation) Act, 1976. There is the existence of the public purpose and the premises-in-question is required to be requisitioned for the said public purpose. It has, therefore, been submitted that the order of requisition is neither mala fide nor the same has been made on a total non-application of mind or on a consideration of extraneous and irrelevant considerations. It has been further submitted by the learned Additional Advocate General that the rules of natural justice have been excluded by the Act inasmuch as it provides for requisition of land and premises for maintaining supplies and services essential to the life of the community which is an urgent and immediate necessity. It has been submitted that the said Requisition Act cannot be held to be bad on this core as objections can be filed by the petitioners after the order is made. Such objections if filed would be duly considered by the concerned authorities. The petitioners had not filed the objection to the impugned order of requisition and as such they are not competent to challenge the order of requisition on the ground of violation of the rules of natural justice. A decision of the Supreme Court has been cited at the bar in this connection. It has been further submitted by Mr. Gupta that the earlier acquisition proceedings initiated under the Land Acquisition Act. 1894 had been cancelled and the Deputy Secretary, Land and Land Revenue Department intimated to the First Land Acquisition Collector, respondent No. 3, about this already and directed him to send a draft notification cancelling the notification published under Section 4 of the Land Acquisition Act. The' draft cancellation notification was submitted by the respondent No. 3 through the Commissioner of Presidency Division. Of course, the same has not yet been published. Therefore, the land acquisition proceeding has been dropped already before the issuance of the order under Section 3 (1) of the said Act which is neither illegal nor bad. The requisition proceedings are perfectly valid in law and possession of the requisitioned land has been taken already and the same has been made over to the respondent No. 6, the Calcutta Electric

Supply Corporation (India) Ltd. it has been therefore submitted that the instant Rule should be discharged and the interim order should be vacated.

7. The excerpt of the order of requisition dated 16th Oct. 1981 runs as follows: 'Whereas in my opinion it is necessary for a public purpose for maintaining supplies and services essential to the life of the community by establishment of a power distribution system to requisition the land described in the schedule below:Now therefore, in exercise of the power conferred by Sub-section (1) 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 mentioned in the schedule below and make the following further orders namely :-

That the land described in the Schedule below shall be placed at my disposal and control on 17-10-1981 at 10-30 A. M. when an officer deputed from this office will take charge and possession of the said land.'

8. This order as appears from paragraph 10 of the application for vacating and/or modifying the interim order filed on behalf of the respondents Nos. 1 to 3 and affirmed by the Bimal Kr. Bhattacharya, First Land Acquisition Collector, respondent No. 3, was served on the petitioner No. 1, Nil Kamal Bejbaruah at his residence, that is, at 60, Lake Place, Calcutta. It has been stated that the process server of the respondent No. 3 went to the residence of petitioner No. 1 with the said requisition order to serve upon him personally on 16th of October, 1981. But the petitioner No. 1 was not available at his residence and as such the requisition order was served by affixing the same at the main outer door of the said premises No. 60, Lake Place, Calcutta. The Process Server also went to the premises No. 2, Park Lane on the same day, that is, 16-10-1981 with the order of requisition. The Darwan of the petitioner No. 1 was found available who refused to accept the order after reading the contents of the order and accordingly the said Process Server served the requisition order by affixing the said requisition order at the entrance of the requisitioned premises in presence of one Shyamlal Agarwal who is the owner of a ration shop opposite to the requisitioned premises. In the affidavit-in-opposition sworn by Prabhat Kamal Bez Baruah, son of Dr. Nil Kamal Bez Baruah on 26th November, 1981 it has been stated in paragraph 8 that the Darwan was not in the premises on October 17, 1981 and as such the question of his refusal of accepting the order did not arise at all. It has been stated that the Darwan was not authorised to accept the order nor the obligation on the part of the Land Acquisition authorities, could be discharged by taking alternative mode of service, by affixation in nearby Ration Shop. This has been affirmed as true to the knowledge of the deponent. These averments in the affidavit-in-opposition are not acceptable on the ground that the absence of the Darwan on 17th October, 1981 from the requisition premises cannot be true to the knowledge of the deponent in the absence of any supporting affidavit affirmed by the Darwan himself. Moreover, the statement as made in paragraph 12 in the petition are also not acceptable inasmuch as the petitioner on his own statement left Calcutta for Madras on Oct. 7, 1981 and returned from there on 22nd Oct. 1981. Therefore, the question of non-service of the order at his residence at 60, Lake Place does not arise. Nor he is competent to say that the notice was not served on the requisitioned premises because of his absence from Calcutta at that time. These averments in paragraphs 12 and 13 have been sworn as true to the knowledge of the petitioner No. 1. It is inconceivable how the petitioner who was away from Calcutta at the relevant time can know whether the requisition order was served either at his residence or at the requisitioned premises

by the peon on 16th October, 1981 or not and how this fact can be true to his knowledge. No affidavit is forthcoming from the Darwan in question who was actually present at the relevant time at the requisitioned premises. Therefore, this statement cannot be relied upon. It has been urged with great force and persuasiveness that no notice was served on respondent No. 2 who is the divorced wife of the petitioner. It appears from the averments made in paragraph 7 of the petition that the petitioner alone carried on the negotiations for sale of property with the Calcutta Electric Supply Corporation (India) Ltd., respondent No. 6. It also appears from letter dated 14th June, 1978 addressed to M/s. Talbot Co. that the petitioner No. 1 alone is carrying on the negotiations and the draft agreement which has been annexed as annexure 'B' to the petition that the said agreement was purported to be made between the petitioner No. 1 on the one hand and the Calcutta Electric Supply Corporation (India) Ltd. on the other hand and the petitioner No. 2, the divorced wife of the petitioner is a confirming party. This prima facie goes to show that the petitioner No. 1 is carrying on all negotiations as sole owner of the property. Even assuming that the petitioner No. 2, the divorced wife has got some share in the property on the basis of the decree in the partition suit still then from the circumstances stated hereinbefore it is quite evident that the petitioner No. 1 is dealing with this property and that shows he might have been authorised by the respondent No. 2 to do so. The order of requisition, as appears from the report of the peon of respondent No. 3: was served at the main entrance of the requisitioned premises on 17th of Oct., 1981. It also appears from annexure 'D' to the requisition order that the notice was served by the Process Server by affixing the order on the outer door of the residence of the petitioner No. 1 at 60. Lake Place, Calcutta. Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules, 1948 provides four alternative modes of service of which the modes of service specified in 'a' & 'd' are quoted herein below:--

(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 in whom the order is to be served; or his agent or

(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.'

In this case I have already said hereinbefore that the peon of the respondent No. 3 served the copy of the order both at the residence of the petitioner No. 1 as well as the requisitioned premises. Therefore, even if it is assumed for argument's sake that the copy of the order as required to be served on the petitioner No. 2 has not been served still then the copy of the order being served on the requisitioned premises as provided in Rule 3 (d) of the said Rules, there has been in my opinion, no violation or breach of the provisions prescribing the manner of service of orders under Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules, 1948. The decision reported in : AIR1959Cal402 Sri Luxmi Janardan Jew v. State of West Bengal, where it has been held that the order of requisition is bad and the requisition proceedings cannot be allowed to continue as the notice were not served upon all the parties do not apply to this case. The order of requisition have been duly served and as such there is no infirmity in the matter of service of the order under Section 3 of the said Act. The requisition proceedings is, therefore, legal and valid. The contentions on this score is therefore overruled,

9. As regards the contention that the order of requisition is mala fide and the same

has been made on a closed mind and in the absence of any public purpose it is evident from the order of requisition made under Section 3 of the said Act that the public purpose mentioned in the order is 'establishment of a power distribution system.' This undoubtedly is a public purpose. It has been stated in paragraph 2 of the application for vacating interim order sworn by Sri Bimal Kr. Bhattacharya, First Land Acquisition Collector, Calcutta, respondent No. 3 that portion of the disputed premises No. 2, Park Lane, was notified for acquisition under Section 4 of the Land Acquisition Act (Act 1 of 1894). This notification was published in the Calcutta Gazette Extraordinary on June 23, 1979 for a public purpose, that is, for construction of house of the Urdu Academy in Ward No. 6 of the Calcutta Municipality. The objection to the proposed acquisition was filed by the petitioner No. 1 and the same was heard under Section 5(A) of the said Act. The objection was rejected and approval of the Government was granted. Subsequently the said notification was cancelled by the Land and Land Reforms Department as the said premises was no longer required for the said purpose. The Government after cancelling the said notification directed the respondent No. 3 to send a draft of the cancellation for being published in the Calcutta Gazette. Accordingly, the Land Acquisition Collector, respondent No. 3 cancelled the earlier notification dated June 23, 1979. The said notification, however, has not been published as yet. It has been further stated that as the demand for electricity in the Park Street area is increasing due to the construction of the tall buildings in that area it was considered necessary by the Government for setting up a distribution station to solve the present acute problem for which the Calcutta Electric Supply Corporation (India) Ltd. approached the department of Power (Government of West Bengal) for establishment of a power station in that area. The power department on a consideration of all the aspects of the proposal of the Calcutta Electric Supply Corporation (India) Ltd. recommended for requisition and acquisition of the said premises under Act II of 1948 for establishment of a power distribution station. Thereafter the power Department sent a proposal to the Land & Land Reforms department, the competent authority for requisition and acquisition of the said premises. It has been stated that in view of the extreme urgency for the establishment of the distribution station the order under Section 3 of the Land Requisition and Acquisition Act, 1948 was made in respect of the premises-in-question, that is, No. 2, Park Lane, Calcutta. It has also been stated that the earlier negotiation which were started at the instance of the Calcutta Electric Supply Corporation (India) Ltd., respondent No. 6, for purchase of the premises failed owing to the adamant attitude taken by the respondent (petitioner)' no. 1. The order of requisition has not been made mala fide but it has been made on a consideration of the public purpose for which the premises in question is required to be requisitioned. The said order of requisition has also not been made by the respondent No. 3 on a closed mind as tried to be contended. It has been, on the other hand, submitted that the particular premises is required for the purpose of setting up of a power distribution station to solve the acute problem of insufficient supply of electricity to the buildings which are being constructed in the area. There is neither any mala fide nor any absence of public purpose in making the order of requisition. Considering all these facts and circumstances there is no room for contending that the order of requisition is bad as there was no existence of any public purpose and there has been a colourable exercise of power by the respondent No. 3 in making the impugned order. This contention, therefore, cannot be sustained at all. The contention that the order of requisition made under Section 3 of the said Act is bad because the Land Acquisition proceedings were not withdrawn or abandoned is also devoid of any substance as I have already stated hereinbefore. The specified averments made in the application for vacating the interim order to the effect that the notification issued

under Section 4 of the Land Acquisition Act for acquisition of this premises for construction of house of 'Urdu Academy' had been cancelled and as such the said acquisition proceedings are no longer in existence at the time when the requisition order has been made. This position is also well known to the petitioner himself as will appear from the statements made in the letter demanding justice dated 20th October, 1981 which has been annexed as an-nexure I to the petition. In paragraph 4 of the letter it has been specifically stated that the acquisition proceedings was cancelled and abandoned by the Deputy Secretary, Government of West Bengal, Land and Land Reforms Department by order No. 7922--I-A (II)/I O/ 1079, dated July 10, 1981. Therefore, this contention has no legs to stand upon. The next contention raised on behalf of the petitioner that there is no formation of opinion as required under Section 3 (1)' of the said Act inasmuch as the respondent No. 3 did not take into consideration the relevant materials in forming his opinion about the premises being required for a public purpose namely for setting up a distribution station for the Calcutta Electric Supply Corporation, respondent No. 6 and as such the impugned order is wholly illegal, unwarranted and bad. I have already stated hereinbefore that in the writ application it has been specifically stated that there is acute shortage of the supply of electricity in the area and to meet the increasing demand for each day the respondent No. 6 made a proposal to the Government for requisition of premises No. 2, Park Lane, for setting up of a distribution station there and the power department after considering all aspects have found that there was an urgent necessity for requisitioning the land for the particular purpose which is undoubtedly a public purpose. Accordingly the order of requisition was made by the respondent No. 3. In these circumstances, in my opinion, it cannot be said that the opinion was formed by the respondent No. 3 on a consideration of extraneous materials and not on consideration of relevant and germane materials, In view of my above finding it is needless to consider the decision cited at the bar by the learned Counsel for the petitioner. It has been contended on behalf of the petitioner that previously in the notice issued under Section 4 of the Land Acquisition Act, 1894 a portion of the premises was notified for acquisition for the purpose of construction of a house for 'Urdu Academy'. The Deputy Secretary, Government of West Bengal by its communication on 18th July, 1981, to the respondent No. 3 asked for requisition of 7 cottahs of land out of the lands of premises No. 2. Park Lane for setting up of a distribution station by Calcutta Electric Supply Corporation. Subsequently, however, another communication was sent by the Government requesting for requisition of the entire premises No. 2, Park Lane, Calcutta, for establishment of a power distribution station. This has been challenged as bad because only seven cottahs of land is necessary for construction of the power distribution station and as such it has been contended that the requisition order is bad as it purports to requisition the entire premises. This argument, in my opinion, cannot be sustained inasmuch as it is the authority concerned who is the fittest person to decide how much land would be required for the public purpose namely for the establishment of the distribution station of the Calcutta Electric Supply Corporation (India) Ltd., respondent No. 6. This con-Intention, therefore, is devoid of any merit. The last contention advanced on behalf of the petitioner is that the order under Section 3 (1) of the said Act is wholly bad, illegal and ultra vires inasmuch as no opportunity of hearing was given to the petitioner before the making of the order and/or before the order is made as the order has sot civil consequences. The order impugned though an administrative order yet affects the civil rights of the petitioner and it has been submitted that the rules of natural justice, or, in other words, the principles of audi alteram partem will apply in this case and the person affected has to be given an opportunity of being heard before the order under Section 3 (1) is made. This being not done the impugned order

is liable to be quashed and set aside. To deal with this contention properly it is necessary to set out the relevant provisions of Section 3 of the Land Requisition and Acquisition Act (Act II of 1948):--

'(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 providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living condition in rural or urban areas, not being an industrial or other area excluded by the state Government by a notification in this behalf, by the construction or reconstruction of dwelling places for people residing in such areas, the State Government may, by order in writing requisition any land and may make such further order as appear to it to be necessary or expedient in connection with the requisitioning; Provided that no land used for the purpose of religious worship or used by an educational or charitable institution shall be requisitioned under this Section. (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). (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).'

The above section does not expressly provide for giving any opportunity of hearing before making the order of requisition under Section 3 (1) of Act, It is to be considered whether by implication it can be said that the rules of natural justice, that is, an opportunity of hearing to be given will apply to this case. In the case of Smt. Maneka Gandhi v. Union of India, : [1978]2SCR621 the question arose whether impounding a passport in the interest of the general public under Section 10(3)(c) of the Passports Act, 1967, is ultra vires of Article 21 of the [Constitution of India](#) since it provides impounding a passport without any procedure as required by that Article or if there is some procedure prescribed under that Act it is wholly unreasonable and not in compliance with the requirement of that Article, It was held that a law depriving a person of his personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred by Article 19 as well as Article 14 of the [Constitution of India](#). It has been held in that connection that 'natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Natural justice is only fair play in action. Fair play in action, demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard'. It has been further observed by Bhagwati, J. who delivered the judgment of the Supreme Court that 'the law must, therefore now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable'. In the above case though Section 10(3)(c) of the Passports Act did not provide for giving any opportunity of hearing yet it was held that the principles of natural justice will apply and before making the order impounding a passport opportunity of hearing has to be given. In the case of Mohinder Singh Gill v. Chief Election Commr., New Delhi, : [1978]2SCR272 it has been observed that 'Fair hearing is thus a postulate of decision making cancelling a poll although fair abridgement of that process is permissible. It can be fair without the rules of evidence or forms of trial. It cannot be fair if apprising the affected and appraising the representations is absent. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic

rule of law.

We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequatur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation.

10. This decision has been referred to and relied upon in a recent pronouncement of the Supreme Court in the case of *Swadeshi Cotton Mills v. Union of India* : [1981]2SCR533 ' It has been observed--While considering the provisions of Section 18-AA of the Industries (Development and Regulation) Act (65 of 1951) which provides that the Central Government on being satisfied that the persons in charge of the undertaking have brought about a situation likely to cause fall in production by committing any of the three kinds of acts specified in that provision, it may, by order direct the taking over of sick industry, it has been held that though there is no express provision for giving an opportunity of hearing and immediate action is required to be taken by making an order under Section 18-AA of the said Act, yet this does not exclude the application of the rules of natural justice. It has been further observed 'In short, the general principle -- as distinguished from an absolute rule of uniform application--seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order On merits, then such a statute would be construed as excluding the audi alteram partem rule at the predecisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play 'must not be jettisoned save in very exceptional circum-stancee where compulsive necessity so demands'. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But to recall the words of Bhagwati J, in the case that it must however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.'

11. In this case also the Industries (Development and Regulation) Act, 1951 does not expressly provide for giving an opportunity for hearing before the making of the order under Section 18-AA of the said Act. Moreover it has been provided that immediate action is necessary to be taken under the said section. In Section 3 (1)' of the Requisition & Acquisition Act, of course similar provision has been made. In : [1971]3SCR791 . *S.M. Nandy v. State of West Bengal* the question that was referred to the Supreme Court under Art. 145(3) of the Constitution was 'Whether the West Bengal Land (Requisition & Acquisition) Act, 1948 is ultra vires the Constitution under Article 19(1)(f) read with Article 19(5). It has been observed: '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 by regarding 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 Section 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.' This judgment was delivered by a bench of five Judges including Hegde, J. Of course, in this case the question of applicability of the rules of natural justice was not specifically raised nor it was specifically considered. It will not be out of place to mention in this connection that Hegde, J. in the case of A. K. Kraipak v. Union of India : [1970]1SCR457 observed at p. 154). 'The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated..... a welfare State like India it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like India it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously.

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it.'

12. Similar observation has been made by Hegde, J. in the case of Union of India v. J. N. Sinha, : (1970)1ILLJ284SC . It has been observed by Hegde, J. that rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. If a statutory provision can be read consistently with the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Following the decision of the Supreme Court in : [1971]3SCR791 in S.M. Nandy's case it has been held in the case of Sushila Devi Fomra v. State of West Bengal, (1980) 84 Cal WN 661 that the West Bengal Land Requisition and Acquisition Act, 1948 does not contemplate the giving of notice to and hearing the person affected before making an order under Section 3 of the Act. Such a provision is not implicit in the Act. The only remedy available to the aggrieved person is that he is at liberty to make a representation to the authority concerned after the order is served under Section 3 (2). This judgment was delivered by A.N. Sen, C. J. and M.M. Dutt, J. In another Division bench decision reported in (1974) 78 Cal WN 397 Narendra Nath Tripathy v. State of West Bengal, A. C. Gupta, J. as His Lordship then was held that 'though the statute does not contain any express provision requiring an opportunity to be given to the owner of the land to make a representation, such a provision should be deemed as implied. If, however, the statute has by necessary implication excluded the application of the principles of natural justice then the authorities would have no power to entertain any representation that may be made after the service of the order of requisition under Section 3 (2) of the Act. Unless of course the observation of the Supreme Court is construed not as an expression of opinion on the applicability of the principles of natural justice requiring the person affected to be given a hearing but as an expression of faith in the

reasonableness of the executive Government.' It was further held that as observed by the Supreme Court that there was no bar to make a representation after the order under Section 3 (1) of the Act was served on the owner or occupier of the Sand and as they had not done so they could not now make a grievance. In : [1973]2SCR610 , Madan Gopal Agarwal v. District Magistrate, Allahabad the point for consideration was whether rules of natural justice is applicable in making an order under Section 3 of U. P. (Temporary) Accommodation Requisition Act, 1947 (25 of 1947) Section 3 of the Act reads:

'If in the opinion of the District Magistrate it is necessary to requisition any accommodation for any public purpose, he may, by order in writing requisition such accommodation and may direct that the possession thereof shall be delivered to him within such period as may be specified in the order provided that the period so specified shall not be less than 15 days from the date of the service of the order;

Provided also that no building or part of a building exclusively used for religious worship shall be requisitioned under this section.

Provided further that no accommodation which is in the actual occupation of any person shall be requisitioned unless the District Magistrate is further of the opinion that suitable alternative accommodation exists for his needs or has been provided to him.' It was held that though the section does not contain an express provision for notice and hearing before the making of the requisitioning order, yet such a provision have to be read there by necessary implication. 'The object of the provision is to requisition an immovable property. Requisitioning of the property deprives the owners of the property of the right to hold and enjoy the property as he likes. The right to hold and enjoy the property is a cherished right.....,.....,We find it difficult to assume that the legislature would have intended to deprive him of his cherished right without notice and hearing.'

13. An these decisions cited hereinbefore, of course, present a great riddle and dilemma as to what would be the proper course to be followed. However, in view of the pronouncements of the Supreme Court in : [1971]3SCR791 as referred to hereinbefore on this particular act which is binding on this Court as the law of the land, I am unable to hold that the impugned order made under Section 3 (1) of the said Act is illegal and bad as the same was not made without observance of the rules of natural justice. The petitioner may make his representation against the impugned order before the respondent No. 3 and if such representation is made the respondent No, 3 will consider and dispose of the same in accordance with law.

14. For the reasons aforesaid the Rule is discharged without any order as to costs. All interim orders are vacated. The two applications for variation of the interim order are also disposed of in terms of the order made hereinbefore.