

**(1962) 01 BOM CK 0009**  
**In the Bombay High Court**  
**Case No : Suit No. 64 of 1959**

Abdul Satar Ahmedbhey and Another APPELLANT  
Vs  
State of Bombay and Others RESPONDENT

**Date of Decision :** 19-01-1962

**Acts Referred:**

Bombay Land Requisition Act, 1948 — Section 1, 10, 11, 12, 13  
Constitution of India, 1950 — Article 31  
Defence of India Rules, 1962 — Rule 75, 75  
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 24(2), 6(2)

**Citation :** AIR 1965 Bom 64 : (1964) 66 BOMLR 556

**Hon'ble Judges :** K.K. Desai, J

**Bench :** Single Bench

**Advocate :** M.R. Parpia and V.J. Taraporewalla, for the Appellant; G.N. Joshi, S. Baptista, H.V. Shah, Abhichandani, S.A. Kirtikar and R.H. Pandya, for the Respondent

## **Judgement**

(1) This is suit substantially for ejectment of the 3rd Defendant Society from out of Shops Nos.3 and 4 on the ground floor of an Immovable property situate at Dadar and mentioned in the Plaint. For the purposes of the above relief it has become essential for the Plaintiffs to challenge the validity of a requisition order dated February 20, 1957, and an allotment order dated May 22, 1958. This suit may therefore be described as suit for challenging the validity of the above two orders. The Plaintiffs have also challenged the validity of a prior requisition order dated December 11, 1943, and a de-requisition order dated October 14, 1957. As I will point out whilst dealing with the contentions of the Plaintiffs, it appears to me that the challenge to these previous requisition and de-requisition order is irrelevant to be considered in this suit.

(2) In respect of the facts leading to this litigation except on the minor matter there is no substantial dispute between the parties. These facts are as follows:-

The Plaintiffs are trustees of a Wakf and own the Immovable property wherein

the above two shops are situate. Prior to December 1943 one Karamshi Umershi was the tenant of the above shops. In these shops Karamshi carried on business of a licensed ration shop for foodgrains. By an order dated December 11, 1943, the Collector of Bombay, in pursuance of the powers vested in him under sub-rule (I) of R. 75-A of the Defence of India Rules read with Notification No.1336/O.R./1/42 dated April 25, 1942, requisitioned these shops and directed possession thereof to be delivered to the Assistant Director of Civil Supplies (Grain Shops).

On December 20, 1943, in pursuance of the above order, Karamshi went out of possession. The possession was delivered to the Controller of Government Grain Shops on behalf of the Director mentioned in the requisition order. The Government through its agents thereafter conducted distribution of grain and ration shop through these shops. Compensation was fixed in that connection and the compensation was from time to time recovered by the Plaintiffs. The emergency as mentioned in the Defence of India Act and Rules came to an end in September 1946. In that connection Ordinance 19 of 1946, Act XVII of 1947 entitled "Requisitioned Land (Continuance of Powers) Act" and Act IX of 1951 were enacted and requisition orders in existence were (deemed to be) extended. The period of extension provided by the above last Act was different in respect of lands requisitioned "by or under the authority of the Central Government" and lands requisitioned by or under the authority of a State (Province). Under the provisions of this Act lands which were requisitioned by a State were to cease to be under requisition on March, 31, 1951, and lands requisitioned by the Central Government were to cease to be under requisition on March 31, 1952. Before expiry of the period of March 31, 1952, by Act XXX of 1952 (enacted on March 15, 1952) entitled "the Requisitioning and Acquisition of Immovable Property Act, 1952," permanent provision was made for requisition and continuance of lands under requisition for the "purpose of the Union and other public purposes". u/s 24 of this Act property which immediately before the date of the Act was subject to requisition under the date of the Act was subject to requisition IX of 1951) is deemed to be property requisitioned u/s 3 of the Act and all the provisions of the Act are applicable to such requisitioned property.

(3) According to the defence in this case, the shops in suit were requisitioned under the authority of and for the purposes of the Central Government and having regard to the provision of Section 24 validly continued subject to requisition under this Act from and after March 15, 1952 . The plaintiffs deny this and contend that from March 31, 1952, the shops were not subject to any valid requisition in any event.

(4) Now, it is admitted by the plaintiffs that the rationing did not come to end in 1952 as mentioned in paragraph 10 of the plaint. The true fact is that in Bombay rationing of foodgrains came to an end on and from June 14, 1954. The plaintiffs' case is that the rationing having come to an end on this date the purpose for which the shops were requisitioned also came to an end and that in

any event the plaintiffs became entitled to possession of these shops from and after June 14, 1954. In that connected the Plaintiffs addressed correspondence in July 1954. By his letter dated August 31, 1954, the assistant controller of Rationing Informed the Plaintiffs that it was not possible to vacate the shops because they were being used for the sale of licensed foodgrains by the 3rd Defendant Society.

(5) Before referring to other facts, it is necessary to point out that in connection with distribution of foodgrains and rationing thereof from the shops in this suit the Government of Bombay made an agreement dated September 13, 1947, with the 3rd Defendant Society. That agreement is Ex. D. on record. The sole purpose of the agreement was to give possession of the shops to the 3rd Defendant Society for the purpose of conducting the management of the Government grain shop situate in these shops. The plaintiffs case is that the agreement amounts to a tenancy agreement. The defendants' case is that it must be held to be merely a licence and that the 3rd defendants merely as agents of the Government and for the purposes of foodgrains rationing were given possession of these shops. The Plaintiffs by their letters dated March 2, 1955 May 23, 1956 and April 24, 1956, contended that the Government had no right to give the shops to the 3rd Defendant Society. Under these circumstances and possibly having regard to the contentions made on behalf of the Plaintiffs the Government of Bombay made the impugned requisition order dated February 20, 1957. This order is made under the provisions of Section 7 of the Bombay Land Requisition Act, 1943. I will come to the contents of the order whilst dealing with the contentions of the parties. By their Attorneys' notice dated July 18, 1957, given to comply with S. 80 of the Code of Civil Procedure, the plaintiffs challenged the requisition order. The plaintiffs in that connection also addressed their Attorney's notice dated July 18, 1957, u/s 70 of the Bombay Co-operative Societies Act.

(6) After these notices were delivered the Collector of Bombay as representing the Central Government made the de-requisition order dated October 14, 1957 releasing the shops from requisition under the order dated December 11, 1943. That order was made under sub-section (2) of Section 6 of the above referred Act XXX of 1952. By allotment order dated May 22, 1958, the accommodation officer of the Government of Bombay referred to the requisition order dated February 20, 1957, and allotted the shops in suit to the 3rd Defendant Society on the terms and conditions contained in the allotment order. The 3rd Defendant Society has contended that it has remained in possession as allottee of these shops under the above allotment order since 1958 and as authorised fair price shop. In that connection the 3rd Defendant Society has through witness Gunwant Todankar produced permit dated December 13, 1958 and authorisation dated September 10, 1958, as also the agreement dated August 21, 1958. These documents are produced to show that the 3rd Defendant Society is not a profiteering Society and has been authorised to continue in possession of these shops only because it has agreed according to the directions of the Government authorities to carry on business of fair price shop in the premises in suit.

(7) The contentions made by the Plaintiffs for challenging the validity of the allotment order dated February 20, 1957, as also the allotment order dated May 22, 1958, are stated in the plaint in somewhat confusing and extremely diffused manner. I will, however, try to summarise these contentions as appearing in the plaint in the following manner. The main contention of the Plaintiffs is based on the construction of section 7 of the Bombay Land Requisition Act, 1948, because the impugned requisition order is made under the provisions in that section, The plaintiffs' case is that there was no jurisdiction in the state of Bombay under the above Section to make the Impugned order. In this connection it is convenient first to refer to the relevant provisions in the Section and recitals in the order dated February 20, 1957 and then to state the contentions made on behalf of the Plaintiffs. The relevant provisions are as follows:-

"7. (1) Notwithstanding anything contained in the Requisitioned Land (Continuance of Powers) Act, 1947, the State Government may, by order in writing direct that any land which was continued under requisition under the said Act, shall continue to be subject to requisition under this Act XXX when it is released from requisition under the said Act or ceased to be subject to requisition for any reason and the State Government may XXX use or deal with the land so continued to be subject to requisition in such manner as may appear to it to be expedient.

(2) XXXX XXXX XXXX XXXX XXXX ".

The relevant parts of the requisition order run as follows:-

"XXX, the Government of Bombay hereby directs that the premises described in the Schedule hereto which were continued under requisition u/s 3 read with Section 24 of the requisitioning and Acquisition of Immovable Property Act, 1952 (XXX of 1952), shall continue to be subject to requisition under the Bombay Land Requisition Act, 1948, (Bom XXXIII of 1948). With effect from the date on which the said premises are released from requisition under Requisitioning and Acquisition of Immovable Property Act, 1952 (Act XXX of 1952)".

The Plaintiffs' case is that : (1) for several reasons on the date of the impugned requisition order (February 20, 1957) these shops (land) were in fact not continued under requisition under Act XVII of 1947 as required under the above S. 7(2) these shops were in any event not subject to any valid requisition under the Act of 1947 at the date of the order; and (3) at the date of the order the lands previously requisitioned under the Defence of India Act and the Act of 1947 were only continuing subject to requisition under S. 24 of the Requisitioning and Acquisition of Immovable property Act, 1952 (XXX of 1952) and that to the lands so continuing subject to requisition (under the above 1952 Act) the provisions of S. 7 were not applicable because Section 23 of the Bombay Land Requisition Act provides; "Nothing in this Act shall apply to any premises to which the Requisitioning and Acquisition of Immovable property Act, 1952, applies". The Plaintiffs accordingly contend that upon de-requisition of the shops on October

14, 1957, on behalf of the Central Government it was not permissible for the State Government to occupy through the 3rd Defendant Society these shops as if they were under requisition.

(8) In support of their contention that the shops did not continue subject to valid requisition the Plaintiffs have made several contentions as follows : The requisition made under the order dated December 11, 1943, came to an end when :- (1) the State Government took possession of the shops for its own purpose of rationing in Bombay under the Bombay Rationing Order, 1943, (2) the premises were under Ex. D delivered to the 3rd Defendant Society in September 1946, as lessees and public purpose of requisition came to an end, (3) on April 1, 1951, In consequence of the provisions of the Central Act XVII of 1947 read with Central Act IX of 1951, because requisition was for the purpose of the State of Bombay, (4) on April 1, 1952, under the same Acts if it is held that the requisition was by or under the authority of Central Government, (5) on June 14, 1954, when the rationing of foodgrains came to an end in Bombay and the public purpose of occupation of the shops came to an end, (6) on January 26, 1965, when the Essential Supplies (Temporary Powers) Act, 1946, came to an end and (7) on October 1, 1957, when the Bombay Essential Commodities and Cattle (Control) Act, 1946, ceased to have effect.

(9) In connection with the allotment order dated May 22, 1958, in favour of the 3rd Defendant Society, the Plaintiffs' contention is that prior to the allotment order the Plaintiffs had challenged the requisition order dated February 20, 1957. Prior to that date they had served notices u/s 80 of the CPC challenging the requisition order and the right of the Government and the 3rd Defendant Society to continue in occupation. In fact the 3rd Defendant Society was not the agent of the Government and was carrying on its own business in the shops much prior to the date of the allotment order to the knowledge of the State of Bombay. The 3rd Defendant Society is a profiteering Society. The requisition could only be made for a public purpose "as mentioned in the Bombay Land Requisition Act, 1948. The 3rd Defendant Society was in fact a tenant of the Government prior to the date of the allotment order of the Plaintiffs, is merely to give tenancy of the shops to the 3rd Defendant Society and not for any public purpose as mentioned in the Act. For these reasons, according to the Plaintiffs, the allotment order must be held to be male fide and not towards the fulfillment of the purposes of the Bombay Land Requisition Act but for collateral purpose and must be struck down as invalid.

(10) On behalf of the Defendant each of the above contentions made on behalf of the Plaintiffs is negatived. As I have already mentioned, the case of the 1st Defendant to make the impugned requisition order under the provisions of Section 7 of the Bombay Act, that up on the date of the de-requisition order (October 14, 1957) the shops in suit were lands validly continuing subject to requisition by reason of the provisions in the Requisitioned land (Continuance of Powers) Act, 1947, as also the Requisitioning and Acquisition of Immovable Property Act,

1952, and that there was jurisdiction in the state of Bombay Whilst the lands were thus continuing under requisition to give directions in writing u/s 7 of the Bombay Act to the effect that the lands shall continue to be subject to requisition under the Bombay Act. According to the Defendant, u/s 7 of the Bombay Act, such directions must come into effect only when the shops were released from requisition by de-requisition order dated October 14, 1957, or at any rate when the shops ceased to be subject to requisition order dated December 11th 1943m as continued by reason of the legislative provisions which I have already referred to.

(11) In connection with the impugned allotment order it is contended on behalf of the Defendants that the allotment is in fact made for the public purpose of running a fair price shop for supplying essential commodities to citizens and that the allotment order is not made with intent to defeat the notices that were tended on behalf of the Plaintiffs u/s 80 prior to the date of the order, but for the above public purpose. In fact the 3rd Defendant Society is allowed the use of the shops for the above public purpose. The shops are not used and the requisition order was not made for any collateral purpose of letting out the shops to the 3rd Defendant Society.

(12) In the Complaint, the plaintiffs made certain contentions challenging the vires of the various enactments that I have referred to and the validity of the order dated December 11, 1943. In this connection Mr.Parpia has made the following statement :-

"(1) Does not press the validity of the order of requisition dated December 11, 1943.

(2) Does not press that Act XVII of 1947 or Act XXX of 1952 are ultra the Constitution or otherwise invalid.

(3) Does not press for compensation for more than 3 years from the date of the suit."

In the complaint there are minor claims for payment of excess compensation in respect of the use and occupation of the shops and damage suffered by the Plaintiffs. In that connection at the initial state I informed the parties that the question of damages and compensation was reserved till after disposal of other issues.

(13) Now, in connection with the contentions made on behalf of the Plaintiffs as mentioned above, I have to repeat that the main question arises on the true construction and effect of Section 7 of the Bombay Act which is have quoted above.

(14) It is not in dispute that for the purpose of making an order u/s 7 to the effect that "land shall be continued to be subject to requisition" the land in question must be one "which was continued under requisition under the said Act", (viz. Act XVII of 1947). It is also apparent on a reading of the Section that

the true effect of Section 7 is that the order giving directions as above must be made at a date antecedent (I) to the release from requisition of the land under Act XVII of 1947 or (ii) to the point of time at which the land ceases to be subject to requisition for any reason. In other words, the true effect of Section 7 is that for making a valid order directing the land to continue to be subject to requisition u/s 7 the existence of two conditions precedent, viz., (1) that the land in question was continued under requisition under Act XVII of 1947 and (2) that the order giving the directions u/s 7 being made prior to the points of time which I have indicated, is essential. That being the true construction of the provisions of Section 7 in the arguments advanced on behalf of the parties emphasis was laid on the phrases "land which was continued under requisition under the said Act" and "shall continue to be subject to requisition under this Act" as contained in Section 7. The words "was continued" and "shall continue" are significant and necessitated reference by all the parties to previous legislative history leading to continuance of lands subject to requisition under Act XVII of 1947. The relevant legislative history may be in short stated as follows :-

In the Government of India Act, 1935, (and the 7th Schedule to that Act) there was no entry in any of the 3rd lists mentioned providing for power to legislate for requisitions. Even so, under sub-clause (2) or Rule 75-A of the Defence of India Rules provision was enacted enabling the Central Government as also the Provincial Government to make requisitions of Immovable properties. That provision had been challenged in Court and held to be valid. Emergency of War came to an end of September 30, 1946. For continuance of requisitions made under sub-clause (2) of Rule 75-A of the Defence of India Rules enabling legislation with retrospective effect was passed by the parliament of the United Kingdom and in pursuance of that legislation the Requisitioned Land (Continuance of Powers) Act, 1947 (XVII of 1947), which is mentioned in Section 7 of the Bombay Act is that "notwithstanding the expiration of the Defence of India Act and Rules and the subsequent ordinance all requisitioned lands shall continue to be subject to requisition until the expiry of the Act itself." The further provision was that "in respect of lands requisitioned the appropriate Government may use the lands in such manner as appears to it to be expedient". The Act XVII of 1947 was admittedly to expire on September 30, 1951. It was then found necessary to continue the requisition already made. In that connection extending Act IX of 1951 was enacted. The short consequence of the provisions of that Act was to continue until March 31, 1952. As regards the lands requisitioned by the State Government the requisition was to continue up to March 31, 1951. As in the case of the shops in suit admittedly the requisition order dated December 11, 1943, was made under the authority of the Central Government, it is clear that the shops in suit continued subject to requisition up to March 31, 1952. The requisition as such under Act XVII of 1947 (and IX of 1951) necessarily came to an end as on and from March 31, 1952.

(15) Now, as against the position, the Defendants' contention is that having regard to the subsequent legislative history the shops continued subject to

requisition even subsequently. The defendants rely upon the provisions of the Requisitioning and Acquisition of Immovable Property Ordinance, 1952, and the Requisitioning and Acquisition of Immovable Property Act, 1952, being Act XXX of 1952 (herein referred to as "the 1952 Act"). The Defendants also rely upon the provisions of Section 8 of the General Clauses Act. The relevant provisions in the 1952 Act are contained in Secs. 3 and 24 thereof. By Section 24 the Act XVII of 1947 and the Ordinance of 1952 were repealed. At the same time by sub-section (2) of Section 24 it was enacted that "the lands which were before such repeal subject to requisition under the above Act and Ordinance shall be deemed to be property requisitioned u/s 3 of the 1952 Act as from the commencement thereof". Mr. Joshi for Defendant I has contended that having regard to the provisions in above sub-section (2) it is obvious that the shops in suit must be deemed to have continued under requisition u/s 3 of the 1952 Act from the date of commencement thereof. He has relied upon the provisions of Section 8 of the General Clauses Act, and applying the terms of that Act to the facts in this suit submitted that the provisions in Section 24(1) and (2) of the 1952 Act are meant to reenact the provisions of Act XVII of 1947 with modifications thereof and that all reference in any other enactments to the Act of 1947 with modifications thereof and that all references in any other enactments of the Act of 1947 must from the date of the 1952 Act be read as if the references to the 1947 Act were in fact references to the 1952 Act. In that light he has rightly submitted that In Section 7 of the Bombay Act the phrase "Land which was continued under requisition under the said Act" must mean "land which was continued under requisition under the 1952 Act" also. As admittedly no de-requisition order was passed subsequent to the date of the 1952 Act in respect of the shops in suit up to October 14, 1947, (sic) Mr. Joshi has submitted that both the conditions precedent as essential for giving directions u/s 7 of the Bombay Act are satisfied in connection with the impugned requisition order dated February 20, 1957.

(16) The above would have been true position, but it is in this connection rightly pointed out on behalf of the Plaintiffs that u/s 3 of the 1952 Act as also under the general scheme enacted in that Act requisitions under the 1952 Act could and must only be requisitions for the purposes of the Union. There is no dispute about the effect of the provisions in the 1952 Act and they must be referred to only very summarily. The preamble of the Act states that the Act is "to provide for the requisitioning..... of Immovable property for the purposes of the Union". The substance of Section 3 is that the competent authority may, on being satisfied that a certain land is needed for any public purpose being a purpose of the Union, requisition the property. S. 6 provides for release from requisition of property requisitioned under the Act. As the 1952 Act provides only for requisitioning and continuance of properties under requisition for the purposes of the Union, in my view, the deeming provision in sub-section (2) of section 24 enables to hold that the lands which were requisitioned for purposes other than those of the Union also continued under requisition under the deeming provisions in sub-section (2) of Section 24. Having regard to that situation it was the effort

of Mr. Joshi on behalf of the Defendants to prove that in fact the shops in suit were continuing under requisition up to the date of the impugned requisition order (February 20, 1957) for the purposes of the Union. It was the effort of Mr. Parpia for the plaintiffs to prove that the lands were not under valid requisition at all on the date of the impugned requisition order and that at no period of time the lands were under requisition for the purposes of the Union. If the last contention made on behalf of the Plaintiffs is true, it is obvious that the shops did not continue under valid requisition under the deeming provision of sub-sec (2) of Section 24 of the 1952 Act subsequent to March 31,

(17) In support of his contention that the shops were subject to requisition for the purposes of the Union the argument made by Mr. Joshi may be summarised as follows: The only legislative authority capable of making provisions for requisitions up to the date of the Constitution was the Central Government. In fact the Central Government enacted the provisions of sub-rule (2) of Rule 75-A providing for requisitioning of Immovable properties both by the Central Government and by the Provincial Governments. Even subsequent to the valid under the legislative enactments of the Central Government, viz. (apart from the Ordinances passed) the Act XVII of 1947, the Act IX of 1951 and the 1952 Act, which I have already referred to. In this connection he has pointed out that in the Constitution of India as originally enacted for the first time provisions were made relating to requisitions in the texts in the 7th Schedule (Item 33, list 1: item 36, list 2: and item 42, list 3). Now, under item 33 of list 1 the Central Government ceased to have power to legislate for requisitioning of properties for any purpose other than the purposes of the union. Under item 36 of list 2 the State Government was enabled to legislate for requisitioning of properties except for the purposes of the Union. Under item 42 of list 3 both the Central Government and the State Governments were enabled to legislate for payment and machinery for compensation of amongst other things requisitioned properties. The result of the above provisions in the Constitution is to be found in the 1952 Act. The Central Government made that enactment only enabling it to provide for requisitioning and continuance of requisition of properties for the purposes of the Union. Mr. Joshi also pointed out that from the inception the shops were requisitioned for the purpose of maintaining essential supply of foodgrains to the community. Immediately upon taking possession of the shops on December 20, 1943, the shops were used as Government grain shops for maintaining essential supplies. The maintenance of essential supplies, according to Mr. Joshi, was one of the functions of the Central Government and the requisition must, therefore, he held to have been made for the purposes of the Union. He contends that upon the Constitution coming into existence provision was made in Art. 369 enabling the Central Government irrespective of the provisions in the lists in the 7th Schedule to legislate, inter alia, for maintaining supplies and distribution of foodstuffs in different State in India. This power as mentioned in Art. 369 was temporary power given to the Parliament for 5 years. According to Mr. Joshi, food rationing continued in existence at the date of the

Constitution. Having regard to Article 369 it was one of the functions of the Central Government to maintain supplies of foodstuffs all over India, including the City of Bombay, and that accordingly at least up to the expiry of 5 years mentioned in Art. 369, i.e. 26th January 1955, it must be held that the shops were under requisition for the purposes of the Union. He further contends that the provisions of Art. 369 in effect were on and from February 22, 1955, re-enacted in the Constitution as permanent measure in consequence of the Constitution 3rd Amendment Act 1954. By that amending Act, entry 33 in the third list in the 7th Schedule to the Constitution, inter alia, provided for legislative competence of the Parliament to make enactments and legislation in respect of maintenance of supplies of foodstuffs all over India. He, therefore, say that after the amendment of entry 33 in list 3 it was one of the chief functions of the Central Government to maintain supplies of foodstuffs all over India. He contents that the shops in suit were continued to be held under requisition for distribution of foodstuffs and that accordingly I should come to the conclusion that the shops were held under requisition for the purpose of the Union. In this connection he has also relied upon the Constitution 7th Amendment Act which was enacted on October 19, 1956. By that Act the 7th Schedule to the Constitution was amended by deletion of entry 33 from list 1 and entry 36 from the State list and the entry 42 in the Concurrent list was amended to run as follows: "42. Acquisition and requisitioning of property". The result of the above amendment, according to him, was that the distinction which had to be maintained by the Central and the State Legislatures regarding the enactments providing for requisitioning of properties on the basis that Central Legislature was entitled only to legislate for the purposes of the Union and the State Legislature was entitled to legislate only for purposes other than those of the Union disappeared. There was from the date of the 7th Amendment Act no objection the Parliament legislating for requisition for any purpose including the purposes of the State or the Union. According to him, from the date of this amendment it is immaterial to consider whether the shops in suit were held under requisition for the purposes of the Union or the State.

(18) In connection with the above arguments made by Mr.Joshi I have attempted to find out the true purpose of the requisition of the shops in suit. In that connection I will presently refer to the evidence led on behalf of the Plaintiffs and the 3rd Defendant Society. In the first instance it is necessary to mentioned that prior to the date of the requisition order dated December 11, 1943, it had been decided that there should be rationing of foodgrains in Bombay. In that connection the Government of Bombay as then constituted under the provisions of sub-rule (2) of Rs. 81 enacted the Bombay Rationing Order, 1943, on March 3, 1943. There is no dispute about this subsidiary legislation. Mr. Joshi, however, contends that since this legislation is enacted under the provisions of sub-rule (2) of the Defence of India Rules and since it relates to essential supply of foodstuffs, any requisition made for conducting ration shops for foodgrains in Bombay must be held to be requisition for the purposes of the Central

Government. It appears to me that even if it may be true that rationing of foodgrains had to be enforced at the instance of the Central Government in different provinces as then existing, the subsidiary legislation's made for the purpose like the Bombay Rationing Order, 1943, must be held to be actions of the Provincial Government and not actions of the Central Government. The fallacy in the arguments advanced by Mr. Joshi is that he considers all the enactments made by Provincial Governments for the purposes of maintenance of essential supplies of foodstuffs and other things as if these were for the purposes of the Central Government in respect of these matters also existed in the Central Legislature. In my view, administrative actions for enforcing the Bombay Rationing Order, 1943, as well as the enactment itself for providing for rationing of foodgrains in Bombay can never be held to be those for the purposes of Central Government and are essentially for the purposes of province. If this is true conclusion, I must hold that all material times the shops in suit were requisitioned only for the purposes of maintaining essential supplies of an rationing of foodgrains in and were subject to requisition for the purposes of the province (State). Indisputably this position continued and obtained at the date of the 1952 Act. As on that date, the shops were subject to requisition only for the purposes of the State, the requisition thereof could not in law thereafter validly continue by reason of the deeming provision and/or fictional provisions as contained in sub-section (2) of Section 24 of that Act. I have not been able to appreciate the argument that because there was legislative competence in the Central Legislature to make laws and legislate for providing, inter alia, for essential supplies of foodgrains in Bombay I must come to the conclusion that the shops in suit were under requisition for the purposes of the Union of India at the date of the 1952 Act.

(19) It must in this connection be further pointed out that admittedly rationing of foodgrains came to an end on June 14, 1954. The purpose for which the shops were during the material period occupied by the 3rd Defendant Society is to be found in the evidence of Gunwant Todankar, an officer of the 3rd Defendant Society. The 3rd Defendant Society came to be in possession of the shops in suit under the agreement dated September 13, 1947. Which is Ex. D on record. The recitals in the agreement show that up to the date of the agreement the Government was conducting Government Grain shop No.235 in the shops. From the date of the agreement the Government was giving over the management of the Government Grain shop to the 3rd Defendant Society in consideration of the remuneration mentioned in the agreement. Now, it is true that under Clause 2(e) of the agreement the Society undertook to obey all directions issued by the Government Mr.Parpia for the Plaintiffs has contended that the whole of the tenor of the agreement and the wording thereof clearly prove that the Government gave tenancy of the shops to the Society. There is no doubt that the agreement uses the words "demise", "rent" and "determination of tenancy" and makes several other provisions on the footing that this was tenancy in favour of the Society. Mr. Joshi has relied upon the decision in the case of Ministry of

Agriculture and Fisheries V. Mathews 1949 (2) ALL ER 724 which has been relied upon the decision in the case of Shirinbai A. Irani v. Dominion of India, Suit No.235 of 1949 in this court. The ratio of the decision in the later case is that since requisition of property only gives tile to remain in possession all agreements made by Government of the nature as contained in a lease must be held in effect to be licences. As I am in favour of the Plaintiffs on other larger grounds, it is unnecessary for me to make any finding as to whether the agreement Ex. D creates a tenancy or a licence. The real question which I have to decide is as to whether at the date of the impugned requisition order in February 1957 the shops were under valid requisition. The contention which Mr. Parpia shops were put between the date of this agreement and the date of the impugned order the conclusion that I should come to is that the shops were neither held nor occupied for the purposes of the State nor for the purposes of the Union, but for the purposes of the Society itself. Under such circumstances, according to him, the shops could never be said to be under or subject to valid requisition in February 1957. The further evidence of Todankar is that initially wheat, rice and sugar were sold from the shops to card holder and this continued up to 1954. One may, therefore, assume in favour of the Defendants that up to the cesser of rationing of foodgrains in June 14, 1945, the shops in Suit were used for the purpose of essential supply of foodgrains and for that public purpose. Todankar's evidence is that and 1952 the society was directed to self cloth to card holders. During this period also the Society was authorised and directed to sell wheat and rice supplied by the Government at controlled price. The cloth rationing also came to an end in 1952. He admitted that since 1949 the Society was selling, apart from rationed articles, all the Society was selling, apart from rationed articles, all sundry grocery goods from these shops. From 1954 onward, apart from what and rice supplied by the Government to the Society, it has been purchasing wheat, rice and all sorts of other foodgrains and grocery goods and cloth in the open market. As regards these goods there was no control on price or on the Society and the Society was entitled to sell these goods to all purchasers (Consumers) who visited the shops at prices fixed by it. Since 1958 the Society is one of the dealers to whom licence and authority is giving to act as fair price shop. It appears that there exists the Foodgrains (Declaration of Stocks) Order, 1957, whereunder licence is issued to dealers for distribution of foodgrains to authorised card holders. It also appears that the Government has for some time past enacted Fair Price shop scheme. The Government has also made an agreement dated August 21, 1958, in connection with the Fair Price Shop scheme with the 3rd Defendant Society. From the recitals in the agreement it appears that the scheme for fair price shops became necessary because of abnormal rise in foodgrain prices. Under the scheme the Government makes arrangement with certain dealers in the market to run authorised fair price shops for distribution of foodgrains supplied by the Government at fair price. It is also clear from the evidence to Todankar that apart from the foodgrains supplied by the Government to such dealers there is liberty to the dealers to deal in each and all foodgrains without any controlled prices. The total result of the evidence of

Todankar is that from June 14, 1954, when the rationing of foodgrains came to an end the Society has been trading in these shops. the society deals with its purchasers fairly and charges them only a specific small amount of profit. The whole of the profit earned is distributed amongst the members of the Society. The Government needs dealers who are willing to act as fair price shops in respect of foodgrains supplied by the Government. Only to that extent the Society is one of the dealers under an agreement with the Government to act as a fair price shop. the business of the Society is its own private business and has no relevance to the purposes of the Government.

(20) Having regard to these facts Mr. Parpia for the Plaintiffs commenced the argument that because under Rule 75 of the Defence of India Rules requisition was made for the purposes mentioned in the first requisition order dated December 11, 1943, the use of the shops for any other purpose must result into the invalidity of the requisition and from the date of such unauthorised use the shops should be held to be not under valid requisition. He rightly argued that under the Bombay Act it is impossible that any requisition could be made for enabling a private dealer like the Society to trade in requisitioned shops. The requisition could be made only by reason of the provisions in Art. 31 of the Constitution as also the Bombay Act be made only for public purpose. If the shops in suit were requisitioned not for any public purpose, the directions given u/s 7 and the impugned requisition order must also be held to be without jurisdiction and invalid. It is necessary for me to consider in a great detail all the arguments advanced on behalf of the Plaintiffs in this connection. It is also impossible to indicate all the detailed arguments advanced before me. What I must consider in this connection are the facts what existed at the date of the impugned requisition order, viz. February 20, 1957. The rationing of foodgrains had come to an end on June 14, 1954. The net result of the evidence of Todankar as to facts which thereafter existed is as mentioned above. Those were the facts at the date of the impugned requisition order dated February 20, 1957. As I have found that the Society is a private dealer existing for its own purposes, I find it very difficult to hold that because the Society like other numerous outside dealers was employed for distribution of wheat and rice to card holders, use of the shops by the Society is a public purpose within the meaning of Section 7 and other parts of the Bombay Act. In my view, the shops in suit had ceased to be used for a "Public purpose" long prior to February 20, 1957.

(21) The question is, if so, can it be also inferred for this reason that the shops had ceased to be under valid requisition. (Before discussing that question, I must repeat that my first finding made above is that the shops ceased to be under valid requisition as from the commencement of the 1952 Act). In connection with this further question Mr. Parpia has relied upon the decision of the Supreme Court in the case of The Union of India (UOI) Vs. Ram Kanwar and Others, . In that case (appeal) the premises requisitioned under the Defence of India Rules ultimately came to be used by a body of the name of "Triveni Kala Sangam". Apparently, that body was connected with some sort of social amelioration work.

The respondents in that case who were the owner of the requisitioned premises challenged the continuance of the premises under requisition as invalid on the ground that the use of the premises was not being made for any public purpose nor for the purposes for which the requisition was made under the Defence of India Rules. In connection with the argument advanced on behalf of the Union that by reason of the deeming provision in the 1952 Act the requisition which was initially made under the Defence of India Act and continued under the 1947 Act must be deemed to be continuing, the relevant observations made by Subba Rao J. are as follows :

"XXX But the fiction created by S. 24(2) of the Act would operate only upon the requisition already made. The function could not validate any illegal act of the Government. Therefore, the question is what was the effect of the earlier requisition under the Rules as well as under the 1947 Act. ....But the validity of the requisition could be judged on the basis of the pre-existing statutes and not on the basis of the provisions of the sections of the 1952 Act. XXX" After the above observations reference is made to provisions in Section 6 providing for de-requisition of requisitioned premises, when the same are the required for the purpose for which requisition was made. Reference is then made to the liability of the Central Government on purposes ceasing to exist to release the property from requisition. Having regard to that liability it was held that from the date when the premises ceased to be needed for a public purpose and for the purposes for which the requisition was made the same were liable to be released from requisition. The subsequent user of the requisitioned premises could not be available for finding that the premises could not be available for finding that the premises must be deemed to be continuing under requisition under sub-section (2) of Section 24 of the 1952 Act. Following these observations and having regard to the conclusion to which I have come, viz., that the premises were not used for public purpose for considerable time prior of February 20, 1957, I must come to the conclusion that the Union of India was bound to de-requisition and deliver back the possession of the shops long prior to February, 20, 1957. It directly follows from the above that the shops had ceased to be under or subject to valid requisition (also) long prior to February 20, 1957.

(22) This being the true position, one of the conditions precedent as necessary to exercise powers vested in the Government u/s 7 of the Bombay Act had ceased to exist prior to February 20, 1957. In other words, the impugned order of requisition was made long after the shops ceased to be subject to requisition. Having regard to that cesser the requisition could not be directed to continue under the provisions of Section 7 of the Bombay Act.

(23) Mr. Parpia also relied upon Section 23 of the Bombay Act, which runs as follows :-

"Nothing in this Act shall apply to my premises to which the Requisitioning and Acquisition of Immovable Property Act, 1952, applies."

This section was by an amendment added to the Bombay Act in 1956. Curiously enough, the addition is made by Order No.25399/B. The order is entitled "The Bombay Adaptation of Laws (State and Concurrent Subjects) Order, 1956". The order is made under the provisions of section 120 of the State Reorganisation Act, 1956. The addition of the above Section 23 in the Bombay Act obviously has nothing to do with the States Reorganisation Act. Mr. Joshi has submitted that the section was added in 1956 because by the Constitution 7th Amendment Act provision was made to amend the 7th Schedule to the Constitution by deletion of item 33 of list 1 and 36 of list 2 and by amendment of item 42 is list 3. Item 42 as amended made the matter of requisition a concurrent subject for legislative competence of both the Central and the State Government. At the date of the 7th amendment on October 19, 1956, the 1952 Act was the central legislation relating to requisitions. The Bombay Act was the State legislation relating to requisitions. The Bombay Act had to be in consonance with the provisions of the 1952 Act. It was for this reason that section 23 was added in the Bombay Act. Even so, the question is as to what is the true effect of Section 23, The obvious meaning of the language of Section 23 is that none of the provisions in Section 1 to 22 of the Act apply to any premises (lands) to which the 1952 Act applies. It is the contention of the Defendants in this case that up to the date of the de-requisition order dated October 14, 1957, the shops in suit were validly under requisition under the 1952 Act. Having regard to the above apparent and clear meaning of the Section 23 as mentioned above to the shops in suit the provisions of S 7 of the Bombay Act (Whereunder the impugned requisition order dated February 20m 1957, is made) could not apply. Mr. Joshi, however, contends that having regard to the only reason which led to the addition of Section 1 to 22 do not apply to lands subject to requisition under the 1952 Act during the period of such requisition. In other words, his contention is that orders can be validity passed for requisitioning of the properties under requisition under the questioning of the properties under requisition under the 1952 Act in anticipation of de-requisition. Such orders would operate and come into effect only upon the lands subject to requisition under the 1952 Act ceasing to be subject to requisition under that Act. This construction of the section is obviously not grammatical or apparent. The provisions for requisition of properties are expropriatory and must be construed strictly. Again, having regard to the legislative history in regard to the subject of requisitioning of properties it appears that at the date of the 1952 Act whatever was subject to requisition under the Defence of India Rules was intended to be continued under requisition under the 1952 Act only if the previous requisition was for the Union Purposes. The State Government having knowledge of that fact and having knowledge that the requisitions made for the State purposes under the Defence of India Rules must under the 1947 Act expire in March 1951 was bound to give directions for its own safety u/s 7 long before that date. In cases where it failed to give such directions before that date it may be quite possible that the Legislature did not want the State Government to have any power u/s 7 after expiry of such date. As there is no clear provision as is submitted by Mr. Joshi to enable continuance

of the powers u/s 7 in spite of the previous in Section 23. I have come to the conclusion that the submission made on behalf of the Plaintiffs u/s 23 of the Bombay Act is correct. There was no power in the State Government to give directions u/s 7 on February 20, 1957, and the impugned requisition order was without authority of law.

(24) In connection with the argument about the land not being subject to requisition for the purposes of the State Mr. Parpia has relied in great detail upon the Bombay Rationing order as also the Notifications issued thereunder which are all contained in a Manual issued by the Government entitled "Government Orders Relating to Rationing". These Notifications show that it was the Provincial and/or the State Government which decided upon enforcing rationing in various areas at various times. When there was rationing in the City of Bombay there was no rationing in mofussil towns. There was rationing in some mofussil towns and not in others. The State Government also from time to time dealt with the question of what kinds of foodgrains should be under rationing and what should be free of rationing. These details go to show that the question of essential supply of foodgrains and rationing thereof locally was dealt with throughout by the State Government.. The requisition, therefore, also was not for the purposes of the Union. In this connection Mr. Parpia has relied upon the Notification dated September 13, 1952, bearing No. S.R.O. 1606 issued by the Central Government. The Notification appears at page 1492 of the Gazette of India, Part II - Section 3, dated September 20, 1952. Under the Notification the Central Government delegated authority to make all subsidiary legislation to the State Government in connection with foodstuffs, milk and milk products. Mr. Parpia has also relied upon the Bombay Essential Commodities and Cattle (Control) Act, 1946, the Bombay Essential Commodities Act, 1955, the Bombay Foodgrains Dealers Licensing Order, 1958, and several other Notifications in support of his contention that the shops were always under requisition for the purposes of the State and not for the purposes of the Union.

(25) I must indicate that I do not accept the contention made by Mr. Parpia that it is not correct to read u/s 8 of the General Clauses Act reference to the 1947 Act in Section 7 of the Bombay Act as in fact not referring to the 1952 Act. I also do not accept his contentions that prior to the 1952 Act requisition of the shops had ceased.

(26) Mr. Parpia has argued that because the requisition order dated February 20, 1957, provides for operation of the requisition from a future date the same should be held to be invalid. It is unnecessary to discuss this question. I must indicate that I cannot uphold that contention.

(27) Mr. Parpia has also argued that since the impugned requisition order does not mention the public purpose for which requisition was intended to be continued the same should be held to be invalid. In that connection Mr. Joshi has referred to the decision in the case of Mr. Joshi has referred to the decision in the case of The State of Bombay Vs. Bhanji Munji and Another, . It appears that

having regard to the observations made in that case it is not absolutely necessary that in each requisition order the public purpose for which requisition is made must be mentioned.

(28) Mr. Parpia has also argued that the impugned requisition order must be struck down as resulting from male fides. In that connection he has relied upon the fact that the requisition was made subsequent to correspondence and notices expressing protests against delivery of possession of the shops to the Society. The notices are dated March 2, 1955, May 23, 1956, and April 24, 1956. There is no doubt that prior to the requisition order dated February 20, 1957, on behalf of the Plaintiffs it was repeatedly contended that the shops were not liable to be continued under requisition under the 1952 Act and that the Society was in the shops having its own private business which could not be public purpose. It is unnecessary for me to make a finding on this contention as I have otherwise held the impugned requisition order to be invalid.

(29) Mr. Parpia has also relied upon the admitted fact that in 1957 and prior thereto it was announced policy of the State Government not to requisition business premises. In that connection it is pointed out on behalf of the Defendants that this Court cannot be concerned in the matter of a policy announcement of the Government. The Court would have to enforce the law as it was. If there was a question of discrimination pleaded and raised in this connection, the question would have been relevant. It is unnecessary to decide this connection.

(30) Mr. Parpia has contended that the allotment order made in favour of the Society on May 22, 1958, should be held to be invalid on the ground that the terms thereof are not intelligible and secondly that the order made is also mala fide. To support the contention of male fides he has relied upon the facts which I have already indicated above. He has also relied upon a letter ready indicated above. He has also relied upon a letter in reply given by the Society on September 22, 1957. By that letter Todankar on behalf of the Society wrote to the Plaintiffs to state as follows:-

"We, the Kamgar Consumers" Co-operative Society Ltd, are your tenant in the above mentioned premises and we are conducting the shop of our Society in the same for the last ten years,

Office of the Controller of Accommodation has informed us that it has no objection regarding our direct tenancy to you. XXX".

Todankar consequently by the letter requested the Plaintiffs to accept the Society as Plaintiffs' tenant. It is quite possible that the statements made by Todankar in this letter are true. There is, however, no evidence on record that the Controller of Accommodation in fact has no objection to the Plaintiffs giving direct tenancy to the Society. It is also true, as contended by Mr. Parpia, that the above allotment order was made subsequent to the notices tendered on behalf of the Plaintiffs u/s 70 of the Bombay Co-operative Societies Act on July 18, 1957.

These are relevant facts to be considered if occasion arises to decide the issue of male fides. It is unnecessary for me, having regard to the conclusions which I have already arrived at, to make any finding on this contention. It is true that there is considerable force in the argument that the requisition order and the allotment order were made for the collateral purpose of enabling the Society to continue its business in these shops.

(31) Mr. Parpia has argued that the de-requisition order dated October 14, 1957, is invalid. In that connection he has led evidence to prove that the original tenant Karamshi has surrendered the tenancy of the shops to the Plaintiffs. Suffice it to state that the evidence in Chief was completely broken when Mr. Joshi cross-examined witness Hiralal Thakker. In the correspondence prior to the suit on behalf of Plaintiffs no reference was made to any surrender of tenancy. The explanations given in that connection by Hiralal Thakker are such as can never be accepted. In his cross-examination he also admitted that Karamshi died intestate leaving him surviving as his heirs his widow and a daughter. The widow is residing in which the shops in suit are situated on the 1st floor thereof. The evidence of Hiralal was led because the Plaintiff's contention is that under the scheme for release from requisitioning as contained in Section 6 of the 1952 Act it was incumbent upon the Central Government upon de-requisition to direct that the properties should be given in possession of the plaintiffs as owners. The defendants' contention is that under sub-section (2) of Section 6 of the 1952 Act upon de-requisition the possession was of the 1952 Act upon de-requisition the possession was liable to be returned to the person from whom the possession of the shops was in fact taken. Admittedly, on December 20, 1943, Karamshi had given up possession of the shops. He was tenant in possession of the shops up to the time when possession was taken. The Defendants case is that in no event the Plaintiffs were entitled to redelivery of possession and the same was liable to be returned only to the person from whom possession was taken. The defendants case is that having regard to the fact that Karamshi has left a widow and a daughter the Plaintiffs are in no event entitled to claim back possession under sub-section (2) of Section 6 It appears to me that the provision of Section 6 do not enable the de-requisitioning officer and/or the Government to decide the title and/or the person entitled to the title of the Immovable property. In fact having regard to the provisions in sub-section (3) of Section 6 it is abundantly clear that the decisions taken by a de-requisitioning officer and/or Government as to redelivery of possession of requisitioned properties upon de-requisitioning do not in any manner prejudice any rights in respect of the properties which any other person may be entitled to enforce by due process of law against the person to whom possession of the properties is given. The substance of this suit, in my view, is that it is for ejectment of the 3rd Defendant Society which has received possession both in pursuance of the de-requisition order as also the impugned requisition order and allotment order. The suit is on the footing of the title that the Plaintiffs have against each of the Defendants in this suit to present possession of the property. This being suit to enforce that title, the question of

validity or otherwise of the directions contained in the de-requisition order for delivery of possession to the 3rd Defendant Society is entirely irrelevant to be decided. If the plaintiffs establish their title to present possession of the shops in suit, they must do it independently of the question of validity or otherwise, of the de-requisition order. It is, therefore, unnecessary and irrelevant to decide this connection made on behalf of the Plaintiffs.

(32) At this stage Mr. Parpia has informed me that as on the findings which I have already made the Plaintiffs are entitled to the relief of ejectment and possession he has advised his clients not to press the claims for compensation as mentioned in the plaint and prayers (b) and (c) thereof.

(33) In the result, my answers to the issues raised on behalf of defendant 1 are as follows:-

Issue No. 1: Not pressed by Plaintiffs.

Issue No.2 : Not pressed by Plaintiffs.

Issue No.3 : Not pressed by Plaintiffs.

Issue No. 4: In the negative.

Issue No.5 : In view of answer to Issue No.6 unnecessary.

Issue No.6 : In the affirmative.

Issue No.7 and 8 : See judgment. Not answered in view of answer to issue No.6

Issue No. 9: In the affirmative.

Issue No.10 : In the affirmative.

Issue No.11: See judgment. 12 and 13:

Issue No. 14 : In the affirmative.

Issue No.15 : In the affirmative.

Issue No.16: In the affirmative.

Issue No.17 : In the negative.

Issue No. 18: Unnecessary.

Issue No. 19: In the negative as the Plaintiffs do not press the claim.

My answers to the issues raised on behalf of Defendant 2 are:-

Issue No. 1: As the de-requisition order was challenged, the 2nd Defendants were appropriate parties.

Issue No. 2: Not pressed by the Plaintiffs.

Issue No. 3: Not pressed by the Plaintiffs.

Issue No. 4: Not pressed by the Plaintiffs.

Issue No. 5, 6, and 7 : These are not in face issues which require to be answered, as the question raised therein do not form part of any cause of action of the Plaintiffs.

Issue No. 8 : See judgment.

Issue No. 9: Not pressed by the Plaintiffs.

Issue No. 10: In the affirmative.

Issue No. 11: See judgment.

Issue No. 12: In the affirmative.

Issue No. 13: In the affirmative.

My answer to the issues raised on behalf of Defendant 3 are :-

Issue No. 1: The Plaintiffs have not pressed.

Issue No.2 : Unnecessary, in view of answer to Issue No.1

Issue No. 3: In the negative.

Issue No. 4: In the affirmative.

Issue No. 5: In the negative.

Issue No.6 : In the negative.

Issue No. 7: See judgment.

Issue No. 8: See judgment.

Issue No. 9 : In the affirmative.

(34) The Plaintiffs are entitled to a decree against Defendants 1 and 3 in terms of prayer (a). There will be no relief in respect of prayers (b), (c) and (d) and the claim made therein stands dismissed. Defendants 1 and 3 to pay costs of this suit to the plaintiffs. Decree not to be executed for 6 weeks.

(35) Suit decreed.