

(1994) 04 SC CK 0031

In the Supreme Court Of India

Case No : Writ Petition (C) No. 53 of 1993 etc.

Grahak Sanstha Manch and others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:

Bombay Land Requisition Ordinance, 1947 — Section 20
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 1, 4(1), 5(1), 6, 8
Constitution of India, 1950 — Article 300A, 31

Citation : AIR 1994 SC 2319 : (1994) 96 BOMLR 574 : (1994) 3 JT 474 : (1996) 2 PLJR 201 : (1994) 2 SCALE 705 : (1994) 4 SCC 192 : (1994) 3 SCR 746 : (1994) 2 UJ 244

Hon'ble Judges : M. N. Venkatachaliah, C.J.;S.P. Bharucha, J;S. C. Agrawal, J;P. B. Sawant, J;J. S. Verma, J

Bench : Full Bench

Advocate : Y. Adhyaru and K.V. Sreekumar, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Bharucha, J.—Writ Petition (C) No. 404 of 1986. President Association of Allottees of Requisitioned Premises, Bombay v. State of Maharashtra, originated upon a letter written to the then Chief Justice of India. It was treated as a writ petition and numbered accordingly. On 21st July, 1986 rule was issued upon the writ petition and it was referred to a five Judge bench for hearing. Accordingly, it comes to be heard by us. The writ petition, in effect, seeks reconsideration of the decision in H.D. Vora Vs. State of Maharashtra and Others, which was decided by a bench of two learned Judges of this Court.

2. While the aforementioned writ petition concerns premises requisitioned for the purposes of residential use under the Bombay Land Requisition Act, 1948 (hereinafter called "the said Act"). Writ Petition No. 53 of 1953 Grahak Sanstha Manch and others Vs. State of Maharashtra, , concerns premises requisitioned under the said Act for commercial use. Therein the petitioners are an association of cooperative societies running fair price ration shops in Bombay in premises

requisitioned under the said Act. Some of its members are also petitioners and others are respondents. Each of these premises was requisitioned more than 45 years back. Some of these cooperative societies have now been served with a notice by the State Government calling upon them to vacate the premises on or before 26th December, 1992 so that the premises may be derequisitioned. The writ petition prays for a writ of mandamus commanding the State Government not to evict the petitioners from the requisitioned premises, in effect, this writ petition too seeks reconsideration of the judgment in H.D. Vora's case.

3. Both writ petitions have been heard together and may conveniently be disposed of by a common judgment.

4. In H.D. Vora's case a flat in a residential building was requisitioned by an order dated 9th April, 1951, by the State Government in exercise of powers conferred by Section 6(4)(a) of the said Act. The flat was allotted to the appellant, H.D. Vora, who was neither a Government servant nor a homeless person. The allotment was made despite an earlier refusal by the State Government to do so. The ownership of the building having changed hands, the new owner requested the State Government to derequisition the flat on the ground that its allotment in favour of the appellant could not be said to be for a public purpose. This not having been done, the owner filed a writ petition in the High Court at Bombay challenging the continuance of the order requisitioning the flat on the ground that it could not survive for such a long period of time. Upon an examination of the material that was placed before it the High Court held that there was no material which showed the public purpose for which the order of requisition of the flat was made and there was no denial on the part of the State Government of the averment that the appellant was neither a Government servant nor a homeless person. This Court, in appeal, found the High Court's view well founded and held that it was not possible to say on the material on record that the order of requisition had been made for a public purpose. But it was contended on behalf of the appellant that even if the order of requisition was invalid as having been made for a purpose other than a public purpose, the owner of the building was not entitled to challenge, the same after a lapse of over 30 years and the writ petition ought, therefore, to have been dismissed. This Court said :

Now if the only ground on which the order of requisition was challenged in the writ petition was that it was not made for a public purpose and was therefore void, perhaps it might have been possible to successfully repel this ground of challenge by raising an objection that the High Court should not have entertained the writ petition challenging the order of requisition after a lapse of over 30 years. But we find that there is also another ground of challenge urged on behalf of respondent 3 and that is a very formidable ground to which there is no answer. The argument urged under this ground of challenge was that an order of requisition is by its very nature temporary in character and it cannot endure for an indefinite period of time and the order of requisition in the present case

therefore ceased to be valid and effective after the expiration of a reasonable period of time and that it could not, under any circumstances, continue for a period of about 30 years and hence it was liable to be quashed and set aside or in any event the State Government was bound to revoke the same and to derequisition the flat. This contention has, in our opinion, great force and must be sustained. There is a basic and fundamental distinction recognised by law between requisition and acquisition. The Constitution itself in Entry 42 of List III of the Seventh Schedule makes a distinction between acquisition and requisitioning of property. The original Article 31 Clause (2) of the Constitution also recognised the distinction between compulsory acquisition and requisitioning of property. The two concepts, one of requisition and the other of acquisition are totally distinct and independent. Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passed on acquisition to the acquired leaving nothing to the former, vide : Observations of Mukherjee, J. in Chiranjit Lal case. The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of "domain or control over property without acquiring rights of ownership" and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the Government can under the quiz of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the Government. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property but it cannot use the power of requisition for achieving that object.

This Court observed that the power of requisition was exercisable only for a public purpose which was of a transitory character. If the public purpose for which the premises were required was of a perennial, to permanent character from the very inception, no order could be passed requisitioning the premises. Where the purpose for which the premises was required was of such a character that from the very inception it could never be served by requisitioning the premises but could be achieved only by acquiring the same, which would be the case where the purpose was of a permanent character or likely to subsist for an indefinite period of time, the Government could acquire the premises but it certainly could not requisition the same and continue the requisitioning indefinitely. It was also observed by this Court that it was not necessary to

decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because, ultimately, the answer to this question depended on the facts and circumstances of such case; but there could be no doubt, that, whatever to the public purpose for which an order of requisition was made, the period of time for which it could be continued could not be an unreasonably long period such as thirty years. This Court, therefore, upheld the view of the High Court that the order of requisition could not survive any longer, that the State Government was bound to revoke it and to derequisition the flat and to take steps to evict the appellant from it and to hand over its vacant possession to the owner.

5. Before we proceed to discuss the provisions of the Act and submissions of counsel it is convenient to notice three judgments of this Court concerning the said Act.

6. In *The State of Bombay Vs. Bhanji Munji and Another*, the validity of the said Act was upheld by a Constitution Bench. This Court noted that at the time the said Act was passed the housing situation in Bombay was acute largely due to the influx of refugees. The question of public decency, public morals, public health and the temptation to lawlessness and crime, which such a situation brought in its train, at once arose; and the public conscience was aroused on the ground of plain humanity. A race of proprietors in the shape of rapacious landlords who thrived on the misery of those who could find no decent roof over their heads sprang into being. The efficiency of the administration was threatened because Government servants could not find proper accommodation. Milder efforts to cope with the evil proved ineffective. It was necessary, therefore, for Government to take more drastic steps in the form of the said Act, and in doing so it had acted for the public weal. There was, consequently, a clear public purpose and an undoubted public benefit.

7. In *Collector of Akola and Others Vs. Ramchandra and Others*, land owned by the respondents was requisitioned under the said Act for the public purpose of establishing a new village site to resettle flood victims. The requisition was challenged on the ground that an order passed for a permanent purpose was outside the scope of the said Act, which, at that time, was a temporary Act. This Court held that the words of Section 5(1) of the said Act, namely, 'any land for any public purpose' were sufficiently wide to include any public purpose, whether temporary or otherwise. To read, it was said, into the section a limitation that the six months immediately preceding the date of the order shall be requisitioned. Sub-section 2 of Section 5 requires an enquiry in this behalf to be made. Section 6(1) obliges the landlords of premises situated in any area specified by the State Government by notification in the Official Gazette to give intimation in the prescribed form to the State Government of any vacancy therein. Sub-section 3 of Section 6 precludes the landlord, without the permission of the State Government, from letting, occupying or permitting to be occupied such premises before giving such intimation and for a period of one month from the date on

which the intimation is given. Under Sub-section 4 the State Government may, whether or not an intimation under Sub-section (i) has been given and notwithstanding anything contained in Section 5, requisition premises for any public purpose and use, them in such manner as may appear to it as expedient. Section 8 provides for payment of compensation when any land is requisitioned under the said Act. It contemplates, inter alia, payment of compensation in a lump sum. Section 8B empowers the State Government to appoint a competent authority for the purposes of the said Act. u/s 8C that competent authority, if satisfied after holding such inquiry as it deems fit, that an allottee of requisitioned land or premises has not paid the due monthly compensation or has Sub-let the whole or any part thereof without permission or has committed any acts in contravention of the terms and conditions of the allotment or has been in unauthorised occupation thereof or that some other person is in unauthorised occupation or that such land or premises are to be released from requisition, may order the allottee to vacate the same. Section 8E makes it clear that the allotment of requisitioned land or premises shall be deemed to be a licence in favour of the allottee for its use and occupation. Section 9 authorises the State Government to release at any time from requisition any requisitioned land. Sub-section 1A thereof states that the State Government shall release from requisition, notwithstanding anything contained in Sub-section 1, any land requisitioned under the said Act on or before 31st December, 1994, and by reason of Sub-section 2 such land must be restored, as far as possible, in the same condition in which it was when the State Government was put in possession thereof. With the other provisions of the Act we are not here concerned. We need only note that the said Act repealed the provisions of the Bombay Land Requisition Ordinance, 1947 and Sub-section 2 of Section 20 stated that, notwithstanding the repeal of the Ordinance, any land requisitioned or continued to be subject to requisition under the Ordinance would be deemed to be subject to requisition under the said Act.

8. When the said Act was originally enacted it provided (Section 3) that it would remain in force upto 31st March, 1950. Section 6(4)(B) of the said Act as originally enacted empowered the Provincial Government, as it then was, to "require the landlord to let the premises to specified persons or class of persons or in specified circumstances". The said Act was amended so that Section 3 stood deleted by Section 2 of Maharashtra Act 51 of 1973. At the same time Sub-section 1A was introduced in Section 9, which obliged the State Government to release land from requisition on the expiry of a stated period. That period was extended from time to time by successive amendments and, as the said Act presently stands, the period expires on 31st December, 1994. Section 6(4)(b) was deleted by Section 3(2) of the Bombay (Amendment) Act 5 of 1952 and consequential amendments in the proviso to Sub-section 4 were made.

9. The said Act as originally enacted, therefore, empowered the State Government to require landlords to let out premises. The provisions in that regard were deleted. It is, therefore, not possible to accept Ms. Jaisingh's

submission that the said Act as it stands is rent control legislation. That the said Act as originally enacted had contemplated both the requisitioning of premises and compulsory letting out thereof indicates the legislative intent that whereas letting out was intended to be a permanent arrangement, requisitioning was intended to be only a temporary arrangement. Emphasis was laid by counsel for the petitioners upon the fact that Section 9 authorises the State Government to release "land" from requisition and under the provisions of Sub-section 1A thereof obliges it to do so before the period stated therein. It was urged that "land" and "premises" were separately defined for the purposes of the Act so that there was no compulsion upon the State Government to release from requisitioning "premises", namely, any building or part of a building let or intended to be let and that, insofar as premises were concerned, requisitioning was not intended to be a temporary arrangement. "Land" has been defined to include benefits that arise out of land and buildings and all things attached to the earth or permanently fastened to the buildings or things attached to the earth and "premises" to mean any building or part of a building let or intended to be let. The definition of land is, in our view, wide and clearly includes a building or part thereof let or intended to be let. Premises would appear to separately defined only because the said Act as originally enacted empowered the State Government not only to requisition premises but also to compel landlords to let out premises. It is, therefore, not possible to accept the contention that under Sub-section 1A of Section 9 the State Government is not obliged to release premises from requisition within the period stated therein.

10. We find ourselves in agreement with the view taken in the cases of Collector of Akola and Jiwani Kumar Paraki that the purpose of a requisition order may be permanent. But that is not to say that an order of requisitioning can be continued indefinitely or for a period of time longer than that which is, in the facts and circumstances of the particular case, reasonable. We note and approve in this regard, as did this Court in Jiwani Kumar Paraki's case, the observations of the Nagpur High Court in the case of Mangilal Karwa v. State of M.P., ILR 1955 Nag. 34 which have been reproduced above. That the concept of requisitioning is temporary is also indicated by the Law Commission in its Tenth Report and, as pointed out earlier, by the terms of the said Act itself, as it originally stood and as amended from time to time. There is no contradiction in concluding that while a requisition order can be issued for a permanent public purpose, it cannot be continued indefinitely. Requisitioning might have to be resorted to for a permanent public purpose, to give an example, to tide over the period of time required for making permanent premises available for it. The concepts of acquisition and requisition are altogether different as are the consequences that flow therefrom. A landlord cannot, in effect and substance, be deprived of, his right and title to property without being paid due compensation, and this is the effect of prolonged requisitioning. Requisitioning may be continued only for a reasonable period; what that period should be would depend upon the facts and circumstances of each case and it would ordinarily, be for the Government to

decide.

11. For the aforesaid reasons, we hold that the decision in H.D. Vora's case does not require reconsideration. We, however, do not approve the observations therein that requisition orders under the said Act cannot be made for a permanent purpose. We make it clear that the said decision does not lay down, as has been argued, a period of 30 years as the outer limit for which a requisition order may continue. The period of 30 years was mentioned in the decision only in the context of the date of the requisition order there concerned. An order of requisition can continue for a reasonable period of time and it was held, as we hold, that the continuance of an order of requisition for as long as 30 years was unreasonable.

12. The position in respect of requisitioned premises in the State is set out in the affidavit filed on 21st April, 1986 by Vasant J. Patwardhen on behalf of the State Government in Writ Petition No. 404 of 1986 thus :

After requisitioning the premises, the Government of Maharashtra has been allotting such requisitioned premises to State Government servants/State Government Offices/other category of persons/offices permissible under the policy of Government. The residential requisitioned premises in the State of Maharashtra has not only been allotted to the State Government servants but also to persons of other categories such as homeless persons. At present, there are about 2300 requisitioned residential and about 247 non-residential premises in Maharashtra. Out of these about 1928 residential premises are in Bombay alone and out of which 1779 premises were requisitioned in or before 1960 i.e. have already been under requisition for over 25 years. In Bombay, about 1404 premises stand allotted to Government Servants and about 276 of them are continued in possession of Government Servants who have ceased to be Government Servants. About 497 of the residential premises stand allotted to persons of other categories like victims of house collapse, homeless persons etc.

We may add that of these residential premises some are large flats in the best localities of Bombay city.

13. The State Government cannot, in our opinion, be compelled to provide alternate accommodation to the allottees of all the requisitioned premises and we reject the plea of counsel for the petitioners in this behalf. It is for the State Government to consider the desirability and feasibility of providing alternate accommodation to such of them as would be in the interests of the administration.

14. The continuance of requisition orders made in the late 1940's and early 1950's and thereabouts, particularly of residential premises, have been struck down by the Bombay, High Court in numerous cases following the judgment in H.D. Vora's case. There are no appeals there against except one which was, by a separate order of this bench, dismissed. The allottees of these requisitioned premises (except retired Government servants allotted premises requisitioned for

the purpose of housing Government servants) and their legal representatives have continued in occupation thereof by reason of the interim orders of this Court passed from time to time in Writ Petition No. 404 of 1986. Having regard to the known difficulty of finding alternate accommodation in Bombay and other large cities in Maharashtra, the protection of these interim orders is hereby continued until 30th November, 1994, on which date all occupants of premises the continued requisition of which has been quashed as afore-stated shall be bound to vacate and hand over vacant possession to the State Government so that the State Government may, on or before 31st December, 1994, derequisition such premises and hand back vacant possession thereof to the landlords.

15. The Writ Petitions are, accordingly, dismissed. There shall be no order as to costs.

P.B. Sawant, J.

16. I have had the benefit of perusing the draft of the judgment prepared by Bharucha, J. While I agree with the findings on the questions of law, I am unable to agree with the proposed order. I am of the view that notwithstanding the legal position, the following directions can be given to mitigate the hardship of the allottees of the requisitioned premises. These directions will in no way prejudice the interests of the landlords of the premises. At present that are receiving the same rent from the allottees as from the other tenants. On account of the Rent Act, they will not receive more rent from the new tenants whom they may induct after the premises are released from requisition. It is in rare cases that the premises would be required by the landlords for bona fide personal requirement. All that, therefore, they will be deprived of for some time more, on account of these directions, is the right to induct new tenants of their choice. It is a notorious fact that such choice is, more often than not, exercised in favour of those who can offer competing illegal consideration, commonly known as "pugree" which is escalating with passage of time.

17. would, therefore, pass the following order:

There are two sets of allottees before us: (a) Consumer Cooperative Societies which are allotted premises to run fair price ration shops and (b) individuals who are allotted residential premises.

18. Those who avail of the fair price ration shops are mostly drawn from the middle and low income groups. They are large in number. The allottee-consumer cooperative societies among themselves also employ a size-able number of employees who will have overnight to face unemployment when the shops are required to be vacated and as a consequence, the societies may have to wind up. It is, therefore, necessary that the State Government should, for the benefit of the consumers, first, make suitable arrangements for housing the ration shops in the shops run by others in the same localities where at present the allottee-consumer cooperative societies are running their shops, before they are evicted from the present shops. Secondly, the consumer societies should have sufficient

time to search for new premises and the employees of the societies should also have sufficient time to find out alternative employment. Hence, the State Government should not derequisition and evict the consumer cooperative societies from the allotted premises before 31st May, 1996.

19. As regards the allottees of the requisitioned residential premises, they belong to different strata of the society, and the requisitioned premises also differ in size. Most of the allottees belong to the middle and low income groups (hereinafter referred to as 'MIG and LIG') and they are identifiable by the criteria laid down by the State Government and other authorities for allotting houses for such groups. The premises in their occupation are also small in size. Even among the MIG and LIG, some may have secured other residential premises either in their own name or in the name of their spouses and dependents. As a result of this decision, it is only those allottees belonging to the MIG and LIG who have not acquired other premises in the meanwhile, who would be hit hard inasmuch as they will be dishoused and thrown on the street with their families overnight. The State Government should, therefore, give preference to such MIG and LIG allottees in providing residential accommodation. It is possible for the State Government to do so (a) by giving priority in the allotment of its own plots of land, (b) by requiring or making suitable arrangements with the City and Industrial Development Corporation of Maharashtra Ltd. and Maharashtra State Housing Board for giving them priority in the allotments of plots, and tenements which are either already constructed or are proposed to be constructed by them, (c) by requiring the said organisations to construct tenements specially for such allottees, or (d) in any other manner the State Government deems fit. I understand that the State Housing Board has at present sufficient number of residential premises (about 6000) available for being allotted on hire-purchase as well as on rental basis to the MIG and LIG. The allottees of the requisitioned premises are no more than about 3000. Since for making the premises available to the eligible among these groups sufficient time will be required, the State Government should not derequisition, and evict the said allottees from, the present premises till they are offered suitable alternative premises. The State Government should make such premises available at the latest before 31st May, 1996.

20. The other premises may be derequisitioned as directed in the order proposed by the majority.

21. I dismiss the writ petitions subject to the above order.