
(1958) 01 CAL CK 0020
In the Calcutta High Court
Case No : Civil Rule No. 1809 of 1957

Sachindra Nath Mukherji	Vs	APPELLANT
The State of West-Bengal and Others		RESPONDENT

Date of Decision : 21-01-1958

Acts Referred:

Constitution of India, 1950 — Article 141, 226
West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 3(1)
West Bengal Salaries and Allowances Act, 1952 — Section 4, 6

Citation : AIR 1958 Cal 510

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Nalini Ranjan Bhattacharjee, for the Appellant; Nirmal Chandra Chakravarty and D.N. Basu for Respondents 1, 2 and 4, for the Respondent

Judgement

P.B. Mukharji, J.—This is an application under Article 226 of the Constitution of India. The order of requisition No. 91/56 dated 6-10-1956, requisitioning premises No. 1/8, Dover Lane, Calcutta, is challenged. The requisition was made u/s 3(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, (West Bengal Act V of 1947). The recital of purpose in that order was that the premises were needed for "a public purpose". The order as produced by, the Senior Government Advocate is directed to be filed in these proceedings. Although that order describes one Sm. Jyotsnabala Chakravarty as the owner of the premises, it is not disputed on any affidavit here that the applicant is the owner.

2. The applicant seeks for a writ of mandamus directing the respondents to forbear from giving effect to the order of requisition dated 6-10-1956, in Requisition Case No. 91 of 1956 and, to cancel the same, and also for a writ of Certiorari to quash the proceedings.

3. The applicant challenges the order of requisition on four grounds. His first

ground is that the purpose for which the premises were requisitioned was not a public purpose within the meaning of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. His second objection is that even if it be regarded as a requisition under the said Act, the respondents have not complied with the mandatory provision of Section 3 (2) of that Act which provides that an order of requisition shall be served on the landlord and where it relates to premises let out to a tenant, also on such tenant. His third objection is that the minimum notice of ten days as provided in Section 4 (1) (a) of the Act has not been given. His fourth objection is that even the purpose for which the order of requisition was made having expired, the Government illegally and unlawfully continued the requisition instead of derequisitioning the same.

4. The facts of this application are stated in the petition. The facts alleged constitute serious allegations against the Government. It is one of the hardest cases of requisition that have ever come up before the Court. The facts and allegations made in the petition have not been denied by the use of any affidavit on behalf of the Government. The Rule was issued on 10-7-1957. On 31-7-1957, the Government was allowed as long as five weeks" time to file affidavits for controverting the allegations in the petition. No affidavits were filed within that time. Since then about six months more have elapsed, and no affidavits have been filed by the Government to deny any of the grave allegations made in the petition. At the date when the matter came up for hearing, the Senior Government Advocate asked for still further time to file the affidavits on behalf of the Government which was opposed by the applicant. I refused further time on the ground that five weeks" time originally given to the Government was ample enough to make an affidavit in answer to the petition and even six months thereafter was still more time to do so.

5. The facts as appearing from the petition may be briefly summarised. They tell a story of unparalleled hardship. The petitioner is the owner of premises No. 1/8 Dover Lane, Calcutta. He is an Advocate ordinarily practising in the district courts at Alipore. This is the only house he possesses. He is an old man of over sixty years. The house was constructed in 1938 for his residence and office. He remained in exclusive occupation thereof with the members of his family. One Bireswar Chakra-varty, the father-in-law of the fourth respondent Ajita Ranjan Mukherjee who is the Secretary of the West Bengal Legislative Assembly, Calcutta, was a gurubhai (disciple of a common preceptor) of the applicant and as such picked up friendship and intimacy with the applicant. The material result of that spiritual friendship was that he with his family used to stay with the applicant's family whenever he had occasion to come to Calcutta. Some time in the year 1942 the fourth respondent Mukherjee who was a member of the Bengal Judicial Service came on transfer to Calcutta as the Deputy Registrar of the Small Cause Court, Calcutta. At the request of his said father-in-law Biseswar Chakra-varty the applicant accommodated the respondent Mukherjee by allowing him to stay in that house rent free on the express undertaking given by the respondent Mukherjee that he would vacate the house as soon as he got one for

himself. It is alleged that the applicant had sufficient reason to believe that the respondent Mukherjee's stay in the house would be temporary as his service was transferable. The respondent Mukherjee's occupation of the house, however, was not temporary. In fact, he was transferred from the Judicial to the Legislative Department and became the Secretary of the West Bengal Legislative Assembly and continued to live in that house without rent till the middle of 1954. It is the applicant's allegation that for this long period of 12 years from 1942 to 1954 the respondent Mukherjee, the Secretary to the West Bengal Legislative Assembly and a public servant of this State occupied the house of the applicant without any rent. At the end of that time he offered a nominal rent of Rs. 150/- per month which the applicant accepted. It is the applicant's case that he did so at the insistent request of the said Bisweswar Chakravarty and his daughter who was the wife of the respondent Mukherjee whom the applicant looked upon as his daughter. But that was only on condition that the respondent Mukherjee with his family would vacate the house, by the end of December 1944. Again, the respondent Mukherjee did not vacate. It is the allegation of the applicant that he became a very different man altogether, misbehaved with the applicant and ultimately went so far as to threaten and intimidate the applicant that the applicant had to leave his own house keeping only two rooms for his library, furniture and some utensils. The applicant describes his position that he is a professional man of 65 who has practically become a vagrant in the city of Calcutta with no fixed residence of his own. These serious allegations have not been denied by any affidavit from any of the four respondents who are serially the State of West Bengal, the Land Acquisition Collector, Gopika Bilas Sen and Ajita Ranjan Mukherjee.

6. To continue with the sad story it is necessary to state that the applicant was compelled to file a suit for ejectment against the respondent Mukherjee on the ground of personal use and occupation, default and annoyance against the respondent Mukherjee in the Second Court of the Munsif at Alipore. That suit was Title Suit No. 486 of 1955. It was transferred to the Second Additional Court of the Munsif and re-numbered as Title Suit No. 20 of 1956. The date for its hearing was fixed on 13-11-1956. Before that date came, the order of requisition had been made. It came in the following circumstances according to the petitioner. The applicant was absent from Calcutta during the Puja Vacation. The applicant alleges that, the respondent Mukherjee in collusion with his intimate friend, the respondent No. 3 Gopika Bilas Sen, suppressing the fact of a suit for ejectment, manipulated out of spite to get the said premises requisitioned under Requisition Case No. 91 of 1956, dated 6-10-1956, without any notice thereof or without any order of requisition of the said premises being served upon the applicant. The circumstances were also as harsh as possible. The order of requisition was dated 6-10-1956, and the applicant was required by that order to vacate the premises by 7-10-1956 by 9 A. M. The applicant alleges that Gopika Bilas Sen and Ajita Ranjan Mukherjee, the two respondents were intimate friends. They both came from Suri in the district of Birbhum. The respondent Mukherjee was the

Secretary of the West Bengal Legislative Assembly and the respondent Gopika Bilas Sen was then the Deputy Minister for Information and Broadcasting and the Chief Whip of the Government of West Bengal. Neither the respondent Gopika Bilas Sen nor the respondent Ajita Ranjan Mukherjee has made any affidavit to challenge or controvert any of the serious allegations of fact made by the applicant in paragraph 8 of his petition. It is also alleged by the applicant in that paragraph that on 7-10-56, when he was being required to vacate under the threat of that order of requisition, the respondent Gopika Bilas Sen for whom the requisition was in fact being made was living in a very comfortable and well furnished flat. The allegation is that the respondent Ajita Rajan Mukherjee by that time had built his new house on a C. I. T. plot near the Lake and shifted to his own house doing his good turn of gratitude to the man who had allowed him to live in his house for 12 years without a rent by getting the order for requisition in favour of the respondent Gopika Bilas Sen.

7. The Title Suit of the applicant against the respondent Ajita Ranjan Mukherjee came up for hearing on 13-11-1956, when the respondent Mukherjee disclosed that he had vacated the house and was not in a position to deliver possession disclosing the facts about the order of requisition. The suit was accordingly compromised on 20-11-1956, on a joint petition of Ajita Ranjan Mukherjee and the applicant without prejudice to the applicant's right to challenge the validity of that requisition order and also to take necessary steps to derequisition the house. A certified copy of the decree of that suit is" directed to be filed with the proceedings herein.

8. Thereafter the applicant tried unsuccessfully to have the premises derequisitioned. On 28-11-1956, the applicant filed an application before the Land Acquisition Collector, who is the second respondent to this application, for vacating or rescinding the order of requisition and in any event for releasing the said premises. It is the allegation that the Collector directed him to submit a similar application to the Secretary to the Land and Land Revenue Department who is representing the State of West Bengal, the first respondent. No derequisition, however, took place.

9. In the meantime the political fortunes of the respondent Gopika Bilas Sen turned against him. He was defeated in the General Elections to the West Bengal Legislative Assembly and ceased to be the Deputy Minister for Information and Broadcasting and the Chief Whip of the Government of West Bengal with effect from March 1957, The applicant thereupon again made, as alleged in paragraph 12 of his petition, a fervent request to the Government to release his house from requisition and make over possession thereof to the applicant. The applicant thought that as the person for whom the property was requisitioned would no longer be in his official capacity, the chances for derequisition of his house improved. The applicant, however, received his further shock and surprise again when far from the house being derequisitioned, he was served with a notice dated 8-7-1957, u/s 41 (1) (b) of the West Bengal Premises Requisition and

Control (Temporary Provisions) Act, 1947, whereby he was directed to white-wash the said premises by 9-7-1957. The order of white-washing had to be satisfied within 24 hours. Naturally in those circumstances the applicant pleads in paragraph 13 that he apprehends that some other Government employee would now start utilising the said premises.

10. All these facts appearing in paragraphs 1 to 13 are affirmed by the applicant as true to his knowledge. There is no counter-affidavit from any one of the four respondents to controvert any of these allegations of facts.

11. On these facts the applicant has submitted that the said order of requisition without being served on the applicant as provided in Section 3(2) of the Act and taking possession of the said premises on the strength thereof within a few hours from the issue of the requisition order was in collusion with the respondents Gopika Bilas Sen and Ajita Ranjan Mukherjee and in contravention of the provisions of Section 4 of the statute and, therefore, it is arbitrary, illegal and mala fide.

12. Mr. Chakravarty, the learned Senior Government Advocate, has argued that the applicant's objection about "public purpose" cannot be entertained by this Court. He has relied upon the decision of a Division Bench of G. N. Das and Debabrata Mukherjee JJ. in the case of Srinivas Kedwal Vs. State of West Bengal, . According to that decision the West Bengal Requisition and Control (Temporary Provisions) Act, 1947, was passed beyond eighteen months of the Constitution and as such was an existing law within the meaning of Article 31(5) of the Constitution and, therefore, the constitutional validity of the Act cannot be canvassed. This decision was rendered on 12-5-1953. It is also an authority for the proposition that u/s 3 (1) of the West Bengal Requisition and Control (Temporary provisions) Act, 1947, the factual existence of a public purpose depends entirely on the subjective satisfaction of the Provincial Government and is not justiciable.

13. Since the date when that Judgment was delivered, there have been many pronouncements on the subject. Analysing these pronouncements it appears to me that in so far as that decision held that the question of public purpose was not justiciable can no longer be regarded as good law. The Supreme Court in The State of Bombay Vs. Bhanji Munji and Another, (B) said at page 45:

""In our opinion, it is not necessary to set out the purpose of the requisition in the order. The desirability of such a course is obvious because when it is not done, proof of the purpose must be given in other ways and that exposes the authorities to the kind of charges we find here and to the danger that the courts will consider them well founded. But in itself an omission to set out the purpose in the order is not fatal so long as the facts are established to the satisfaction of the Court in some other way. The underlying principle of our decision in Biswabhusan Naik Vs. The State of Orissa, (C), applies here."

That decision is clearly an authority to show that public purpose is a justiciable

question. It is true that the Supreme Court there was discussing the Bombay Land Acquisition Act, 1948. In my view, although the decisions on one Act should not be applied in coming to decisions on a different Act, the circumstances in which and the language of the statute on which the justiciability of public purpose arose in the Bombay Land Acquisition Act, 1948, are similar to and *pari materia* with the question of justiciability under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947.

14. This is not the only decision of the Supreme Court. There is a clearer and a more definite pronouncement of the Supreme Court in 1956, a year after the former decision. This is the decision of *The State of Bombay Vs. R.S. Nanji*, . This, again, was a decision on the Bombay Land Acquisition Act, 1948, The Supreme Court there comes to the conclusion that

"It is impossible to precisely define the expression "public purpose". In each case all the facts and circumstances will require to be closely examined in order to determine whether a "public purpose" has been established. *Prima facie* the Government is the best judge as to whether "public purpose" is served by issuing a requisition order, but it is not the sole judge. The Courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose."

The relevant observations of Imam J. at p. 314 (of SCA): (at p. 297 of AIR) of that report are:

"The courts have the jurisdiction and it is their" duty to determine the matter whenever a question is raised whether a requisition, order is or is not for a "public purpose." "

15. I need hardly say that this is a clear enough pronouncement on the justiciability of public purpose in an order of requisition, although I say again that it was made under the Bombay Land Acquisition Act. In that case the requisition was also made for housing an officer of the State Transport Corporation which was a public utility service. The Bombay Requisition Act was construed. Although there u/s 5, the well known expression is used "If in the opinion of the Provincial Government it is necessary or expedient so to do, the Provincial Government may, by order in writing, requisition any land for any purpose," and it was even expressly provided there that the opinion of the Government that it was expedient or necessary to make the order of requisition, was the test, the Supreme Court comes to the conclusion that even then the purpose was justiciable by the courts. Here, under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, the words are far less stringent because the expression here is

"Whenever it appears to the State Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing, requisition such premises" etc.

If there the statute by saying that the opinion of the State Government was to be the test could not escape the Justiciability of the purpose by the courts, far less would it be SO in my view here on the language of Section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. I may incidentally mention here that although the section of the Act begins with the expression

"Whenever it appears to the State Government that any premises in any locality are needed or are likely to be needed for any public purpose,"

the actual order in this case, however, recited the "opinion" of the Government as in the Bombay case.

16. Before I pass on from the relevant decisions of the Supreme Court, I should like to mention the latest pronouncement of the Supreme Court also on the subject. In the case of Lilavati Bai Vs. The State of Bombay, (E), B. P. Sinha, J. referred to the previous decision of the Supreme Court with approval although it was pointed out there that construction of one statute should not be guided by the construction of another statute which is not in *pari materia*. Sinha, J., however, was in that decision construing the same Bombay Land Acquisition Act, 1948. This brings up-to-date the different pronouncements of the Supreme Court on the subject of "public purpose", land acquisition and requisition.

17. The recent decision in the case of Satya Narayan Nathani Vs. State of West Bengal and Another, (F) is a pronouncement on the same statute, the West Bengal Premises Requisition and Control (Temporary Provisions), Act, 1947, and on the question of public purpose, Chakravartti, C. J. delivering the judgment of the Division Bench comes to the conclusion that the case of, Srinivas Kedwal Vs. State of West Bengal, (A) was decided without considering the effect of the enactment of Act XV of 1950 & the effect of the extension of the life of the principal Act brought about by it after the date of the Constitution. The correctness therefore, of the decision of G. N. Das, J. in that case has been questioned. It is expressly pointed out in this case by the learned Chief Justice that the words

"Whenever it appears to the State Government that any premises in any locality are needed or are likely to be needed for any public purpose"

in Section 3 (1) of the Act suggest that what is left to the opinion of the Government is not the existence of the public purpose at all, but the need for the land. The Government is the best judge for the need. Whether the need is public purpose or not within the meaning of the statute remains in my view justiciable. That view appears to be fortified by contrasting this provision of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, with Section 6 of the Land Acquisition Act 1894 where the order of the Government is made conclusive evidence that the land is needed for a public purpose subject of course to the provisions of that statute. In Satya Narayan Nathani Vs. State of West Bengal and Another, (F) the learned Chief Justice at p. 431 (of Cal WN): (at

p. 316 of AIR) of the report after stating that the affidavit in opposition by the Government there did not disclose sufficient materials to establish, public purpose proceeded to say as follows:

"It was a purpose of providing accommodation to an officer of the State Government, who, it was said, was surely in need of accommodation. It was not said that he had made every possible effort on his own account to secure accommodation and such efforts had failed, nor that in order to the efficient discharge of the duties of his office, it was essential that he should find accommodation in Calcutta and could not come from the suburbs or from any of the neighbouring localities. An exposition of "public purpose" which has received the approval of the Judicial Committee is that whatever else public purpose may mean, it must include a purpose that has an object and an aim in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. A Government servant is undoubtedly a public servant in the broad sense of the term though very remotely a servant of the public, and it may also be said that the public are interested in the proper discharge by a Government servant of the duties of his office. But where the conditions of a Government servant's service do not require that accommodation is to be provided for him or there is nothing to show that there is some special reason for which it is essential to provide him with residential facilities or to find accommodation for him in a particular locality in order that he may be enabled to perform or perform efficiently the duties of his office, I find it difficult to hold that the purpose of providing accommodation to a person merely because he is a Government servant and merely because he is in need of accommodation, is a purpose in which the public, who pay him by a salary for such services as he renders are further interested, not to speak of being interested directly or vitally. I can, however, think of special cases. If, for example, it was considered expedient to provide accommodation to the members of a fire-brigade in the neighbourhood of the fire-station on the ground that they should be easily available and land situated near the fire-station was for that purpose acquired, I would be prepared to hold that the purpose would be a public purpose. Whether there were any special circumstances present in the case before us, does not appear."

18. Here, in this case the question of insufficiency of material in the affidavit in opposition by the Government does not arise at all. Indeed, the Government has chosen not to make any affidavit at all, far less to provide any materials to establish "public purpose" to the satisfaction of the court as directed by the Supreme Court. Indeed, it has not even controverted any of the facts of serious allegation against the Government that has been made in the petition. The facts in this case are much stronger than the facts before the learned Chief Justice in Satya Narayan Nathani's case. Here, the house was requisitioned by an order on 6-10-1956, with a direction upon the owner to vacate within 24 hours by the following day. It was supposed to be requisitioned, as subsequent events proved, for the purpose of providing accommodation for the respondent Gopika Bilas Sen

who happened, on the date of the order of requisition on 6-10-1956, to be a Deputy Minister for Information and Broadcasting and the Chief Whip of the Government of West Bengal.

19. Now, it is clearly alleged in the petition that on 7-10-1956, when this citizen of India was being asked to vacate his only house in the city, the respondent Gopika Bilas Sen was "living in a very comfortable and well furnished fiat". If that be so, then certainly it is not a "public purpose". This is without going into the question whether a Deputy Minister is at all required to reside in the city of Calcutta and whether he cannot equally serve his purpose by residing in the suburbs of Calcutta with the modern facilities for quick transport which exist to-day.

20. It is necessary to mention here at this stage the relevant provisions of the West Bengal Salaries and Allowances Act, 1952 (West Bengal Act V of 1952). By Section 4 of that Act the Chief Minister and each Minister shall be entitled, without payment of rent, to the use of a furnished residence in Calcutta throughout the term of his office at the expense of the public exchequer. A Deputy Minister of State is not so entitled to a house without payment or rent or to a furnished residence in Calcutta. It is expressly said by Section 6 of that statute that in the case of a Deputy Minister only a house allowance at the rate of Rs. 250/- per month and a conveyance allowance at the rate of Rs. 200/-per month will be permissible. If that be so, then obviously the statute itself does not indicate that a Deputy Minister must be furnished with a house within the city of Calcutta. The fact that he was at that time living in a very comfortable and well furnished flat has not also, been denied and must be taken to be correct.

21. I am told that the respondent Gopika Bilas Sen having lost in his election has vacated the house and some one else on behalf of the Government is in occupation of the house. It is not on affidavit, but assuming that some one else has come in after the General Elections, in 1957, the subsequent need, even if a need there is, of the present occupant cannot legalise a public purpose at the date of the order of the requisition on 6-10-1956, when the purpose for which it was requisitioned was not a public purpose within the meaning of the law. I need only add that there is no fresh requisition order stating that the residence of the present occupant, whoever he may be, is a public purpose within the meaning of the statute.

22. By all the tests laid down by Chakravartti, C. J., in Satya Narayan Nathani's case (F), I therefore must hold that no case of public purpose has at all been established in the present requisition. On that ground alone the order of requisition dated 6-10-1956, in Requisition Case No. 91 of 1955 must be set aside as being in contravention of Section 3 (1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, and as not being for a public purpose as required by the statute.

23. Before I leave this branch of the law I must say that the learned Senior

Government Advocate Mr. Chakravarty tried to argue that the learned Chief Justice in Satya Narayan Nathani's case (F), should have under the Rules of this Court, referred the matter to a Full Bench because the previous Division Bench in Srinivas Kedwal Vs. State of West Bengal, (A), presided over by G. N. Das, J., came to a different conclusion. It is unnecessary for me to express any opinion on that point except to say that since the decision in Srinivas Khedwal (A), by G. N. Das in 1953 various pronouncements in 1954, 1955 and 1956 have been made by the Supreme Court of India. My own view is that, in the light of those observations of the Supreme Court, it was wholly unnecessary for the learned Chief Justice to refer the matter to a Full Bench because the law declared by the Supreme Court of India is binding on all courts in India under Article 141 of the Constitution and must therefore be applied in a subsequent decision even though the resulting decision thereby might be in conflict with a prior Division Bench decision of this Court. In Such circumstances reference to a Full Bench as required by the Rules of this Court is unnecessary as it would be an idle ceremony.

24. I do not consider the head note (c) in the case reported in (S) Lilavati Bai Vs. The State of Bombay, (E), of that report to be sufficient by itself where it is said "The words "opinion of the State Government" appearing in the beginning of Section 5 signify the subjective opinion of the Government and not an opinion subject to objective tests". I am afraid, as I read the decision of B. P. Sinha, J. at P. 527 of that report, that head-note does not fully reflect the judgment on the point. It is, therefore, necessary, to set out the relevant passage from the judgment of Sinha, J., on the point :

"In the first place, it is well settled that observations made with reference to the construction of one statute cannot be applied with reference to the provisions of another statute which is not in pari materia with the statute which forms the subject matter of the previous decision. The Judicial Committee was dealing with the provisions of Section 4(1) of the Indian Electricity Act, 1910, which did not contain the words "conclusive evidence" or any words to that effect. That decision of the Judicial Committee, if it can at all be applied to the Act now before us, is against the petitioner in so far as it has construed the words "opinion of the Provincial Government". Those words or words of similar import appear in the beginning of Section 5. In the words of the Judicial Committee, those words signify the subjective opinion of the Government and not an opinion subject to objective tests. The observations quoted above only show that on a proper construction of the provisions of the statute then before the Judicial Committee the opinion of the Government, if it was made non-justiciable, was confined to the question of whether there had been a wilful and unreasonably prolonged default, but did not cover the question of the opinion of Government relating to the obligations imposed by the statute on the licensee by or under the Act. Hence those observations are absolutely of no assistance to the petitioner on the question of the full implication of the rule making certain matters "conclusive evidence" under the provisions of Sections 5 and 6 of the Act."

I do not, therefore, read the judgment of B. P. Sinha, J., to mean that "public purpose" under the Bombay Land Acquisition Act, 1948, is not justiciable and I do not think that His Lordship's observations are at all contrary to the observations made in the two previous decisions of the Supreme Court and specially to the observations of Imam, J., in one of these, which I have quoted elsewhere in this judgment.

25. Now, the next objection to the order of requisition in this case is that this impugned order violated the statutory mandate of Section 4 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. Section 4 (1) (a) of the Act provides as follows:--

"Where any premises are requisitioned under this Act, the Collector may by notice in writing (a) order the person in occupation of the premises, if any, to vacate the premises within a period of ten days from the service of the notice."

The undisputed fact in this case is that ten days' time was not allowed. The order of requisition on its very face stands self-condemned by virtue of the obligation contained in Section 4 (1) (a) of the Act. I have already said that the order of requisition is dated 6-10-1956. It expressly asked the owner (who in this case it must be recalled retained in his occupation two rooms of his house for library, furniture and utensils and therefore must be said to be in occupation of a part of the premises and as such entitled to notice u/s 4 (1) (a) 1 to vacate the premises by 9 A.M. on 7-10-1956. That being so, the minimum statutory period of ten days was not granted as required by Section 4 (1) (a) of the Act. In fact, the Government has produced no notice in writing by the Collector at all and the learned Senior Government Advocate argues that the order of requisition itself is the notice in writing by the Collector. The notice really is appended at the foot of the order of requisition and is also dated 6-10-1956. On this fact I must hold that the Collector did not give any notice for ten days as required by the statute.

26. A point was taken by the Senior Government Advocate that no objection was taken u/s 4 of the Act in the petition. I do not think that is a correct statement. In paragraph 14 of the petition the applicant expressly says that the order of requisition without having been served on the applicant as provided by Section 3 (2) of the Act

"and taking possession of the said premises on the strength thereof within a few hours from the starting of the said Requisition Case * * * in contravention of the provision of Section 4 of the said Act has been arbitrary, illegal and mala fide" etc.

I, therefore, find that the objection u/s 4 is expressly taken in the petition.

27. The next objection to the order of requisition is that such order was not served in the prescribed manner on the applicant u/s 3 (2) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. This point is also expressly taken in paragraph 4 of the petition Which I have quoted above.

In paragraph 8 of the petition the applicant states that while he was absent from Calcutta during the Puja Vacation this order of requisition was brought into being and given effect to within 24 hours. The applicant pleads also in that paragraph that no notice of that requisition was ever served upon him. Now, no affidavit has been filed by the Government to controvert the fact that the applicant was absent from Calcutta at the time and also that he had no notice of the order of requisition served on him. The applicant is a legal practitioner practising in the district court at Alipore and I have no doubt in my mind that there was no difficulty in serving him with an order of requisition personally and had it been done his acknowledgment; would have been produced by the Government. As the Government has not made any affidavit nor has produced any affidavit of proper or due service on the applicant, I must hold it as a fact that there is a breach by the Government of the statutory mandate and obligation contained in Section 3 (2) of the Act which says that such order of requisition shall be served.

28. The applicant urges this court to hold the Government guilty of mala fides and misconduct on the ground (1) that the order of requisition turned him out within 24 hours and without even giving the minimum statutory period of ten days (2) that the order of requisition was not even served on him as required by the statute and (3) that the Government asked him to do impossible things like whitewashing the house within 24 hours. I can understand the bitterness and indignity of an honourable citizen of this country required to do such thing's as vacate the house within 24 hours and worse still to white-wash the same also within 24 hours. It is however unnecessary for me to come to any finding of fact on the mala fides and the conduct of the Government as alleged in the petition for it is enough on the findings that I have reached already that this order of requisition cannot be sustained.

29. On behalf of the Government it was contended that as the applicant has delayed in moving this Court he should not be allowed any relief on the petition under Article 226 of the Constitution. There are many answers to this argument. The first answer is that on facts the whole order of requisition is illegal and in contravention of the express provisions of the statute and also beyond the scope of public purpose as laid down in the statute. The delay cannot legalise such illegal order of requisition. Secondly, there has not been in fact any delay whatever. The applicant tried to accommodate the Government, as a citizen normally should help his own Government in every possible way. He made an application on 28-11-1956, before the First Land Acquisition Collector for vacating the order of requisition and making over possession of his house to the petitioner. This is referred to in paragraph 11 of the petition and is not denied. Then, again, after the end of March, 1957, he pleads that he made "a fervent request to release the said premises from requisition" because the respondent Gopika Bilas Sen for whom the requisition was made was defeated in the last General Elections. This fact also is not denied by the Government. In fact, it was the Government's action on 8-7-1957 when it served a notice upon the applicant to whitewash the premises, far less derequisition it which was the last straw on

the camel's back. That notice to white-wash was dated 8-7-1957. The applicant moved this Court and obtained this Rule immediately on 10-7-1957. On the facts of the case, therefore, I hold that there was no delay whatever.

30. For these reasons this petition succeeds and I make the Rule absolute and set aside the order of requisition dated 6-10-1956, in Requisition Case No. 91 of 1956 in respect of premises No. 1/8, Dover Lane, Calcutta.

31. The applicant is entitled to the costs of this Rule -- the hearing-fee being assessed at two gold mohurs.

32. The verbal prayer for stay of operation of this order is refused, and the prayer for filing two affidavits to be kept on the record is also refused.