

(2019) 05 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 73 Of 2015

Sahyadri Central Consumer Co Op. Wholesale And Retail
Stores Ltd.

APPELLANT

Vs

The Controller Of Accommodation General Admn. Department
And 2 Ors

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 8C(1), 8B(1), 8C(2), 8C(1), 8C(a),
8C(1)(iii), 8C(i)(iv), 8C(b)(iv), 8D, 11, 13, 16

Bombay Rent, Hotel And Lodging House Rates Control Act, 1947 — Section 5, 5(1A),
9(8), 15B, 15B(1), 15B(1A)

Bombay Government Premises Eviction Act, 1955 — Section 2(b)

Maharashtra Rent Control Act, 1999 — Section 7, 7(2), 7(2)(a), 27, 27(1)

Bombay Rents, Hotel And Lodging House Rates Control, Bombay Land Requisition And
Bombay Government Premises (Eviction) (Amendment) Act, 1996 — Section 7(2)(a),
7(2)(b), 9(1A).1N

Constitution Of India, 1950 — Article 14, 31(2), 32, 226, 300A

Citation : (2019) 05 BOM CK 0020

Hon'ble Judges : G.S. Kulkarni, J

Bench : Single Bench

**Advocate : V.A. Thorat, Prachi Tatake, R.S. Ghadge, A.S. Desai, G.W. Mattos, S.
Deshmukh, S.P. Kanuga**

Judgement

1. This Petition under Article 226 of the Constitution of India challenges an Order dated 9 January 2014 passed by the "Principal Secretary/Appellate Authority" of the General Administration Department, Mantralaya, Mumbai, whereby an appeal filed by the petitioner against the Order dated 26 February 2013 passed by the Controller of Accommodation under Section 8C(1) of the Bombay Land Requisition Act, 1948 stands dismissed. The consequence of the impugned order is that the petitioner who is an allottee of the Government requisitioned premises would be required to vacate the requisitioned premises.

2. The factual antecedents are as under :-

On 19 June 1948, Government of Maharashtra requisitioned Shop Nos. 3 to 5 in a building known as Natawala Terrace, 53, Gokhale Road, Dadar(W), Mumbai (for short "the said premises") under the provisions of the Bombay Land Requisition Act, 1948 (for short "the Requisition Act"). The Petitioner which was then known as "The Prafula Consumers Co-operative Society Ltd." Was allotted the said requisitioned premises by an Order dated 1 March 1949 on a condition of payment of monthly rent.

3. The averments as made in the writ petition indicate that for quite some time there were issues on the petitioner remaining a defaulter in payment of the monthly rent. The Petitioner has referred to notices dated 28 July 1969 and 9 December 1969, of the competent authority by which the Petitioner was called upon to make payment of rent, failing which an eviction action would be initiated against the petitioner. The Petitioner has also referred to a notice dated 20 June 1970 under which enhanced compensation was called upon to be paid by the Petitioner as also to a subsequent notice dated 21 August 1970 for repayment of repair cess from January 1970. The petitioner also refers to a notice dated 10 September 1971 whereby the petitioner was called upon to pay compensation from 1 July 1971, failing which eviction proceedings will be initiated.

4. On 28 January 1976, the name of the Petitioner-Society was changed from 'Prafula Consumers Co-operative Society Ltd' to the present name "The Sahyadri Central Consumer Co-op. Wholesale And Retail Stores Ltd," accordingly a necessary correction was requested to be made by the Petitioner-Society in the official record. The Petitioner has referred to certain further notices dated 26 October 1978, 28 October 1978 and 17 October 1980 issued by the authority inter alia demanding payment of outstanding rent and education cess. It is the Petitioner's case that the landlord of the said premises had addressed a letter dated 20 June 1986 to the Controller of Accommodation requesting that the premises be de-requisitioned, which was not accepted by the Controller of Accommodation, who informed the landlord by a letter dated 3 July 1986 that the Government was still in need of the said premises. The Respondent No.4-landlord accordingly, filed Writ Petition No. 1720 of 1986 in this Court praying for a direction to the State to de-requisition the said premises.

5. The historical antecedents on requisition of the premises by the Government in the early years of independence would show, that the continuance of the requisition of the premises for unreasonably long years, had brought about quite an unrest amongst the landlords. This gave rise to large scale litigation. The litigation reached the Supreme Court culminating in one of its significant judgments on the Requisition Act, in H.D. Vora Vs. State of Maharashtra and others (1984) 223 SCC 33.

The decision of the Supreme Court in H. D. Vora's case was a pathbreaker. This decision recognized the rights of the landlords to receive back their premises which were requisitioned during the early years of independence thereby depriving the landlords of their valuable rights to property. Justice P. N. Bhagwati

speaking for the Bench observed thus:

"5. 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 3rd respondent was not entitled to challenge the same after a lapse of over 30 years and the writ petition should therefore have been dismissed by the High Court. 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 the 3rd respondent 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 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 recognized 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 this 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 passes on acquisition to the acquirer leaving nothing to the former. Vide: Observations of Mukherjee, J. in Chiranjitlal's case. The concept of acquisition has an air of permanence and finality in the 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 guise 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. The power of requisition is exercisable by the government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely. Here in the present case the order of requisition was made as far back as 9th April 1951 and even if it was made for housing a homeless person and the appellant at that time fell within the category of homeless person, it cannot be allowed to continue for such an inordinately long period as thirty years. We must therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a reasonable period of time. It is not necessary for us 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 must depend on the facts and circumstances of each case but there can be no doubt that whatever be the public purpose for which an order of requisition is made the period of time for which the order of requisition may be continued cannot be an unreasonably long period such as thirty years. The High Court was, therefore, in any view of the matter, right in holding that in the circumstances the order of requisition could not survive any longer and the State Government was bound to revoke the order of requisition and deregulation the flat and to take steps to evict the appellant from the flat and to hand over vacant possession of it to the 3rd respondent."

(emphasis supplied)

6. The Controller of Accommodation by its letter dated 12 June 1989 addressed to the Petitioner informed that the Supreme Court in H. D. Vora's case had held that a requisition of the property by its very nature is of a temporary duration and the Government cannot continue to hold the requisitioned premises/property for an indefinite period of time, under the guise of requisition. It was informed that the premises which have been requisitioned prior to 26 December 1973 will have to be released from requisition before 26 December 1990. It was stated that the said time limit was extended to enable the allottees to surrender the allotted premises and make alternative arrangements before the said date. It was stated that it will not be possible for the Government to provide any

alternate accommodation and the Petitioner will have to make its own alternate arrangement at the earliest or before 26 December 1990. The Controller of Accommodation also stated that those allottees who produce a 'no Objection' or consent letters from the landlords accepting the allottees as direct tenants, were allowed to become tenants of these landlords, qua the requisitioned premises. It was stated that in any case, the allottees will have to vacate the premises by 26 December 1990, in case the allottees are not accepted as direct tenants by their respective landlords. The petitioner however, did not vacate and continued in the possession of the requisitioned premises.

7. In the meantime on the said writ petition (writ petition No.1720 of 1986) filed by respondent No.4-landlord was adjudicated and by a judgment and Order dated 2 March 1990 a learned Single Judge of this Court set aside the Order dated 19 June 1948 by which the said premises were requisitioned.

8. Jurisprudentially the issues did not rest on the decision of the two Judge Bench in H. D. Vora's case. A Constitution Bench of the Supreme Court thereafter on 27 April 1994 decided the issues on the legality of the continued occupation of the requisitioned premises by the allottees, in the case of Grahak Sanstha Manch & ors V/s State of Maharashtra (AIR 1994 SC 2319). In this case the Supreme Court was concerned with two kinds of allottees namely those who were using the requisitioned premises for commercial purposes and the others for residential purposes. The Constitution Bench in this decision while upholding the decision in H. D. Vora's case held that there cannot be an indefinite requisition of the premises under the Requisition Act. It clarified the decision in H. D. Vora's case, holding that although the premises can be requisitioned for a permanent public purpose, however, the order of requisition can be continued only for a reasonable period of time. It was held that the continuance of an order of requisition for a period as long as 30 years was unreasonable. The Supreme Court directed that all the allottees of the requisitioned premises shall vacate their respective premises before 30 November 1994 and the possession of the requisitioned premises be handed over by the allottees to the Government and thereafter, the Government shall handover possession to the respective landlords before 31 December 1994. The Supreme Court also directed that it would not be an obligation of the State Government to grant any alternate accommodation to any of the allottees of the requisitioned premises. It is significant that the petitioner was one of the petitioners in this writ petition filed by Grahak Sanstha Manch (supra).

9. Thereafter, in pursuance of the directions of the Supreme Court in Grahak Sanstha Manch (supra) the Controller of Accommodation issued a notice dated 30 July 1994, to the Petitioner directing the Petitioner to handover the possession before 30 November 1994.

10. Despite this notice dated 30 July 1994 of the Controller of Accommodation, seeking compliance of the directions of the Supreme Court in Grahak Sanstha Manch & ors. (supra), the Petitioner did not vacate the premises. The petitioner

also was a defaulter in payment of the rent. However, as the petitioner continued to be a defaulter as also that the landlord was demanding arrears of rent, a notice dated 7 June 1995 was issued to the petitioner by the competent authority demanding from the Petitioner arrears of rent of Rs. 3,214.80/- clearly recording that the landlord has complained that timely rent was not being paid by the Petitioner.

11. The Controller of Accommodation thereafter issued a Show Cause Notice dated 22 September 1995 to the Petitioner under Section 8C(2) of the Requisition Act again referring to the decision of the Supreme Court in *Grahak Sanstha Manch & ors.*(supra) and called upon the Petitioner to show cause as to why action of eviction should not be taken against the Petitioner. As to whether there was at all a requirement of a show cause notice in the teeth of the directions of the Supreme Court in *Grahak Sanstha Manch* is a matter of serious concern. The Petitioner undauntedly and undeterred by the Supreme Court orders, replied to the said notice of the Competent Authority vide its letter dated 5 October 1995 inter alia recording that the petitioner Society was established in 1948 and was catering to the needs of the residents of the area for the last 40 years. The petitioner stated that the residents were purchasing fair price commodities, consumer essentials items from the Petitioner's shop. It was stated that there are employees who are working in the said shop, and if the Petitioner is called upon to vacate the premises, it would virtually amount to closure of the shop resulting in unemployment and inconvenience to the residents. The petitioner requested that the requisitioning of the said premises be therefore continued. It is the case of the petitioner that the Controller of Accommodation, thereafter, stopped accepting the rent. The Petitioner however states that nonetheless there was a demand made for arrears of rent vide letter dated 17 June 1998 of Respondent No. 1 issued to the Petitioner.

12. As an aftermath of the decision of the Supreme Court in *Grahak Sanstha Manch & ors.*(supra), affecting the allottees, the Governor of Maharashtra promulgated the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947, Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996 (Maharashtra Ordinance XXIII of 1996) whereby Section 5(1-A) of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (for short "the 1947 Rent Act") was amended inter-alia so as to confer status of a "tenant of the landlord" on such person or his legal heirs who were allotted by the State Government the requisitioned premises for residential purpose and where such premises were continued under requisition. The status conferred on them by amending Section 5 by insertion of sub-section (1-A) and by inserting Section 15-B was that the allottee or his legal heirs in occupation or possession of the allotted premises shall notwithstanding anything contained in the 1947 Rent Act or the Bombay Land Acquisition Act, 1948 or in any other law for the time being in force or any contract or in any Judgment, decree or order of any Court passed on or after 11.06.1996 were deemed to have become for the purpose of 1947 Rent Act tenants of the landlord, and such premises were deemed to have been let by the

landlord to the State Government or as the case may be to such Government allottee on payment of rent and permitted increases equal to the amount of compensation payable in respect of premises immediately before the said date. Further all the premises requisitioned or continued under requisition under the Requisition Act and allotted to the Government allottees and allowed by State Government to remain in their occupation or possession were included in the definition of Government premises within the meaning of Section 2, Clause (b) of the Bombay Government Premises Eviction Act, 1955. There were consequential amendment also effected in the Requisition Act. The ordinance was replaced by the Bombay Rent, Hotel and Lodging House Rates Control Act, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1997 (Maharashtra Act XIV of 1997).

13. The validity of the said Amendment Act XIV of 1997 was assailed before this Court. The High Court upheld the challenge and it was finally decided by the Supreme Court in the case of Welfare Association, A.R.P., Maharashtra and Anr. Vs. Ranjit P. Gohil & Ors. AIR 2003 SUPREME COURT 1266. The issues which fell for consideration of Supreme Court in the said decision were as to whether the State Government had the requisite legislative competence to enact the main amendment; whether the impugned legislation was a colourable one and was an interference with the judicial mandate of the decisions in H.D.Vora's case and Grahak Sanstha Manch & ors. (supra) or has the effect of overruling of the said decisions of the Supreme Court and hence violative of the doctrine of separation of powers and lastly whether the impugned enactment was violative of Article 14 of the Constitution being arbitrary and unreasonable. The Supreme Court in the said decision opined that the said amending Act was intra vires and within the competence of the State Legislature. The Supreme Court referring to the decision in Grahak Sanstha Manch & ors.(supra) held that all occupants of the premises the continued requisition of which has been quashed shall be bound to vacate and hand over vacant possession to the State Government as directed in the decision of Grahak Sanstha Manch & ors.(supra). The Supreme Court in para 63 observed thus:

"63. We have in the earlier part of this judgment extracted and reproduced para 20 of the Constitution Bench decision in Grahak Sanstha Manch's case, containing some categorical and definite directions given by the Supreme Court to the occupants of requisitioned premises and the State Government, which protected the occupants in Bombay and other large cities in Maharashtra until 3-11-1994, and with effect from that date directed that "all occupants of premises the continued requisition of which has been quashed shall be bound to vacate and hand over vacant possession to the State Government so that the State Government may on or before 31-12-1994 derequisition such premises and hand back vacant possession thereof to the landlords. The reversal of the impugned judgment of the High Court and upholding the validity of the impugned legislation shall not have the effect of undoing or overruling the abovesaid mandate of the Supreme Court contained in the decision of Grahak Sanstha

Manch's case."

(emphasis supplied)

14. The State of Maharashtra thereafter repealed the Bombay Rates and Hotel and Lodging House Rates Control Act, 1947 (for short the 1947 Rent Act) by notifying the Rent Control Act, 1999 (for short 'the Rent Control Act 1999') with effect from 31 March 2000. Section 7 sub-section 2 defined Government allottee as under :-

"7(2) "Government allottee",-

(a) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any non- residential purpose to any Department or office of the State Government or Central Government or any public sector undertaking or corporation owned or controlled fully or partly by the State Government or any Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 or any foreign consulate, by whatever name called, and on the 7th December 1996, being the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, were in their occupation or possession, means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or consulate; and

(b) in relation to any premises requisitioned or continued under requisition which were allotted by the State Government for residential purpose to any person and on the 7th December 1996, being the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, such person or his legal heir was in occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir;"

(Emphasis supplied)

Section 27 of the Rent Control Act 1999, provides for the State Government or Government allottee to become a deemed tenant of premises requisitioned or continued under requisition as on 7 December 1996. Section 27 reads thus :-

"27. State Government or Government allottee to become tenant of premises requisitioned or continued under requisition.

(1) On the 7th December 1996, that is the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (hereinafter in this section referred to as "the said date"),-

(a) the State Government, in respect of the premises requisitioned or continued under requisition and allotted to a Government allottee referred to in sub-clause (a) of clause (2) of section 7; and

(b) the Government allottee, in respect of the premises requisitioned or continued under requisition and allotted to him as referred to in sub-clause (b) of clause (2) of section 7, shall, notwithstanding anything contained in this Act, or in the Bombay Land Requisition Act, 1948, or in any other law for the time being in force, or in any contract, or in any judgment, decree or order of any court passed on or after the 11th June 1996, or in any order of eviction issued by the Competent Authority, or by the Appellate Authority, under the Bombay Land Requisition Act, 1948, be deemed to have become, for the purposes of this Act, the tenant of the landlord; and such premises shall be deemed to have been let by the landlord to the State Government allottee, on payment of rent and permitted increases equal to the amount of compensation payable in respect of the premises immediately before the said date.

(2) Save as otherwise provided in this section or any other provisions of this Act, nothing in this section shall affect, -

(a) the rights of the landlord including his right to recover possession of the premises from such tenant on any of the grounds mentioned in section 16 or in any other section;

(b) the right of the landlord or such tenant to apply to the court for the fixation of standard rent and permitted increases under this Act, by reason only of the fact that the amount of the rent and permitted increases, if any, to be paid by such tenant to the landlord is determined under sub-section (1);

(c) the operation and the application of the other relevant provisions of this Act in respect of such tenancy."

(emphasis supplied)

15. The application and effect of Section 27 read with Section 7 sub section (2) of the Rent Control Act is that the State Government or Government allottee would become a "deemed tenant" for the purposes of the Rent Control Act provided that on 7 December 1996, that is the date on which the Bombay Rates Hotel and Lodging House Rates Control Act, was amended, the premises stood requisitioned or continued under the requisition notwithstanding anything contained in the Rent Control Act 1999 or the Requisition Act, or any other law for the time being in force, or in any contract, judgment, decree or order of any Court passed on or after 11 June 1996 or any eviction order issued by the Competent Authority.

16. On the above backdrop the Controller of Accommodation, thereafter, on 28 August 2012 issued a fresh show cause notice under Section 8C(2) of the Requisition Act to the petitioner inter alia recording that the Petitioner was not entitled to a protection under Section 27(1) of the Maharashtra Rent Control Act, 1999. The Petitioner was called upon to appear before the Controller of Accommodation alongwith its reply and documents to show cause as to why appropriate steps should not be taken to evict the Petitioner from the said

premises under Section 8C(1) of the Requisition Act. Again what was the need of this second show cause notice when there were already orders of the Supreme Court in Grahak Sanstha Manch directing the petitioner to vacate the requisitioned on or before 30 November 1994 is difficult to be understood. But things on both the ends appear to have taken place in such brazen manner.

17. The Petitioner again incorrigibly submitted its reply dated 17 September 2012 to the said notice of the Controller of Accommodation, inter alia stating that the Petitioner is in possession of the requisitioned premises since the year 1948. The Petitioner also contended that under Section 27 (1) of the Maharashtra Rent Act 1999, the State Government or a Government allottee becomes a tenant of the requisitioned premises. The petitioner stated that the Petitioner was catering to the needs of Society by conducting a fair price rationing shop a public utility service. It was stated that the landlord had filed Writ Petition for de-requisition of the premises, however, he could not succeed, as the order passed by the learned Single Judge of this Court de requisitioning the premises was set aside by the Division Bench and the matter was remanded back to the Controller of Accommodation. The Petitioner therefore requested the Controller of Accommodation that the notice be withdrawn.

18. The Controller of Accommodation passed an order on 18 September 2012 recording that the Petitioner who was earlier known as the Prafula Consumers Co-operative Society Ltd. was issued an eviction order on 12 May 1967 and hence, under Section 27(1) of the Rent Control Act 1999, those occupants of the requisitioned premises who were served with eviction orders before 11 June 1996 were not entitled to any protection. It was observed that the Petitioner had overlooked the provisions of Section 27(1) of the Rent Control Act 1999 and that the pre-condition of the requisitioning being continued being the requirement under the said provisions for becoming a deemed tenant itself was not fulfilled. It was further observed that Section 15-B(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was brought into effect from 7 December 1996 and that the said provision did not exist in the year 1990 when the two Writ Petitions as referred in the reply were heard by the Court. It was, thus, held that the premises in possession of the Petitioner were not continued under requisition. The Controller of Accommodation accordingly passed an order under sub-section (1) of Section 8C of the Requisition Act directing the Petitioner to vacate the premises within 30 days from the date of receipt of this order and handover vacant possession to the Government.

19. The Petitioner challenged the said eviction order dated 18 September 2012 passed by the Controller of Accommodation by filing an appeal under Section 8D of the Requisition Act. The Petitioner also filed Writ Petition No.10318 of 2012, however, as an appeal was already filed, the writ petition was not entertained by this Court. The Principal Secretary, being the Appellate Authority heard the Appeal. The Petitioner raised a contention that it was entitled for protection under Section 27(1) of the Maharashtra Rent Control Act as no eviction order

was served on the Appellant on 12 May 1967 and also no eviction orders were issued against the Petitioner before 7 December 1996. It was contended hence the order passed by the Controller of Accommodation was illegal.

20. The Appellate Authority passed an order dated 1 January 2013 on the petitioner's appeal whereby the order dated 18 September 2012 passed by the Controller of Accommodation was set aside on the ground that the Controller of Accommodation had not granted a hearing to the Petitioner. The case was remanded back to the Controller of Accommodation for a hearing to be granted to the Petitioner and for a reasoned order to be passed by the Controller of Accommodation. As there is some relevance to this order dated 1 January 2013 by the appellate authority it is extracted hereunder :-

"O R D E R

(Passed on 01.01.2013)

1. The Sahyadri Central Consumer Co-op. Wholesale and Retail Stores Ltd., has filed an appeal against the order under section 8C(I) on 18.09.2012 by the Controller of Accommodation on following grounds:-

a) The order is illegal.

b) The Appellants are entitled for protection under section 27(1) of the Maharashtra Rent Control Act, 1999 and no eviction order has been served on the Appellants on 12.05.1967. Also no eviction orders have been issued against them on or before 07.12.1996.

2. I find that the Controller of Accommodation had not given hearing to the representatives of The Sahyadri Central Consumer Co-op. Wholesale and Retail Stores Ltd. Therefore, I pass the following order.

ORDER

3. The order dated 18.09.2012 of the respondent is set aside.

The case is remanded back to the Controller of Accommodation for giving proper hearing to The Sahyadri Central Consumer Co-op. Wholesale and Retail Stores Ltd. And then passing a well reasoned order.

Inform all concerned."

(emphasis supplied)

Thus the petitioner was to be given a fresh hearing on the above grounds which included on the 12.05.1967 eviction order by the Controller of Accommodation and a 'well reasoned' order was directed to be passed.

21. The Controller of Accommodation, thereafter, heard the Petitioner and passed a fresh reasoned order dated 26 February 2013 inter alia recording a findings of fact that the Petitioner was issued an eviction order dated 12 May 1967. It was

observed that under Section 27(1) of the Maharashtra Rent Control Act, the occupants of the requisitioned premises, who were served with an eviction order before 11 June 1996 were not entitled to any protection. It was also observed that there was a report dated 6 May 1994 from the Area Inspector that there was a liquor shop in one of the shops allotted to the Petitioner and that the petitioner society was also issued a notice dated 30 July 1994 to vacate the premises by 30 November 1994. It was observed that the petitioner society was well aware of this notice to vacate, and in fact the petitioner society had submitted this letter along with the documents relied upon by the petitioner before the Controller. It was also observed that such letter issued to a Government allottee was held to be an eviction order in the decision of the Division Bench of this Court (A.M.Khanwilkar J. (as his Lordship then was) and Mrs. Mridula Bhatkar J) in the case of Ashok Chandrakant Palande Versus State Of Maharashtra and Ors. (in W. P. No. 997 of 2012). It was observed that the petitioner having not received the said eviction order was untenable as there was stamped acknowledgement of the Society on record. The Controller of Accommodation, accordingly, directed eviction of the Petitioner exercising powers under sub-section (1) of Section 8C.

22. The Petitioner thereafter preferred an Appeal before the Appellate Authority (Additional Chief Secretary), General Administration Department, Mantralaya, Mumbai who took into consideration the entire material on record, which included several documents as submitted by the petitioner and the official record. The appellate authority noted the undisputed documents and recorded a clear finding of fact that there already existed an eviction order against the petitioner. Accordingly, by the impugned order dated 9 January 2014, the Appellate Authority dismissed the petitioner's Appeal, recording the following findings :

"3. Sahyadri had been issued an eviction order under section 8C(1) of the Bombay Land Requisition Act, 1948 on 12.05.1967 and it was served upon them as per record available with the Respondent. As per Section 27(1) of the Maharashtra Rent Control Act, 1999 read with section 7(2)(a), occupants of the requisitioned premises who have been served with eviction orders before 11.6.1996 are not protected as deemed tenants. The Bombay High Court, interpreting the provisions of the amendments to the Bombay Rents Act (now Maharashtra Rent Control Act, 1999) has ruled in W. P. No. 115 of 2007 and W. P. (L) No. 1369 of 2010 that in such cases the occupants do not become deemed tenants. The occupants can be deemed tenants provided they satisfy some specific conditions. One such condition is that on 07.12.1996 they have been in occupation because of some positive sanction by the government, if a government allottee is in possession of requisitioned premises on 07.12.1996 due to government inaction but does not have support of a positive sanction to his occupation, the allottee cannot be a deemed tenant. The allottee has ceased to be a government allottee once an eviction order has been passed. If an appeal against the order is not pursued, it is due to the allottee's fault that he has let the eviction order gain finality. This view has been endorsed by the Hon'ble Bombay High Court in the judgment on W. P. 1369/2010.

Also the Maharashtra Rent Control Act, 1999 is silent on the point of how much to go back in time before the cut-off date 11.6.1996. Hence an eviction order issued in 1967 can be a valid ground on which to initiate eviction proceedings.

I therefore pass the following order :-

ORDER

Since the Appellants have been issued an eviction order on 12.05.1967 i. e. before the cut-off date viz. 11.6.1996 prescribed under section 27(1) of the Maharashtra Rent Control Act, 1999, their appeal is hereby dismissed and the Eviction Order passed by the Controller of Accommodation on 26.02.2013 is upheld.

The possession of the premises should be obtained from the appellants forcibly if they do not vacate the premises within 30 days of receiving this order.

Inform all concerned."

23. It is against this order passed by the Appellate Authority confirming the order of the Controller of Accommodation dated 26 February, 2013, the petitioner is before the Court in the present proceedings challenging the said order.

24. On behalf of the State, reply affidavit of Mr. S. N. Bagul, Joint Secretary to the Government of Maharashtra dated 17 November 2017 is filed. The State Government has referred to the background of the litigation under the Requisition Act to contend that Writ Petition No. 779 of 1983 (H.D.Vora vs State of Maharashtra) was filed in this Court inter alia contending that the order of requisition by its very nature passed by the Government is temporary in character and cannot endure for any indefinite period and the order of requisition ceases to be valid and effective after the expiration of a reasonable period of time and it could not under any circumstances continue beyond a period of 30 years. It is averred that this litigation being decided by the High Court, was carried to the Supreme Court which was decided by the Supreme Court by its judgment in H. D. Vora Vs. State of Maharashtra and others (supra) whereby the Supreme Court dismissed the appeal and directed the Government and the Controller of Accommodation to de-requisition the premises. The Affidavit further avers that on 3 December 1992, the Petitioner filed Writ Petition (Civil) No. 53 of 1993 in the Supreme Court being the case of Grahak Sanstha Manch & ors versus State Of Maharashtra (Supra) inter alia praying for issuance of a Writ of Mandamus commanding the Government not to evict the Petitioner from the requisitioned premises. It is averred that the said Writ Petition was dismissed by the Constitution Bench of the Supreme Court by its Judgment and Order dated 27 April 1994 in Grahak Sanstha Manch & ors. (Supra) by which the Supreme Court quashed the requisition of the premises of the petitioners and directed that the said premises as requisitioned by the State Government shall be vacated by 30 November 1994 to be de- requisitioned and the possession thereof shall be handed over to the original owners by 30 December 1994. It is further averred

that after dismissal of the Petitioner's Writ Petition by the Supreme Court, the Controller of Accommodation had issued a notice dated 30 July 1994 to the Petitioner calling upon the petitioner to vacate the requisitioned premises in its use, occupation and possession. It is stated that this notice has attained finality, inasmuch as, the Petitioner has not challenged the same. It is further contended that the said notice had put an end to the permission granted to the Petitioner to use and occupy the premises and that the Petitioner had lost his status as "Government allottee" since 30 July 1994 as also the petitioner being bound by the Judgment of the Supreme Court in *Grahak Sanstha Manch & ors.*(supra), the Petitioner could not challenge the said notice and was required to vacate the premises. The State Government also refers to the amendment made to the Rent Control Act and the Bombay Land Requisition Act as made in the year 1997. The State Government has also referred to the decision of the Supreme Court in *Maheshchandra Trikamji Gajjar Vs. State of Maharashtra and others* (2000) 3 SCC 295 to contend that the petitioner cannot assert that its occupation after the eviction orders and/or orders of the Supreme Court in *Grahak Sanstha Manch*, in no manner be treated to be legal. The State Government has also referred to the decision of the Supreme Court in *Welfare Association A. R. P. Maharashtra and anr. Vs. Ranjit P. Gohil* (supra) by which the Supreme Court upheld the constitutional validity of the amendment brought to the Rent Act 1999.

25. The State Government has also contended that the facts of the present case are *pari materia* to the facts in the case of the Petitioner in Writ Petition No. 115 of 2007 (*Harishchandra Ramchandra Pokade Vs. The Controller of Accommodation and others*), decided by the Division Bench of this Court on 14 November 2011. The State Government has also referred to the decision of the Division Bench of this Court in Writ Petition No. 997 of 2012 dated 5 December 2012 in *Ashok Chandrakant Palande Vs. The State of Maharashtra and others* (supra) to contend that in similar facts the High Court had not entertained a Writ Petition. The State has also placed on record the order dated 12 May 1967 passed by the Controller of Accommodation evicting the Petitioner from the said premises under Section 8C(1) of the Requisition Act and the stamped acknowledgment of the due receipt of the said order by the Petitioner dated 14 May 1967 in supporting the contention that the Petitioner even otherwise was already evicted much prior to the decision of the Supreme Court in the case of *H. D. Vora* (Supra) and *Grahak Sanstha Manch & ors.*(supra).

26. Respondent No. 4-landlord has appeared and has placed on record two reply Affidavits dated 14 February 2015 of Mr. Riyaz Butler, constituted attorney of the Respondent No. 4 and another affidavit dated 17 March 2016. The Affidavits inter alia contend that the Petitioner is guilty of suppression, inasmuch as, the petitioner had approached the Supreme Court in a Writ Petition under Article 32 of the Constitution of India. The Affidavit dated 14 February 2015 in paragraph 3 has specifically stated that the petitioner was arrayed as Petitioner No. 14 in Writ Petition (Civil) No. 53 of 1993 filed before the Supreme Court (*Grahak Sanstha Manch & ors. V/s. State of Maharashtra*). The specific averments as made and

the prayers of the petitioner as referred by respondent no.4 are as under :-

"1M The petitioner No. 14, its original name in the file was Prafulla Consumer Co-operative Society, now Sahyadri Consumer Co-operative Society situated at '36', Irani Manzil, Gokhale Road South, Dadar, Bombay - 400 028 and are paying the monthly rent of Rs. 450/- to the Government is issuing the rent receipt. The said Society was registered on 09.01.1948 with registration No. C-1142 having 802 ration cards with 6065 units having authorised capital of Rs. 10 lakhs and the subscribed capital of Rs. 1,92,000/-. The said Requisitioned premises was given to the petitioner on 09.01.1948 and are in possession for the last 44 years. They have received an eviction notice from the Government to evict the premises by 26th December, 1990 but the period has been extended upto 26th December, 1992, by virtue of amendment to Section 9(1-AJ.1N)."

"(1) The petitioners submit that some of the Members of the petitioner No. 1 Manch have recently received a notice from the respondent no. 1 thereby asking the cooperative Societies to vacate the premises by 26th December 1992 in view of the amendment made by the State Government in the year 1990 whereby the period was extended for 17 years.

Therefore, the petitioners and the respondents nos 2 to 13 are under constant threat from the respondent no. 1 that they may evict the petitioners. The petitioners, therefore, are filing this writ petition under Article 32 of the Constitution of India for the reasons that the similar point which has been raised by the allottees before this Hon'ble Supreme Court and, therefore, it will be appropriate in the interest of justice to consider the request of the petitioners at the time of hearing of the writ petition before the Constitution Bench of the Hon'ble Supreme Court and be also heard at the time of the hearing of the writ petition No. 404/1986.

3. The petitioners submit that the notice issued by the Government asking the petitioners to vacate their premises, is unconstitutional ultra vires, mala fide, null and void and inoperative on the following grounds.

The petitioners, therefore, prays :

a) That this Hon'ble Court may be pleased to issue a writ of mandamus commanding the Govt. not to evict the petitioners from their requisitioned premises in furtherance of the notice dated 29.2.92 which is annexed with this writ as Annexure B.

(Emphasis supplied)

b) Pending the hearing and final disposal of the writ petition, the respondent may be restrained from evicting the petitioners from the premises.

c) That pending the hearing and final disposal of this writ petition an ad interim order of injunction be issued against the respondent no. 1 in terms and prayer (a) and the same may be made absolute after notice to the respondent no. 1.

d) To pass such other order or orders as this Hon'ble Court may deem and proper in the circumstances of the case. And for this act of kindness the petitioner shall as in duty bound ever pray."

(Emphasis supplied)

27. Respondent no.4 has stated the Constitution Bench of the Supreme Court decided the said Writ Petition filed by the Petitioners in Grahak Sanstha Manch & ors.(Supra), (wherein the present Petitioner was arrayed as Petitioner No. 14) by its judgment and order dated 27 April 1994. It is further stated that the State Government, thereafter, promulgated Ordinance No. 23 of 1996 notifying amendments to the Rent Control Act 1947. The amendments were challenged before this Court in Welfare Association A. R. P., Maharashtra and anr.(Supra). This Judgment was carried to the Supreme Court and the Supreme Court reversed the said Judgment of the High Court and upheld the constitutional validity of the amendments. The Supreme Court however held that the Judgment will not apply to the occupants who were parties before the Supreme Court in the case of Grahak Sanstha Manch & ors.(Supra). Respondent No. 4 accordingly, contends that the Petitioner was fully aware that the petitioner was directed to vacate the requisitioned premises and having taken benefit of the decision of the Supreme Court in Grahak Sanstha Manch & ors.(Supra) to remain on the premises for an extended period, the petitioner ought to have surrendered the premises to the Controller of Accommodation. Respondent No. 4 has stated that by manipulation and suppression and taking a recourse to unwarranted litigation, the petitioner has continued to illegally remain in occupation also without paying the market compensation to the landlords. Respondent No. 4 has stated that the market rent for the three shops as occupied by the Petitioner would be about Rs. 1,97,180/- per month as on 14 February 2015 and that the Petitioners are profiteering from the premises. Respondent No. 4 has, accordingly, prayed that the Petition be dismissed for all these reasons and particularly, for suppression of the facts.

28. Respondent No. 4 has filed a further Affidavit dated 11 March 2016. In this affidavit it is pointed out that the Petitioner has approached this Court with a false case when the Petitioner in grounds U, V and W of the petition has pleaded that the eviction order dated 12 May 1967 was not on the file of the Government. It is stated that, when the Petitioners realized that these are false averments, the petitioner deleted the said grounds. The Respondent No. 4 has also stated that the Petitioner had obtained a complete record from the concerned office of the State Government which included the order dated 12 May 1967. It is stated that even otherwise the Petitioner was issued an eviction notice dated 30 July 1994 after the decision of the Supreme Court in the case of Grahak Sanstha Manch & ors.(Supra) and the Petitioner had not challenged the said eviction notice.

29. On the above factual matrix, learned counsel for the parties have made their respective submissions.

30. Mr. Thorat, learned Senior Counsel for the Petitioner in supporting the prayers of the petitioner would submit that the original order dated 26 February 2013 passed by the Controller of Accommodation as also the impugned order passed by the Appellate Authority take into consideration the order dated 12 May 1967 to hold that as already there was an eviction order, the Petitioner would not be entitled to protection under Section 27(1) of the Rent Control Act 1999. It is submitted that this approach on the part of both the authorities below is patently erroneous and illegal. Mr. Thorat submits that this for the reason that the Show Cause Notice issued to the petitioner is not on the basis of the eviction order dated 12 May 1967 and thus, such adjudication as made by the Controller of Accommodation in passing the order dated 26 February 2013 as also the impugned order passed by the Appellate Authority, on the basis of eviction order dated 12 May 1967 needs to be set aside only on this ground. It is submitted that the eviction order dated 12 May 1967 was not acted upon and therefore, could not have formed the basis of the impugned eviction order dated 26 February 2013 passed by the Controller of Accommodation.

31. It is next submitted that the subsequent eviction notice dated 30 July 1994 and the Show Cause Notice dated 22 September 1995 are also illegal, as they are not on any of the grounds as specified in Section 8C(1) of the Act. It is submitted that the impugned eviction order dated 26 February 2013 is patently perverse, as it travels beyond the scope of the Show Cause Notice and the provisions of Section 8(C)1 of the Act. It is submitted that appropriate course of action would be to remand the matter for a fresh adjudication. In supporting the above submissions, Mr. Thorat learned senior counsel for the petitioner has placed reliance on the decisions of the Supreme Court in the case of GTC Industries Limited V/s. The Collector of Central Excise, New Delhi 1997(6) SCC 655 and The Commissioner of Police, Bombay V/s. Gordhandas Bhanji AIR 1952 SC 16.

32. Mr. Thorat learned senior counsel for the petitioner would then submit that it is not correct for the State Government to say that the premises are de-requisitioned. It is submitted that the powers for eviction could be exercised only when there was an order to de requisition the premises and when no eviction order was passed, the impugned order ought to be quashed and set aside. It is submitted that in fact, adjudication orders passed by the Controller of Accommodation record reasons which are not put to the Petitioner in the Show Cause Notice. It is submitted that the Petitioner was in possession of the premises on 7 December 1996 and that there was no subsisting eviction order till 7 December 1996 and the order dated 30 July 1994 cannot be said to be a de-requisition order.

33. On the other hand, Mr. Mattos, learned Assistant Government Pleader on behalf of the State in opposing the petition and supporting the impugned orders would contend that firstly by virtue of the eviction order dated 12 May 1967, the Petitioner was a rank trespasser. Mr. Mattos submitted that the Petitioner was

conscious that the Petitioner was suppressing the said eviction order and that the petitioner had received the said order from the Government directing that the Petitioner to vacate the premises. It is next submitted that thereafter the Controller of Accommodation by its letter dated 12 June 1989 addressed to the petitioner had informed the petitioner that the said premises were required to be released from requisition before 26 December 1990 and the petitioner will have to make its own arrangements. It is submitted that as clearly averred by the Petitioner in the Writ Petition filed before the Supreme Court (Grahak Sanstha Manch & ors.(Supra), the prayer of the Petitioner before the Supreme Court was to restrain the State from evicting the petitioner which was also rejected by the Supreme Court. It is submitted that consequent to the said orders passed by the Supreme Court, the Petitioner was issued another notice dated 30 July 1994 specifically referring to the orders of the Supreme Court. It is submitted that this notice was never assailed by the Petitioner. Learned AGP has submitted that the contention as urged on behalf of the Petitioner that the Show Cause Notice does not refer to the eviction order dated 12 May 1967 is patently misconceived, inasmuch as, the Controller of Accommodation had earlier passed an order on the Show Cause Notice dated 18 September 2012 referring to the eviction order dated 12 May 1967 and the said order came to be set aside by the Appellate Authority by an order dated 1 January 2013 keeping open all issues to be agitated by the Petitioner before the Controller of Accommodation. It is submitted that the Petitioner cannot assail the said admitted position that an eviction order dated 12 May 1967 was passed against the petitioner. It is submitted that it is misconceived for the Petitioner to contend that the eviction order dated 12 May 1967 ought not to be considered as a relevant factor. Learned AGP would further submit that this apart, the Petitioner cannot take a position contrary to the order passed by the Supreme Court in Grahak Sanstha Manch (supra) wherein the petitioner itself was one of the petitioner. The Petitioner in compliance of the orders passed by the Supreme Court ought to have vacated the premises by 30 November 1994 so that the Government could handover the possession to the landlords by 31 December 1994. Learned AGP in supporting his submissions would submit that the Petitioner's case is clearly covered by the decision of the Division Bench of this Court in the case of Ashok Chandrakant Palande Vs. The State of Maharashtra & ors. Writ Petition No. 997 of 2012 decided on 5 December 2012.

34. Mr. Deshmukh, learned counsel for the Respondent No. 4 would submit that the only issue as raised in the Show Cause Notice was on Section 27(1) of the Maharashtra Rent Control Act. It is submitted that the notice of the Controller of Accommodation dated 30 July 1994, directing the Petitioner to vacate the premises was, admittedly, received by the Petitioner, however, the Petitioner had failed to vacate the premises. It is submitted that the contention of the Petitioner that the premises are not de-requisitioned is raised for the first time, ex-facie contrary to the prayers of the Petitioner before the Supreme Court in Grahak Sanstha Manch (supra) which proceeded on the footing that the premises were

already de requisitioned and the Petitioner was liable to vacate. It is submitted that in any case, these are all issues which have attained finality also in view of the decision of the Supreme Court in Grahak Sanstha Manch which now cannot be agitated in this proceedings. Mr.Deshmukh learned counsel for the respondent no.4 in supporting his submissions has referred to the affidavits filed on behalf of respondent no.4 and the various judgments which are also cited on behalf of the State Government.

Discussion and Conclusion

35. Having heard learned counsel for the parties and having perused the record, at the outset, some admitted facts are required to be noted.

36. The Petitioner which was earlier known as "Prafula Consumers Co-operative Society Ltd." was allotted the requisitioned premises in question by the Government of Maharashtra on 19 June 1948 on the condition of making payment of monthly rent. It is not in dispute that the Government record contained the order dated 12 May 1967 passed by the Controller of Accommodation directing the Petitioner to vacate the premises within seven days from the date of receipt of the said order and deliver possession to the State Government. There is also stamped acknowledgement of the receipt of the said order dated 12 May 1967 by the Petitioner. The memo of the writ petition indicates that initially the petitioner intended to plead ignorance and/or lack of knowledge of this eviction order dated 12 May 1967 however, subsequently, these averments are deleted from the memo of the petition. The effect of the said order dated 12 May 1967 passed by the Controller of Accommodation was that the occupation of the petitioner in the premises was illegal. This order is required to be noted and reads thus :

" No.RIII/62G/Shop No.3-5 and 5 Office of the Controller of Accommodation,4th Floor, Sachivalaya Annexe, Bombay-32

12th May 1967

Order

Whereas the land specified in the Schedule appended hereto has been requisitioned under the Bombay Land Requisition Act, 1948 (Bom.XXXVII of 1948) ;

And whereas the Prafulla Consumers Co- operative Society has been allotted the said land;

And whereas the Prafulla Consumers Co- operative Society is in arrears of compensation;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 8-B of the said Act, the Government of Maharashtra hereby directs the said Prafulla Consumers Cooperative Society to vacate the said land within seven days from the date of receipt of this order and deliver possession thereof to

Government.

Schedule

G.G.S. No.36, Irani Manzil,Gokhale Road,Dadar, Bombay-28.

By order and in the name of the Governor of Maharashtra

Accommodation Officer

To.

1. The Prafulla Consumers Co-operative Society, G.G.S.No.36, Irani Manzil,Gokhale Road, Dadar, Bombay.

2. The occupants"

37. What becomes relevant from the above order is the application of Section 8C(1) of the Requisition Act to the extent it provides that an allottee being in unauthorised occupation of the premises is a ground for eviction under section 8C (I) (iv) and (b) of the Requisition Act, Act.

38. It also appears to be not in dispute that from time to time, notices were issued to the petitioner demanding outstanding rent as noted above. The court in exercising writ jurisdiction cannot also be oblivious to the clear position which has emerged on record and as asserted on behalf of the State and the landlords-respondent no 4 namely of the petitioner occupying the premises illegally in breach of the orders passed by the Supreme Court in Grahak Sanstha Manch. It is not in dispute and as seen from the averments of the petitioners in the writ petition filed by the Petitioner (Grahak Sanstha Manch & ors. (Supra)) before the Supreme Court that the Government had again issued a Show Cause Notice dated 29 February 1992 to the Petitioner (referred before the Supreme Court as between January, 1992 and June, 1992), calling upon the Petitioner to vacate and handover vacant possession of the said requisitioned premises on or before 26 December 1992, and the Petitioner had accordingly, approached the Supreme Court in the said Writ Petition praying for a writ of mandamus against the Government not to evict the Petitioner from these requisitioned premises, in furtherance of the notice dated 29 February 1992.

39. The above facts would clearly indicate that the occupation and possession of the Petitioner was unauthorized and illegal, considering the clear provisions of Section 8C(1) of the Requisition Act. Further, and most significantly the Petitioner could not succeed before the Supreme Court in Grahak Sanstha Manch & Ors. (Supra). The Constitution Bench of the Supreme Court in the said case held that continuance of requisition orders made in the late 1940s and 1950s cannot be continued indefinitely and these requisition orders were quashed. It was held that the landlord cannot in effect and substance be deprived of his rights and title to property without being paid due compensation which was the effect of prolonged requisitioning. It was held that requisitioning can be continued only for a reasonable period and as to what such period should be would depend upon

the facts and circumstances of each case and it would ordinarily be for the Government to decide. It was also held that the State Government cannot be compelled to provide an alternate accommodation to the allottees of the requisitioned premises. The Supreme Court continued the interim protection till 30 November 1994 directing that on this date all occupants of the premises the continued requisition of which has been quashed shall be bound to vacate and hand over vacant possession to the State Government so that the State Government may on or before 31 December 1994 de-requisition the premises and hand back the vacant possession of the premises to the landlord. It is vital to note the relevant observations and directions of the Supreme Court in *Grahak Sanstha Manch*, for the reason that the petitioner was one of the petitioner and thus the directions of the Supreme Court were directly applicable and binding on petitioner which read as under:-

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 1993, *Grahak Sanstha Manch and ors 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 26.12.1992 so that the premises may be de-requisitioned. 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* case.

16. 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* case, the observations of the Nagpur High Court in the case of *Mangilal Karwa vs State of M.P.* 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 continued indefinitely. Requisitioning might have to be resorted to for a permanent public purpose, to give an example, to tide 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 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 there from. A landlord cannot, in effect and substance, be deprived of his rights 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."

17. For the aforesaid reasons, we hold that the decision in H.D.Vora 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.

"19. 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."

20. The continuance of requisition orders made in the late 1940s and early 1950s and thereabouts, particularly of residential premises, have been struck down by the Bombay High Court in numerous cases following the judgments in H.D.Vora 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 30.11.1994, on which date all occupants of premises the continued requisition of which has been quashed as aforesaid shall be bound to vacate and hand over vacant possession to the State Government so that the State government may, on or before 31.12.1994, de-requisition such premises and hand back vacant possession thereof to the landlords.

21. The writ petitions are, accordingly dismissed. There shall be no order as to costs."

(emphasis supplied)

Mr. Justice P.B.Sawant (as his Lordship then was) in his supplementing Judgment agreed with the majority findings on the question of law. However, in regard to the operative order, His Lordship was of the opinion that a longer time up to

31.5.1996 is required to be granted to the Consumer Co-operative Societies to vacate their respective premises. However the facts remains that there were no two opinions, even considering the supplementing judgment of Justice Sawant, who although did not agree with the operative order of the majority of the Judges inter alia on the time to vacate as His Lordship also held that the Consumer Co-operative Societies before the Court in any case cannot be continued to be in occupation of the requisitioned premises and that these societies have to vacate the premises and/or evicted before 31.5.1996. The observations of Justice Sawant in the context of Consumer Co-operative Societies are required to be noted.

" 22. 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 they 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.

23. I 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."

24. 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 sizeable 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 31.5.1996."

40. It is thus crystal clear that the petitioner's writ petition being dismissed by

the Supreme Court the petitioner was duty bound to vacate the premises before 30 November 1994, (as per the majority orders), as the continued requisition of these premises was quashed. The petitioner therefore cannot contend that there was no de- requisition of its premises. In so contending the petitioner is speaking against its own case and assertion before the Supreme Court and the said express orders of the Supreme Court. For this reason the contention as urged on behalf of the petitioner that the premises are not de-requisitioned is totally untenable. In fact the petitioner never asserted such position even before the Supreme Court. Moreover the Supreme Court has clearly observed in paragraph 20 of the decision that the petitioners were bound to vacate and hand over vacant possession as the continued requisition of these premises was quashed by the Supreme Court. Hence once requisition was quashed by the Supreme Court and the Supreme Court had granted a specific time limit up to 30.11.1994 to vacate the premises, by no stretch of imagination could the petitioner (who was itself one of the petitioner before the Supreme Court) contend that the premises in their occupation were continued to be requisitioned. In fact the occupation of the premises beyond the time lines as prescribed by the Supreme Court was illegal.

41. Now coming to the case of the petitioner being pleaded on legislative amendments brought about inter-alia to the Rent Control Act relying on which the petitioner intends to contend that the petitioner has become a deemed tenant of the respondent no.4 landlord. As noted above after the decision of the Supreme Court in *Grahak Sanstha Manch & ors.*(Supra), the State of Maharashtra first enacted the Maharashtra Act 16 of 1997 amending the Bombay Rents, Hotel and Lodging House Rates Control Act, the Bombay Land Requisition and the Bombay Government Premises Eviction (Amendment Act), 1996 with effect from 7 February 1996. By this amendment, statutory protection was sought to be given to the allottees of the requisitioned premises by providing that the Government allottees become deemed tenants of the requisitioned premises. The definition of Government allottee was amended and another new provision, being Section 15B inserted providing for the State Government and/or Government allottee to become a tenant of requisitioned premises or continued under requisition. This amendment was declared to be unconstitutional by the Division Bench of this Court on 27 July 1998 which was reversed by the Supreme Court in its decision in *Welfare Association's Case* (Supra), however the directions of the Constitution Bench in *Grahak Sanstha Manch* remained undisturbed. Thereafter the State of Maharashtra repealed the Rent Control Act 1947 by with effect from 31 March 2000 by enacting the Maharashtra Rent Control Act 1999 (Rent Control Act 1999). Section 7 and Section 27 of the Rent Control Act 1999 as extracted in the foregoing paragraphs are sought to be pressed in service by the petitioner to claim deem tenancy as a defence to the eviction action.

42. As regards the premises in question, the definition of Government allottee under Section 7 (2) (a) would be relevant, as the Petitioner was the original

allottee of the said requisitioned premises. The Petitioner, so as to be conferred a status of a deemed tenant within the meaning of section 27 of the Rent Act, the State Government was required to continue the requisition of the premises in question by some positive order which is certainly not the case. The State Government could not have done so, considering the record and background of the notices issued to the petitioner, including to implement the order of the Supreme Court in Grahak Sanstha Manch. Thus surely it can be said that the petitioners premises no more continued to be requisitioned or continued to be requisitioned'. The record would firstly indicate that there was an eviction order dated 12 May 1967 passed against the petitioners which was received by the petitioner and was never assailed as noted above. Secondly also there was a further direction in the communication of the Controller dated 12 June 1989 pursuant to the decision of the Supreme Court in H.D.Vora's case (supra), that the premises would be required to be released from requisition before 26 December 1990. Thirdly as set out by the petitioner in its own case before the Supreme Court in Writ Petition filed by Grahak Sanstha Manch the petitioners, averred that the petitioner was directed to vacate the premises on or before 26 December 1992. Forthly thereafter there is an order dated 30 July 1992 of the Controller of Accommodation pursuant to the directions of the Supreme Court in Grahak Sanstha Manch & ors (supra) calling upon the petitioner to vacate the premises by 30 November 1994 for the reason that the Supreme Court had quashed the requisition of the petitioners premises. All these orders are before the cut off date of 7 December 1996 as Section 27(1) of the Rent Control Act would provide for continuing the status of a deemed tenant. Thus clearly the occupation and possession of the suit premises by the Petitioner was patently illegal. The Petitioner did not enjoy the status of being an allottee of the premises of which the requisition was continued, nor can it be said by any stretch of imagination that the premises stood to be requisitioned premises so that the benefit of Section 27 is available to the Petitioner to be a deemed tenant.

43. This apart, and most glaringly the Petitioner cannot take a position contrary to the specific and categorical directions of the Supreme Court in the petitioner's own case namely in Grahak Sanstha Manch & ors.(Supra), where the Supreme Court refused to grant any protection to the Petitioner while quashing the requisition of the premises and moreover, the Supreme Court directed the Petitioner to vacate the premises on or before 30 November 1994 as observed in paragraph 19 of the said decision.

44. In any event, the petitioner's contention that the petitioner is not in unauthorized occupation and possession of the premises cannot be accepted considering the settled position of law in that regard even if the State could not be successful in evicting the petitioner despite attempts to that effect. In Kunal R.Choudhary vs Purshottem B. Toddy 1997 (9) SCC 229 the Supreme Court was dealing with a case wherein an allottee was called upon to vacate the premises and hand over the same to the Government to as to enable the Government to surrender the premises to the landlord. There was also an order passed by the

State Government under section 11 of the Requisition Act, authorising the Area Sub-Inspector in the office of Controller of Accommodation to take vacant possession of the premises from the allottee on or before the stipulated date. It is on these facts, the Supreme Court held that the authority of the allottee to occupy the premises by virtue of the original allotment order made by the State Government had already come to an end before the date of the Ordinance namely 7 December 1996 on which date the applicant was not a person who was allowed by the State Government to remain in occupation and possession of such premises and hence did not fall within the definition as government allottee of section 5(1-A) of the Rent Act and thus could not take advantage of section 15 - B of that Act. The Supreme Court held that for the same reason he also could not take benefit of Section 9(8) of the said Act.

45. In *Maheshchandra Trikamji Gajjar Vs. State of Maharashtra and ors.*, reported in (2000) 3 Supreme Court Cases 295, considering the amended provisions as incorporated by Act No. 16 of 1997 the Supreme Court held that the word "allowed" in Section 5(1-A) introduced in the ordinance would mean some positive sanction and not mere slackness on the part of competent authority in not taking action for getting the premises vacated. The Supreme Court in para 15 observed thus :-

"15. The deletion of the words "allowed by the State Government to remain" from clause (b) of Section 5(1-A) by Ordinance dated 26-12-1997 also does not alter the status of an occupant like Respondent 3. The word "allowed" in the aforesaid provision may mean some positive sanction and not mere slackness on the part of the competent authority in not taking action for getting the premises vacated. It is evident that the accommodation or possession of the premises within the meaning of clause (b) by a person who when allotted was a government employee has to be on account of some right to occupy or possess the premises. The continued occupation or possession without any such right would not confer on the occupant the status of a government allottee simply on account of such person being in occupation or possession of the requisitioned premises even after retirement. The reason for authorities not taking any action to get such premises vacated is explainable on account of the said premises being not available for allotment again to any existing government servant. On this account, the authorities may not initiate any proceedings for getting the possession but that would not confer on the occupant the status of "government allottee" within the meaning of the term as defined in the Amendment Act. Thus, assuming the amendments to be valid, we find no right in favour of Respondent 3 to continue with the possession of the premises even after the invalidity of the order of requisition dated 17-4-1958 and his retirement. Respondent 3 cannot be treated as a deemed tenant."

(emphasis supplied)

46. In *Ashok Chandrakant Palande Vs. The State of Maharashtra & Ors.* Writ Petition No.997 of 2012, Order dt.5.12.2012 a Division Bench of this Court was

dealing with a case where there was already an eviction order passed by the Competent Authority, the Division Bench referring to the decision of the Supreme Court in "Maheshchandra Trikamji Gajjar Vs. State of Maharashtra & ors" (2000)3 SCC 295 in paragraphs 4 and 5 has made the following observations:-

"4. We are in agreement with the submission made by the Counsel for the respondents that the issue is no more res-integra. The same has been answered by the Apex Court in the case of Maheshchandra Tikamji Gajjar vs State of Maharashtra & Ors, in particular paragraphs 14 and 15 thereof, which reads thus:

"14. It is evident that the object was to protect those who would have been rendered homeless though still in government service on account of the shortage of accommodation with the Government and it being not possible for the Government to give suitable alternative accommodation to such government allottees. It is not and cannot be the case of the respondents that even after retirement, the government had any obligation or policy to provide accommodation to retired employees. If the contention respondent no.3 that he became a deemed tenant on account of 1997 amendment is accepted, it would show that the Government intended to confer a special benefit or providing residential accommodation to occupants of requisitioned accommodation as a superannuation benefit. That is clearly not the object of the amendments. If that was so, there would be a special class of employee. A class that is allotted, while in service, with accommodation which is requisitioned which class would get the special benefit even on superannuation, this class will become tenant under the original owner after retirement with the benefits of all protections under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, their heirs and successors may also subject themselves to eviction only on proof of one or the other ground of eviction provided in the Act. Thus, if one is fortunate enough to be allotted accommodation out of the requisitioned premises while in service, he gets by way of superannuation gift, the continued tenancy and others which may not be that fortunate to get allotment of such premises, will have to vacate government accommodation as per the relevant rules after retirement. We are unable to attribute such an intention to the aforesaid amendments.

15. The deletion of the words "allowed by the State Government to remain " from clause (b) of Section 5 (1-A) by Ordinance dated 26-12.1997 also does not alter the status of an occupant like respondent 3. The word "allowed" in the aforesaid provision may mean some positive sanction and not mere slackness on the part of the competent authority in not taking action for getting the premises vacated. It is evident that the accommodation or possession of the premises within the meaning of clause (b) by a person who when allotted was a government employee has to be on account of some right to occupy or possess the premises. The continued occupation or possession without any such right would not confer on the occupant the status of a government allottee simply on account of such person being in occupation or possession of the requisitioned

premises even after retirement. The reason for authorities not taking any action to get such premises vacated is explainable on account of the said premises being not available for allotment again to any existing government servant. On this account, the authorities may not initiate any proceedings for getting the possession but that would not confer in the occupant the status of "government allottee" within the meaning of the term as defined in the Amendment Act. Thus, assuming the amendments to be valid, we find no right in favour of Respondent 3 to continue with the possession of the premises even after the invalidity of the order of requisition dated 17.4.1958 and his retirement. Respondent 3 cannot be treated as a deemed tenant."

5. This decision of the Apex Court has been considered by the Division Bench of our High Court in a recent decision in the case of Neeta Ramesh Shelar vs The Controller of Accommodation, Mumbai & Ors, decided on 17th June 2010, in particular paragraph 12 onwards. In paragraph 12, the Court has adverted to another decision of the Division Bench of this Court reported in 2008 (1) Bom.C.R.779 and opined that the amendments of 1996 do not protect those persons against whom order of eviction have already been passed. The fact-situation of the present case is similar to the fact-situation in this unreported decision in the case of Neeta Ramesh Shelar (supra). To get over this position, Counsel for the petitioner submits that the communication reproduced above dated 30th July 1994 cannot be treated as an order of eviction issued by the Bombay Land Requisition Act, 1948 in as much as the grounds of eviction are limited to specified in sub-clause (a) of Sub-section... of Section 8C of the Act. None of the those grounds have been involved by the Controller of Accommodation. It is however, not disputed by the Controller of Accommodation is the Competent Authority. Assuming that the said order is illegal the fact remains that the petitioner did not find it necessary to challenge the decision of the competent Authority dated 30th July 1994. In that sense, petitioner continued to remain in unauthorized occupation on and from the expiry of the time to vacate the premises provided therein. Since the order of eviction has already been passed against the petitioner by the Competent Authority as held in the case of Ramesh Shelar, the petitioner cannot claim advantage of the amendment to the provisions of the Land Acquisition Act. The claim of the petitioner that the petitioner has become deemed tenant by virtue of those amendment is therefore completely misplaced and unavailable to the petitioner.

(emphasis supplied)

47. In "S.A.Sule Vs. State Govt.of Maharashtra & Ors." (Writ Petition (L) No.2124 of 2015) a learned Single Judge of this Court was dealing with the commercial premises similarly requisitioned as in the facts of the present case. A prayer akin to the prayer as made in the present petition, was made in the said Writ Petition which pertained to the requisitioned shop premises. The petitioner therein raised contentions similar to the contentions as raised by the petitioner in the present petition. Considering the provisions of the amendments to the Bombay Land

Requisition Act (Act no.16 of 1997) whereby Section 5(1-A) and Section 15-B came to be incorporated, in dismissing the petition, in paragraphs 4 and 6 the learned Single Judge has made the following observations:

4. The record of the case clearly indicates that the suit premises continued to be requisitioned premises as of the cut off date, namely, 7th December, 1996. It is also clear from the record that the petitioner was an allottee of the suit premises under an order passed by the Accommodation Officer on 5th January, 1959 and its use and occupation of the premises throughout had been under this allotment order. As held by the Supreme Court in the case of H. D. Vora Vs. State of Maharashtra (1984) 2 SCC 337, the fact that the petitioner had been paying compensation to the landlord of the premises under the orders of the requisitioning authority, even though such compensation was termed as rent, did not have the effect of putting an end to the order of requisition.

The petitioner continued to be an allottee of the subject premises under the order of acquisition and was liable to pay compensation for use and occupation of the premises to the State Government, which in turn was liable to pay compensation to the landlord. If instead of paying the compensation to the State Government and the State Government making payment of an identical amount to the landlord, by reason of the petitioner paying the amount directly to the landlord, in this case admittedly with an express assent of the State Government, the order of requisition would not cease to be valid and effective. It did not matter at all whether the petitioner described or the landlord accepted the amount paid, as rent. Whatever was done by the petitioner under the order of requisition and so long as the order stood, its possession of the subject premises is attributable only to the order of requisition and no payment, even if termed as rent, could possibly alter the nature of such occupation or make the petitioner a tenant of the landlord. That is clear and beyond doubt, having regard to the dicta of the Supreme Court in the case of H. D. Vora

(supra).

6. Coming now to the facts of our case, it is clear that the original authority of the petitioner to use and occupy the premises (allotment letter of 5th January,1959) was brought to an end when the State Government issued an eviction order of 11th November 1994. In fact, after issuance of the eviction order, the State Government also initiated further proceedings by way of notice under Section 8C(2) of the Requisition Act to show cause against his eviction. That notice and proceedings initiated thereupon were pending before the authority when the Amendment Act 16 of 1997 brought into effect the change in the law as of the cut off date of 7th December,1996. In other words, on 7th December,1996 the petitioner did not have any authority to occupy the premises. It was not "allowed" by the State Government to occupy the requisitioned premises. In accordance with law stated by the Supreme Court in the cases of Kunal R.Chaudhari's (supra) and Maheshchandra Trikamji Gajjar (supra), the petitioner cannot be said to be a Government allottee within the meaning of

Section 5(1-A) of the Rent Act. The petitioner is, thus, not entitled to the protection of the deeming fiction within the meaning of Section 15-B of the Rent Act.

48. Thus the contention as urged on behalf of the Petitioner that the premises still stand requisitioned and/or are not de- requisitioned and therefore, the Controller of Accommodation has no authority to pass an order, cannot be accepted, in view of the above clear position in law and that there were successive orders as noted above directing the Petitioner to vacate the premises.

49. The contention as urged on behalf of the petitioner that the impugned order passed by the Collector of Accommodation is on grounds outside the scope of Section 8C(1) of the Requisition Act also cannot be accepted. This for the reason that sub-clause (iii) of sub- Section 1 of Section 8C provides that if the allottee has committed and / or is committing any acts which are contrary to the terms and conditions express or implied under which the allottee is authorised to occupy such land or premises or as provided in Clause (iv) has been unauthorised occupation of such land and premises, in such event the controller of accommodation would be authorised to evict an allottee. It would be relevant to extract Section 8C which provides for powers of competitive authority to evict which reads thus:-

"8C. Powers of competent authority to evict :-

(1) If the competent authority after holding such inquiry as he deems fit is satisfied-

(a) that a Government allottee or any other person authorised or permitted to occupy or for the time being occupying any land or premises requisitioned or continued under requisition under this Act has, whether before or after the commencement of the Bombay Land Requisition and Bombay government Premises (Eviction) (Amendment) Act, 1980,-

(i) not paid the monthly compensation due from him in respect of such land or premises for a period of more than two months :

(ii) sub-let, the whole or any part of such land or premises without the permission of the State Government or the competent authority :

(iii) committed, or is committing any acts, which are in contravention of the terms and conditions, express or implied, under which he is authorised to occupy such land or premises ; or

(iv) been in unauthorised occupation of such land or premises ; or

(b) that any other person is in unauthorised occupation of such land or premises ; or

(c) that such land or premises are to be released from requisition, then the competent authority may, notwithstanding anything contained in any law for the

time being in force, by order in writing direct the person to whom such land or premises are allotted or the person who is authorised or permitted to occupy them or any other person for the time being in occupation of such land or premises to vacate the same, within one month of the date of the service of the order and to deliver possession thereof to the competent authority or any officer designated by him in this behalf. Such order shall be served on the persons concerned in the manner provided in section 13.

(2) (a) Before an order under sub-section (1) is made against any person, the competent authority shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made....."

50. Considering the clear facts that there was already an order passed by the Controller of Accommodation directing the petitioner to vacate the premises as noted above and there were successive orders / notices issued to the petitioner to vacate the premises, it can surely be concluded that the provisions of Section 8C(1)(iv) and (b) were clearly applicable and there were sufficient grounds to issue a notice under the said provision.

51. In so far as the contention as urged on behalf of the Petitioner that the impugned order passed by the Controller of Accommodation is exceeding the show cause notice as the show cause notice is not based on the eviction order dated 12 May 1967 is totally untenable. This is clear from the fact that the first order dated 26 February 2013 passed by the Controller of Accommodation was set aside by the Appellate Authority and thereafter a full opportunity was granted to the petitioner to defend the show cause notice on all the grounds which included the issue that there was already an eviction order passed by the Controller of Accommodation dated 12 May 1967. It is not the case of the petitioner that sufficient opportunity was not given to the petitioner to defend the case on all the issues including the issue of the petitioner claiming protection under Section 27(1) of the Rent Control Act, the orders passed by the Supreme Court and the second order dated 30 July 1994 passed by the State Government directing the petitioner to vacate the premises on or before 30 December 1994. This apart the petitioners have categorically deleted the grounds (v), (w), (y) which were to the effect that the petitioner was not aware of the eviction order dated 12 May 1967. Moreover, it has clearly come on record that the order dated 12 May 1967 was received by the petitioners and it was part of the entire compilation of record which was obtained by the petitioners from the Controller of Accommodation. The petitioners, therefore, could not have taken a position contrary to the record that there was no eviction order passed against the petitioners and/or that the occupation of the petitioner of the requisitioned premises was in any manner legal or under any authority under law. This would have been contrary to the assertion of the petitioner before the Supreme Court. This being the clear position the decisions as cited by Mr. Thorat learned senior counsel for the petitioner would not assist the petitioner.

52. It may be observed that the attempt of the petitioners is to somehow delay the eviction and commercially exploit the premises to the prejudice of the landlord, contrary to the express directions of the Supreme Court and against the letter and spirit of its decision in *Grahak Sanstha Manch & ors.* (Supra) in which the petitioner itself was a party and could not succeed in getting an order that the petitioner should not be evicted. The said writ petition was dismissed by the Supreme Court.

53. The above discussion would make it abundantly clear that the petitioners in the teeth of the orders passed by the Controller of the Accommodation from time to time and most importantly, the orders of the Supreme Court, in its own case in the year 1994 in *Grahak Sanstha Manch & Ors.* (supra) somehow have managed to illegally occupy the premises and are commercially exploiting the same to the grave detriment of the landlord. It also clearly appears that the petitioner did not leave a single stone unturned to continue its illegal occupation of the premises by indulging in untenable litigation. The defences as taken by the petitioner to retain the possession as noted above, are brazenly frivolous. The petitioner has negated the categorical directions of the Supreme Court in *Grahak Sanstha Manch & Ors.* (supra) as noted above and in fact it needs to be observed that the petitioner is in contempt of the orders of the Supreme Court in *Grahak Sanstha Manch*.

54. It is also surprising as to how the State authorities could shut their eyes to the orders passed by the Supreme Court in *Grahak Sanstha Manch* by virtue of which the petitioners were directed to vacate the premises before 30 November 1994 and impliedly aided the petitioner to continue in occupation of the premises in the teeth of the direction of the Supreme Court. Such an approach on the part of the concerned officers of the State Government at the helm of affairs is certainly and distressingly painful. In fact there was no requirement for the Controller of Accommodation to issue a fresh show cause notice when the Supreme Court itself dismissed the writ petition of the petitioner and the obvious consequence of which was that the petitioners were bound to vacate and ought to have vacated the premises before 30 November 1994. Thus for last about 25 years the petitioner has continued to occupy the premises illegally on account of the disregardful and/or derelict attitude and approach of the concerned officials. Despite the solemn decision of the Supreme Court in *H.D.Vora's case* (supra) and *Grahak Sanstha Manch* (supra) the landlord was deprived of his valuable rights guaranteed under Article 300A of the Constitution. Certainly there is gross injustice caused to the landlord, which the Supreme Court 25 years back had remedied.

55. In the light of the above discussion, there is absolutely no merit in the petition. It is accordingly rejected. The petitioners are directed to hand over the possession of the premises to the respondent/Controller of Accommodation within two months from today. In the facts of the case, the dismissal cannot be unconditional. The petition is dismissed with costs of Rs.1,00,000/- to be paid by

the petitioners to the Tata Memorial Hospital, Parel, Bombay.