

(1980) 08 CAL CK 0006
In the Calcutta High Court
Case No : A.F.O. No. 6 of 1970

State of West Bengal and Others

APPELLANT

Vs

Pulin Krishna Roy Estate (P) Ltd. and Another

RESPONDENT

Date of Decision : 25-08-1980

Acts Referred:

West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 —
Section 2, 3(1), 3(2), 4(1)

West Bengal Premises Requisition and Control (Temporary Provisions) Rules, 1947 —
Rule 3(2)

Citation : AIR 1981 Cal 234

Hon'ble Judges : Ramendra Mohan Datta, J;C.K. Banerji, J

Bench : Division Bench

Advocate : A.P. Chatterjee and Shyamal Sen, for the Appellant; Anindya K. Mitra and Jayanta K. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Banerji, J.—This appeal is against the judgment and order dated the 19th November, 1979 of Mrs. Padma Khastgir, J, making the rule absolute in a writ petition under Article 226 of the Constitution made by the respondents petitioners, inter alia, challenging an order of requisition bearing No. 4/79 dated the 28th May, 1979, made under Sub-section (1) of Section 3 of the West Bengal Premises Requisition & Control (Temporary Provisions) Act, 1947 (hereinafter referred to as the 1947 Act), requisitioning the south west corner flat on the first floor of Block "K" of premises No. 167, Rash Behari Avenue, Calcutta, known as "Jasoda Bhawan" (hereinafter referred to as the said flat).

2. The facts shortly are that one Pradip Kumar Roy and Sm. Gouri Bala Roy, since deceased, the owners of premises Nos. 167A to 167M. Rash Behari Avenue. Calcutta known as "Jasoda Bhawan" by a registered Deed of Lease dated the 5th January, 1970 granted a lease of the said premises in favour of the respondent petitioner No. 1 Pulin Krishna Roy Estate (P) Ltd. for a period of 10 years commencing from the 1st January, 1970, with an option for renewal for a further

period of 40 years. The said premises had earlier been requisitioned by the Government of India under the Defence of India Rules. The owners of the said premises initiated proceedings for de-requisition thereof and ultimately in F. A. No. 92 of 1957 in the Appellate Side of this Court, the matter was settled pursuant to the terms of settlement put in whereby the Government of India agreed to derequisition the said premises by stages and pursuant thereto various flats of the said premises were de-requisitioned from time to time. The last flat that was so de-requisitioned was the said flat and possession thereof was delivered by or on behalf of the Government of India to the owners on or about the 9th March, 1979. The respondent No. 1 after getting possession of the said flat entered into an agreement of monthly tenancy with Chittaranjan Pal the petitioner respondent No. 2 and let out the same to him at a monthly rent of Rs. 300.00 and since then the respondent No. 2 became a tenant and had been in occupation of the said flat and brought his furniture therein. It is alleged in the writ petition that on the 7th June, 1979 at about 11-30 A. M. several persons representing themselves to be from the office of the first Land Acquisition Collector the appellant No. 3, came with a police force, broke open the padlock put on the door of the said flat by the respondent No. 2 and removed and threw out the furniture lying therein in the courtyard of the said premises and put their lock and key on the door of the said flat. Thereafter the said persons left with the durwan of the said premises two copies of the impugned order of requisition containing a direction issued by the appellant No. 3 on the 4th June, 1979. one addressed to the respondent No. 2 and the other addressed to Pradip Kumar Roy and Sm. Gouri Bala Roy of No. 7. Abhoy Mitra Street, Calcutta and a further notice u/s 4(1)(a) of the 1947 Act signed by the appellant No. 3 dated the 4th June, 1979, directing the respondent No. 2 to vacate the said flat on or before the 7th June, 1979, at 10-30 A. M. It is further alleged in the writ petition that Smt. Gouri Bala Roy had died on the 10th Feb. 1972. In the court below the only affidavit-in-op position that was made on behalf of the appellants was by Bimal Kumar Bhattacharjee the First Land Acquisition Collector, the appellant No. 3 affirmed on the 21st August, 1979. In paragraph 4 of the said affidavit it is stated that one Chandra Sekhar Bhattacharjee, a retired W. B. C. S. who was appointed by the Government of West Bengal as a special Officer of the Corporation of Calcutta had requested the Government for allotment of the said flat to him as he was in urgent need of accommodation and the requisition of the said flat was made to accommodate him which was definitely a public purpose. In paragraph 5 it is stated that a prohibitory order No. 4/79 dated the 9th March, 1979 was served on the owners on the same day with direction not to let out the said flat without the permission of the Government of West Bengal until the expiry of two months from the date of the said order. In paragraph 6 it is stated that the Deputy Secretary to the Government of West Bengal L. H. & R. & L. R. Deptt. Reqn. (Spl). Branch, under his letter No. 219 Reqn. (Spl.) dated the 29th/30th May, 1979 sent the said requisition order with instruction to take necessary action with police help as contemplated in Section 9 of the 1947 Act. A copy of the said requisition order under Memo No. 1406 Reqn. dated 4-6-1979,

was served on Pradip Kumar Roy and Gouri Bala Roy the owners on 6-6-1979 by affixing the same as they refused to accept service. Copies of the said requisition order and of the notice u/s 4(1)(a) of the 1947 Act were served on the respondent No. 2 the occupier on 6-6-1979 by affixing the same as he was not found in the said flat and possession under the said requisition order was taken by breaking open the lock in the presence of police on 7-6-1979 and a possession certificate was issued in the presence of the police who signed the same.

3. Pursuant to the directions of the appeal court Pradip Kumar Roy was added as a party to this appeal.

4. Pursuant to direction of the appeal court Chandra Sekhar Bhattacharjee has filed an affidavit affirmed on the 5th March, 1980. In paragraph 1 of the said affidavit it is stated that as a special Officer. Assessment, Corporation of Calcutta, he has to perform the function relating to the assessment cases under the provisions of the Calcutta Municipal Act and to decide such cases after hearing the parties including objections raised by them. Districts II, VI and XII where he lives were covered under his jurisdiction. He resides at No. 8/5 Cornfield Road. Ballygunge. Calcutta 19. In paragraph 2 of his affidavit it is stated that his said residence consists of two bedrooms and one kitchen which has a bath and privy order it (sic) and water drips in the kitchen therefrom. The roof of the Western bedroom leaks at times and cannot be used in the rainy season. There is no other room to be used as drawing room. Water supply is scanty and he has to depend on water being carried from elsewhere by paying charges. His two sons and daughter who are studying require separate room for their study and it is extremely difficult and inconvenient to stay in that flat. He had applied for an allotment of a flat in 1978 so that he could be provided with an accommodation by requisitioning a flat. In paragraph 3 it is stated that prior to his appointment as the Special Officer, he was in the West Bengal Civil Service and apart from difficulties and inconveniences experienced due to acute shortage of accommodation, he found it extremely difficult to maintain the high standard of work required of him in discharge of his functions in a situation of such inconvenience. In paragraph 4 it is alleged that he engaged brokers to find a flat. One of his sons and his wife are under medical care of Dr. R. C. Kundu a resident of Ballygunge. Place. It is very difficult to get good flat unless high selami was paid and at an exorbitant rent and all his efforts failed and in such circumstances he urgently required the requisitioned flat.

5. Pursuant to the directions of the appeal court Pradip Kumar Roy as the Managing Director of the respondent No. 1 has made an affidavit affirmed on the 12th March, 1980 in answer to the said affidavit of Chandra Sekhar Bhattacharjee and has also affirmed another affidavit on the 12th March, 1980 as the lessor of the said premises Nos. 167A to 167M. Rash Behary Avenue, Calcutta, including the said flat asserting the lease granted in favour of the respondent No. 2 annexing a copy of the Deed of lease dated the 5th January,

1970.

6. Mr. A.P. Chatterjee, learned Standing Counsel appearing for the appellants referred to the definition of "Public purpose" in Section 2(ff) and also to Sub-sections (1) and (4) of Section 3 of the 1947 Act which are set out below:

2. In this Act, unless there is anything repugnant in the subject or context :--

(ff) "Public purpose" includes providing residential accommodation for employee of the State Government where the provision of such accommodation is, in the opinion of the State Government, necessary in the interests of public service.

3. (1) Whenever it appears to the State Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing, requisition such premises either with or without any or all of the furniture, if any, in such premises:

Provided that no premises exclusively used for the purpose of religious worship shall be requisitioned under this section.

(2) and (3) * * * *

(4) An order passed under Sub-section (1) shall be final and whenever such order has been passed, the State Government shall direct the Collector to take such further action as is necessary in connection with the requisitioning of the premises in accordance with the provisions of this Act and to take possession of the premises requisitioned.

7. Mr. Chatterjee submitted that the instant requisition having been made to provide residential accommodation to Chandra Sekhar Bhattacharjee, an employee of the State Government, it must have been in the opinion of the State Government that it was necessary in the interest of the public service. Therefore, it was beyond dispute that the said flat was requisitioned for a public purpose.

8. He urged that the order of requisition was made under Sub-section (1) of Section 3 of the 1947 Act and as soon as the said order was issued, it became valid and effective and it was not necessary to serve the order either on the owner or the landlord or on the tenant or any occupier for its validity. Under Sub-section (4) of Section 3 of the 1947 Act such order of requisition was final.

9. Mr. Chatterjee submitted that the opinion of the State Government as to the need for requisitioning the said flat was final but only the factual existence of the public purpose was justiciable and opinion of the State Government in that behalf was not final and he cited a decision of a Division Bench of this Court, in Chhaya Rani Mukherjee v. Assistant Secretary, Land & Land Revenue Department, Requisition Branch. State of West Bengal reported in (1964) 68 Cal WN 826 also reported in Chayarani Mukherjee Vs. Assistant Secretary to the Government of W. Bengal, Land and Land Revenue Dept. Requisition Branch and Others, where it was held that the opinion of the Government as to the need for requisitioning a property was final, but the factual existence of the public purpose was justiciable

and the opinion of the Government in that behalf was not final. Mr. Chatterjee, however, submitted that Chhayarani's case (supra) was decided before the definition of "public purpose" in Section 2(ff) of the 1947 Act was amended by the West Bengal Premises Requisition and Control (Temporary Provisions) (2nd Amendment) Act, 1963 whereby providing residential accommodation for employees of the State Government was specifically made a "public purpose" and the Court therefore went into the question if providing accommodation for employees of the State Government was a public purpose. It was submitted that the various decisions of this Court on this aspect of the matter prior to the said amendment have therefore little application now. Mr. Chatterjee submitted that there was no dispute that the requisition was made to provide residential accommodation to Chandra Sekhar Bhattacharjee who has been appointed a Special Officer, Corporation of Calcutta by the State Government. That the accommodation where Chandra Sekhar Bhattacharjee resides is wholly inadequate and is inconvenient and he cannot discharge his duties therefrom properly, is established by the affidavit of Chandra Sekhar Bhattacharjee.

9A. Mr. Chatterjee submitted that the purpose for which the instant order of requisition was made was a public purpose was clearly established from the facts and circumstances disclosed in the affidavits of Bimal Kumar Bhattacharjee and Chandra Sekhar Bhattacharjee. The Court will not go into mere technicalities to strike down the order of requisition. He urged that it was not necessary to set out the public purpose in the order of requisition itself but when the same was challenged in a court of law, the authorities were required to disclose before the Court the purpose of the requisition and to establish the public purpose for such requisition to the satisfaction of the Court. Reliance was placed on a Bench decision of this Court in Satya Narayan Nathani Vs. State of West Bengal and Another, where Chakravati, C. J. at page 313 of the report observed that for the validity of the order of requisition, it was not necessary to set out the purpose of the requisition in the order itself; but the order would be upheld by the Court if the purpose and public purpose was made out to the satisfaction of the Court and was proved by facts established in the case. Mr. Chatterjee urged that even a purpose collateral to the main purpose was a public purpose and he relied on a decision of a Division Bench of the Bombay High Court in Municipal Corporation of Bombay Vs. Ranchordas Vandravandas, . Here notifications issued under Sections 4 and 8 of the Land Acquisition Act, 1894 for acquisition of certain lands for the Municipality of Bombay to Rive effect to a scheme for the construction of a primary school, a park, quarters for Municipal servants and a number of shoprooms were challenged in a suit on the ground, inter alia, that construction of quarters for Municipal servants and of shops to be let out were not public purpose and was beyond the powers of the Municipality. The High Court held that if the Municipal Commissioners and the Municipality thought that the said measure was likely to promote public convenience it lay within their discretion and the Court should not interfere with such discretion and the mere fact that construction of shops was contemplated was not sufficient to invalidate the whole

scheme. Mr. Chatterjee also cited a decision of the Supreme Court in *The State of Bombay Vs. R.S. Nanji*, . Here a part of a building was requisitioned under the Bombay Land Requisition Act, 1948 for housing an officer of the State Road Transport Corporation a public utility service. The Supreme Court considering that the Road Transport Corporation had a statutory obligation to provide accommodation to its employees and that it appointed a number of officers and servants for its efficient performance and functioning and the property being requisitioned for the purpose of the Corporation, held, that providing living accommodation to its employees was a statutory activity of the Corporation and was so interlinked with its successful functioning that requisitioning or acquisition of property to advance and ensure its such activities was a public purpose. In *The State of Bombay Vs. Ali Gulshan*, the Supreme Court held that requisitioning of a property for housing a member of the staff of a foreign consulate was a public purpose and the order of requisition made under the Bombay Land Requisition Act 1948 was therefore valid. In *Bai Malimabu and Others Vs. State of Gujarat and Others*, the Supreme Court held that construction of staff quarters for the employees of the State Insurance Scheme under the Employees' State Insurance Act. 1948 being closely connected with the implementation of the Scheme was undoubtedly a public purpose.

10. Mr. Chatterjee next referred to Sub-section (2) of Section 3 and to Sub-section (1) of Section 4 and Clauses (a) and (aa) thereof which read as under:

3. (2) An order under Sub-section (1) shall be served in such manner as may be prescribed on the landlord, and where it relates to premises let out to a tenant, also on such tenant.

4. (1) Where any premises are requisitioned under this Act the Collector may by notification in writing;

(a) order the person in occupation of the premises, if any, to vacate the premises within a period of ten days from the service of the notice;

(aa) order the landlord or the tenant, as the case may be, to remove the articles belonging to him, if any, and where the premises are requisitioned without any furniture therein, such furniture, within a period of fifteen days from the service of the notice:

Provided that the Collector, may, for reasons to be recorded in writing, extend the same period up to two months:

11. It was urged that Sub-section (1) of Section 4 provides that the Collector "may" by notice in writing make such orders for vacating the premises or removing the articles and furniture while Sub-section (2) of Section 3 provides that the order under Sub-section (1) of Section 3, "shall" be served. The wordings of the two sub-sections clearly indicated that Sub-section (2) of Section 3 where the word "shall" is used, was mandatory, while subsection (1) of Section 4 where the word "may" is used was directory, Mr. Chatterjee, however, admitted

that no doubt some notice had to be given to the occupier or the landlord or the tenant as the case might be, to vacate and to remove the articles and furniture. It was next contended that the period of 10 days for vacating the premises and the period of 15 days for removing the articles and furniture were merely the outer limits of the notice, which could be shorter than 10 days or 15 days as the case might be. The proviso for extension of the period up to two months governed only Clause (aa) of Section 4 (1) as was clear from the use of "colon" at the end of Clause (aa) while Clause (a) ended with a semicolon. Thus there could be no extension of the period for vacating the requisition premises. Such extension could only be for removal of the articles and furniture.

12. Mr. Chatterjee next contended that the order of requisition was sought to be served on the respondent No. 2, the occupier of the said flat at the said flat but as he was not found, the same was served by affixing a copy thereof on the outer door of the said flat and the notice u/s 4(1) of the 1947 Act was also served on him in the same manner on the same ground. The said order and the said notice were served on the 6th June, 1979, giving time to vacate by the 7th June, 1979. The said order was also served on the owners on the 6th June, 1979, by affixing a copy thereof as they refused to accept service. Death of Smt. Gouri Bala Roy was not within the knowledge of the appellants nor did they have any intimation thereof. Under Clause (a) of Sub-rule (2) of Rule 3 of the West Bengal Premises Requisition and Control Rules, 1947 the order of requisition was validly served on the owners by affixation on their refusal to accept service and under Clause (b) of the said sub-rule the service on the respondent No. 2 was duly effected by affixation as he could not be found. Mr. Chatterjee cited a decision of a single Bench of this Court in *Rash Behari Jana v. Addl. District Magistrate, Midnapore* reported in (1979) 83 CWN 608. Here notices u/s 3(2) of the West Ben-gal Land (Requisition and Acquisition) Act, 1948 were issued in the names of persons whose names appeared in the revisional record of rights as owners or occupiers of the lands sought to be requisitioned, some of whom were dead at the time. The notices were accepted by their suecessors-in-interest who allowed the proceedings to be continued without objection. Construing Section 3 (2) of the West Bengal Land (Requisition and Acquisition) Act, 1948 and Rule 3 of the rules framed thereunder it was observed by the Court that the scheme for service of the order under the said rule was different from that in the Civil P. C. and the four modes indicated in the said rule were alternative modes of service and the manner of applying a particular mode of service in a particular case, could be decided by the authorities concerned. The explanation of the respondents that the notices were issued in the names of persons who were recorded owners or occupiers in revisional record of rights as their deaths had not been intimated to the authorities by the persons interested including their heirs and legal representatives was accepted as reasonable and it was held that the notices having been accepted by their successors who allowed the proceedings to be continued without objection were not entitled to urge invalidity of the notices in the writ petition. Reliance was also placed on a Single Bench

decision of this Court in *Gobinda Chakraborty v. State of West Bengal* reported in (1960) 64 823cwn. Here the order of requisition made under the 1947 Act, was served on an employee of the occupier who accepted service subject to objection, which, however, reached the persons concerned who preferred objections before the First Land Acquisition Collector and were duly heard. On these facts the service was held to be good. In the unreported decision of *Amiya Kumar Mukherjee, J. in Civil Rule No. 6143-44 (W) of 1947* entitled *Anderson Wright and Co. v. State of West Bengal* following a single Bench decision of this Court in *Chitta Ranjan Sen Majumdar v. First Land Acquisition Collector* reported in (1978) 82 Cal WN 628 it was held that service of two notices, one u/s 3 (2) and another u/s 4(1) of the 1947 Act was not necessary and notice u/s 3(1) having been served both on the landlord and the tenant no notice u/s 4(1) of the said Act was required to be served on the petitioner the tenant of the premises requisitioned.

13. In *Govardhan Jaiswal v. First Land Acquisition Collector* reported in (1958) 62 Cal WN 158. *Sinha, J.* (as his Lordship then was) held that as the order of requisition under the 1947 Act was not served on the petitioner the landlord in accordance with the provisions of the said Act and the Rules framed thereunder the Govt. therefore had no right to take possession of the property under requisition but that did not affect the validity of the requisition if the same was otherwise valid.

14. *Mr. Chatterjee* next urged that there were no mala fides and no particulars of mala fides have been given by the respondents. *Mr. Chatterjee* lastly contended that there was no question of violation of principles of natural justice. The order of requisition was made for an immediate necessity to accommodate a Government servant in the interest of public service which could not be kept in abeyance. The 1947 Act and the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter called the 1948 Act) were in pari materia and Sections 1 to 4 of the 1947 Act and of the 1948 Act were identical. It was submitted that a Division Bench of this Court in *Sachindra Mohan Nandy and Others Vs. The State of West Bengal and Others*, has held that neither any hearing was necessary nor did the 1948 Act contemplate any hearing before the order of requisition under the said Act, was passed and this was affirmed by the Supreme Court in AIR 1971 963 (SC) . Thus the question of giving a hearing before the order of requisition was passed was no more res integra. In any event, representation could be made by the person affected after the order of requisition had been served on him and if the same raised any point which overrode the public purpose the same would be favourably considered by the authorities concerned. *Mr. Chatterjee* also cited in this context a decision of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and a decision of the Privy Council in *Furnell v. Whangarei High Schools Board* reported in (1973) 1 All ER 400 and two other Division Bench decisions of this Court in *Mihir Kumar Sarkar and Others Vs. State of West Bengal and Others*, also reported in (1971) 75 CWN 831 and *Smt. Sushila Devi Fomra v. State of West Bengal* reported in (1980) 2

Cal LJ 19.

15. Mr. Jayanta Mitter appearing for the respondents, contended on the other hand, that it was not the case that Chandra Sekhar Bhattacharjee merely wanted a flat but he wanted this very flat which will appear from paragraph 4 of his affidavit that he applied to the State Government for this very flat in 1978. It has not been established either by the appellants or even by Chandra Sekhar Bhattacharjee, if he was a State Government employee at that time or he had already retired from Government service. From the records produced before us by Mr. Chatterjee, Mr. Mitter referred to an undated letter written by Chandra Sekhar Bhattacharjee asking for the requisition of the said flat wherein he described himself as a retired West Bengal Civil Servant. The letter of the Hon"ble Minister, Land Utilisation and Revenue and Land and Land Revenue Department dated the 2nd July, 1978 containing his note pinned to the said letter to Chandra Sekhar Bhattacharjee does not refer to the said letter of Chandra Sekhar Bhattacharjee or to any other letter. The said note of the Minister therefore might not at all refer to the said letter of Chandra Sekhar Bhattacharjee or to any other letter. If that letter of Chandra Sekhar Bhattacharjee was his said application made in 1978, he was clearly not an employee of State Government at the time, Mr. Mitter also commented on the absence of any rubber stamp or other evidence, as is usual with Government Departments, to show that the said letter of Chandra Sekhar Bhattacharjee was received by the Deputy Secretary, Land and Land Revenue Department to whom the same was addressed or by his department. Mr. Mitter next urged that even if Chandra Sekhar Bhattacharjee was a Government servant, the question would still be whether the requisition was made for a public purpose.

16. Mr. Mitter contended that requisition for accommodating a Government servant was not per se a public purpose. To be a public purpose it had to be established that the requisition was in the interest of the public service and the opinion with regard thereto had to be formed by the State Government. Neither the order of requisition nor the affidavit of Bimal Kumar Bhattacharjee made on behalf of the appellants disclose anything to show that any such opinion was ever formed by the State Government nor any materials have been disclosed before this Court which could form the basis for the formation of such opinion. The affidavit of Chandra Sekhar Bhattacharjee also does not disclose any such material. This Court has laid down the tests which would establish a public purpose. In *Gobardhandas Jaiswal v. First Land Acquisition Collector* reported in (1958) 62 CW N 158 D.N. Sinha, J.: (as His Lordship then was) culled out from a decision of a Division Bench of this Court in *Satya Narayan Nathani Vs. State of West Bengal and Another*, the following tests to determine whether an order of requisition was made for public purpose or not;

(1) Merely saying that an officer of the State Government was sorely in need of accommodation was not sufficient.

(2) It must be shown that the Government servant in question had made every

possible effort on his own account to secure accommodation and such efforts had failed,

(3) It was necessary to establish that in order to ensure the efficient discharge of the duties of his office the particular Government servant in Question should find accommodation in Calcutta and could not come from the suburbs or from any of the neighbouring localities.

(4) A public purpose is a purpose which must include an object and aim in which the general interest of the community, as opposed to the particular interest of the individual, was directly and vitally concerned.

(5) A Government servant is in a sense a servant of the public and the public are interested in the proper discharge by him of his duties of office. But where the conditions of service of a Government servant do not require that accommodation had to be provided for him or there was nothing to show that there was some special reason for which it was essential to provide him with residential facilities or to find accommodation for him in a particular locality in order that he may be enabled to perform or perform efficiently the duties of his office, it would not be a public purpose to provide him with accommodation merely because he was in need of accommodation.

17. The above tests have been approved by a Division Bench of this Court in *Paresh Nath Nundi and Another Vs. State of West Bengal and Others*, .

18. Mr. Mitter urged that there is no material to show that Chandra Sekhar Bhattacharjee made every possible effort on his own account to secure an accommodation which failed. He is residing in a requisitioned flat in the same locality as the said flat. What is disclosed in the affidavit of Chandra Sekhar Bhattacharjee is that it was his individual interest which prompted the requisition, not general interest of the community. No special reasons have been disclosed for providing him accommodation in the said flat. It is not the case either of the appellants or of Chandra Sekhar Bhattacharjee that his conditions of service required the Government to provide him with an accommodation. None of the tests laid down in *Govardhan Jaiswal (1858 62 CWN 158)* (supra)) affirmed by the Division Bench of this Court in *Paresh Nath Nandi v. State of West Bengal* (supra) were therefore satisfied.

19. Mr. Mitter submitted that it has been laid down by this Court in *Chayarani Mukherjee Vs. Assistant Secretary to the Government of W. Bengal, Land and Land Revenue Dept. Requisition Branch and Others*, that the opinion of the Government as to the need for requisitioning a premises might be final but the factual existence of the public purpose was justiciable and the opinion of the Government in that behalf was not final and the appellants were bound to satisfy this Court on evidence that there existed a public purpose which they failed to do. In this context Mr. Mitter also cited an un-reported decision of a Division Bench of this Court in Appeal From Original Order No. 165 of 1972 entitled *P. Dutta v. Shri Basant Kumar Chokhani* where it was observed that so far as this

Court was concerned it was settled law that factual existence of public purpose was justiciable, It was further held that as providing accommodation for an Inspector of Police or Police Constables was not a condition of their service and it was not established that the same was absolutely necessary in the interest of general public, therefore no public purpose was disclosed. Mr. Mitter submitted that by the amendment of the definition of "Public purpose" in Section 2 (ff) by the Amendment Act of 1963 providing residential accommodation for employees of the State Government was made a public purpose only if it was in the interest of public service. But even before the said amendment this Court has held that the same might be a public purpose if the tests laid down by this Court were satisfied. Mr. Mitter submitted that the said tests although laid down prior to the said amendment would still apply to and govern cases of requisition both for Government and non-Government servants and to be a public purpose the need of the organisation or the department to which the employee was attached had to be established, the need of an individual employee was not at all a consideration in this regard. It was next contended by Mr. Mitter that Chandra Sekhar Bhattacharjee was neither a Government servant nor a State Government employee. He was a Special Duty Officer of the Corporation of Calcutta. u/s 47-A of the Calcutta Municipal Act, 1951, the State Government is authorised to depute by notification in the Official Gazette one or more officers who are or have been in its service to act as Special Duty Commissioner, Admittedly Chandra Sekhar Bhattacharjee was and is a retired West Bengal Civil Servant and he was deputed by the State Government as an officer who has been in its service to act as Special Duty Commissioner. u/s 47B of the Calcutta Municipal Act. 1951 the salary, allowances and other emoluments, pension or Provident Fund of such Special Duty Commissioners are payable out of the Municipal Fund. The position of a special Commissioner deputed u/s 47A of the Calcutta Municipal Act is similar to that of the Commissioner of the Calcutta Corporation, vis-a-vis the State Government. u/s 14 of the Calcutta Municipal Act, 1951 the State Government is authorised to appoint a person who is or has been an officer in its service by notification in the Official Gazette as the Commissioner and Section 20 provides that the salary and allowances of the Commissioner shall be paid out of the Municipal Fund. It has been held by a Division Bench of this Court in Gowardhandas Rathi Vs. Corporation of Calcutta and Another, that the Commissioner of the Corporation of Calcutta was not a Government servant as the State Government neither exercised any control over the discharge of his duties nor he was in the pay of the Government although the Government had control over his appointment, removal and functions outside as the Commissioner. The above decision of the Division Bench was based on a decision of the Supreme Court in K.C. Deo Bhani v. Raghu Nath Misra, reported in AIR 1953 SC 589 where the Supreme Court observed that for being in the service of the Government it was necessary that two essentials to the relationship of master and servant should exist. Firstly, the servant must have a duty to render personal service to the master or to others on his behalf and, secondly, the master must have right to control the servant's work either

personally or through another servant or agent. Neither of the said two essentials was present in the case of a Special Duty Commissioner deputed u/s 47A of the Calcutta Municipal Act, 1951, Although he was deputed by the State Government but he would perform such duties as may be assigned to him by the Commissioner and he was subject to the control of the Commissioner and his salary, remuneration, pension and provident fund are payable out of the Municipal Fund which was neither a Government fund nor a part of the State Exchequer and did not belong to the State. It was next urged that u/s 3(2) of the 1947 Act service of an order of requisition passed u/s 3(1) of the Act on the landlord and tenant was mandatory. The respondents in paragraph 14 of the writ petition have categorically stated that the order of requisition was not served on any of them. Admittedly, the respondent No. 1 is the landlord and the respondent No. 2 is the tenant under it and they clearly came within the definition of landlord and tenant as defined in Section 2 Clauses (c) and (g) respectively. The case of the appellants is that the said order was served on the respondent No. 2 by affixing a copy on the outer door of the said flat and another copy of the order was similarly served on Pradip Kumar Roy and Smt. Gouri Bala Roy. No case has been made out nor it is the case of the appellants that the said order was served on the respondent No. 1. Non-service of the said order on the respondent No. 1 the landlord, made the subsequent proceedings for possession of the said flat bad. It is not the case of the appellants that the respondent No. 2 refused to accept service of the order of requisition or the notice u/s 4(1) of the 1947 Act. When the officer is purported to have gone to serve the said order and the said notice on him, he was not at the said flat and, therefore, the same are alleged to have been affixed on the outer door of the said flat. Such service is not in accordance with the modes of service as provided in Rule 3 (2) (b) of the West Bengal Premises Requisition and Control Rules, 1947, Such service could be effected under the said rule only if the respondent No. 2 could not be found or was not readily traceable or if he could not be served without undue delay or if there was no adult male member to accept service. In paragraph 6 of the affidavit of Bimal Kumar Bhattacharjee the only case made out as to service on the respondent No. 2 is that both the order u/s 3(1) and the notice u/s 4(1)(a) were served by affixation as he was not found in the premises when the officer went there to serve. It is not the case of the appellants that he could not be found at all or was not readily traceable. There was no question of there being or not being any adult male member who could be served. Thus the alleged service on respondent No. 2 of both the impugned order and of the said notice was no service at all. Further the case made out in the said paragraph of the said affidavit as to service on Pradip Kumar Roy and Smt. Gouri Bala Roy, the owners of the said property, is also by affixation as they refused to accept service, was palpably untrue inasmuch as Gouri Bala Roy having died on February 10, 1972 could not have refused to accept service on the 6th June, 1979. The said allegations are verified as based on information derived from the records. Mr. Mitter referred to the records produced before us on behalf of the appellants wherein there is no service return by the process server nor any other

record as to service of the impugned order either on Pradip Kumar Roy or on Smt. Gouri Bala Roy on the 6th June, 1979 or on any other date either at No. 7 Abhoy Mitter Street, Sovabazar, Calcutta, their residence or at No. 167. Rash Behari Avenue, Calcutta, where the said flat is situate. It was therefore submitted that the story of service of the impugned order on Pradip Kumar Roy and Smt. Gouri Bala Roy, was disproved by the records. Mr. Mitter referred to Section 3(2) of the 1947 Act and urged that provisions of Section 4 of the 1947 Act did not or could not come into play unless the order u/s 3(1) was served on the landlord and the tenant. The appellant No. 3, the first Land Acquisition Collector, without service of the order of requisition on the landlord and the tenant, (sic) The impugned order to be effective and to enable the Collector to take further steps thereunder, the same had to be served on the persons sought to be affected so as to bind the parties thereby. Mr. Mitter relied on a decision of the Supreme Court in Bachhittar Singh Vs. The State of Punjab, where the Supreme Court observed that it was of the essence that the order had to be communicated to the person who would be affected thereby, before the State and that person could be bound by such order.

20. It was next urged by Mr. Mitter that the provisions of Section 4 of the 1947 Act for service of notice were not that a person would be made to vacate and be dispossessed and made to remove his articles and furniture without service on him of any notice to that effect. The proviso to Sub-section (1) of Section 4 which gives the Collector power to extend the time clearly goes to show that service of notice under the said section was mandatory. If the word "shall" was used in Sub-section (1) of Section 4 instead of the word "may" then the period specified therein would be unalterable and could not be extended. Therefore, to give effect to the power of extension of the said period, the legislature has advisedly used the word, may in Sub-section (1) of Section 4. Mr. Mitter also urged that the period, to vacate or to remove articles and furniture from the property requisitioned contained in Clauses (a) and (aa) of Section 4(1) were not the outer limits which could be abridged but the same were the minimum periods which had to be given for vacating or removing articles and furniture. It was a right or benefit granted to the owner and the occupier who could, however, vacate or remove articles and furniture within a shorter period at his option but the Collector was obliged to grant the periods mentioned in the said clauses. Even if the Collector had any discretion in the matter the same was coupled with an obligation to grant time to vacate or to remove articles and furniture and the word "may" should therefore be construed as "shall". Mr. Mitter relied on an unreported decision of my learned brother R.M. Datta, J. (Judgment delivered on the 28th May. 1976) in Matter No. 394 of 1973 entitled Elizabeth Stock v. Secretary, Land Utilisation and Reforms and on a decision of the Supreme Court in State of Uttar Pradesh Vs. Jogendra Singh, where the Supreme Court at page 1620 of the report observed as under:

"There is no doubt that the word "may" generally does not mean must or "shall". But it is well settled that the word "may" is capable of meaning "must" or "shall"

in the light of the context. It is also clear that where discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command."

21. Mr. Mitter next urged that the impugned order was not made bona fide and he relied on the allegations made in paragraphs 6 and 12 of the petition. In paragraph 6 it is alleged that the appellant No. 4 Rama Prosad Chakraborty, the Second Land Acquisition Collector, approached the respondent No. 1 for grant of a monthly tenancy of the said flat to him which was going to be de-requisitioned by the Central Government, representing that he was residing in a requisitioned flat but as he would soon retire from his service he therefore, wanted to have the said flat as a monthly tenant, which was not acceded to by the respondent No. 1. In paragraph 22 of the petition it is alleged that the impugned order has been issued mala fide at the instigation and instance of the appellant No. 4 and even after the 7th June, 1979, after forcible possession of the said flat had been taken by the appellants, the appellant No. 4 again approached the respondent No. 1 that if the said flat was given to him on a monthly tenancy the impugned order would be withdrawn but the respondent No. 1 was not in a position to grant tenancy to the said appellant as the said flat had already been let out to the respondent No. 2. There is neither any denial of the said allegations by the appellant No. 4 nor there is any specific traverse thereof even in the said affidavit of Bimal Kumar Bhattacharjee. The said allegations therefore remain uncontradicted and should, therefore, be deemed to be admitted. Mr. Mitter urged that the mala fides of the appellants are also amply proved by the undue haste with which possession of the said flat was taken for no justifiable reason. From paragraph 6 of the said affidavit of Bimal Kumar Bhattacharjee it would appear that the order of requisition was made on the 28th May, 1979 and was forwarded to the appellant No. 3 under cover of a letter dated the 29th/30th May, 1979, with instructions to obtain police help, although there was no cause for police help at the time. The said order was purported to be served on the owners and the respondent No. 2 the tenant and occupier on the 6th June, 1979 with a direction on them to place the property at the disposal and control of the appellant No. 3 on and from the 7th June, 1979. The notice u/s 4(1)(a) was purported to be served on the respondent No. 2 on the 6th June, 1979 directing him to vacate on or before the 7th June, 1979 at 10.30 a. m. and possession with the police help was taken on the 7th June, 1979, by breaking open the locks. Police help could only be taken by the authorities u/s 9 when there was a failure by the owner or the occupier to comply with the notice u/s 4(1)(a) of the 1947 Act. An order for police help could be obtained by the appellant No. 3 only under Clause (b) of Section 9 after applying to a Magistrate. There was no such application and before there was any failure to comply with the notice u/s 4(1)(a) the officers of the appellant No. 3 went with police force and broke open the locks and took forcible possession with the help of the police without taking recourse of the provisions of Section 9 of the 1947 Act, The writ petition was moved by the respondents on the 11th June, 1979 when the interim order for

maintaining status quo in respect of the said flat was obtained. No steps were taken by the appellants for vacating the interim order. These facts clearly established that there was no urgency at all. It was also urged that a combined order was made containing the orders u/s 3(1) and Section 4(1)(a) of the 1947 Act which could not be done.

22. It was contended by Mr. Anindya Mitra that there has been violation of the principles of natural justice in not giving a prior hearing to respondent No. 1 the landlord and to the respondent No. 2 the tenant before the impugned order of requisition was made. The principles of natural justice were applicable unless the same were excluded expressly or by necessary implication. By the impugned order the occupier or tenant is not only deprived of his accommodation but it also affected his right. The right of the landlord to let out the premises to a tenant of his choice is also equally affected. Principles of natural justice, therefore, required that before an order of requisition was passed the parties affected should be given a hearing although the statute did not specifically provide for such hearing. It was also argued that the proviso to Sub-section (1) of Section 3 of the 1947 Act provides that no premises exclusively used for the purpose of religious worship shall be requisitioned under the said section, Thus before requisitioning a property the authorities were obliged to enquire and find out whether the same was used exclusively for the purpose of religious worship or not and for such enquiry a hearing had to be given to the parties sought to be affected by the contemplated order of requisition. In support of the contentions reliance was placed on the following decisions:

(a) Madan Gopal Agarwal Vs. District Magistrate, Allahabad and Others, . Here an order of requisition of a property was made u/s 3 of the U. P. (Temporary) Accommodation Requisition Act, 1947. Section 3 of the said Act contains a proviso that no building or part of a building exclusively used for religious worship shall be requisitioned under the said section. The Supreme Court held that although the said Act did not contain any express provision for notice and hearing before making the order of requisition but the said proviso strongly suggested by implication of a notice and hearing.

(b) The Government of Mysore and Others Vs. J.V. Bhat and Others, , Here one of the questions was whether a prior hearing was necessary before a notification u/s 9 of the Mysore Slum Areas (Improvement and Clearance) Act, 1959, declaring an area as a clearance area u/s 9 and for demolition of the buildings therein or declaring an area as a slum area u/s 3 of the said Act is issued. There was not specific provision in the statute for giving a hearing to the persons affected by such notification. The Supreme Court observed that it was only when there was nothing in the Statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "audi alteram partem" rule could be imported, although the nature of hearing would vary according to the nature of the function and what its just and fair exercise required in the context

of the rights affected.

(c) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . Here, the Supreme Court observed as under: (Paras 72 and 76)

"We consider it a valid point to insist on observance of natural justice in the area of administrative decision-making so as to avoid devaluation of this principle by "administrators already alarmingly insensitive to the rationale of audi alteram partem"..... Wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequatur. Silence of a statute has no exclusionary effect except where it flows from necessary implication".

(d) State of Punjab and Another Vs. Gurdial Singh and Others, . Here, Krishna Iyer, J., observed as under in the context of an acquisition under the Land Acquisition Act, 1894. (at P. 323 of AIR).

"Compulsory taking of man's property is a serious matter and smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this Administrative fairness is constitutional anathema except for flood reasons."

(e) Bhibhuti Bhusan Chakraborty v. State of West Bengal reported in (1980) 84 359 cwn where this Bench held that the sanction granted by the State Government u/s 197 of the Cri. P. C. to prosecute the appellant solely upon the version of the complainant, when such sanction was refused twice before, on the same facts, was in violation of the rules of natural justice, having been made without giving the appellant an opportunity to make a representation before granting the sanction when he had acquired an immunity from prosecution by virtue of refusal of the sanction on two previous occasions although no such hearing was required to be given if sanction had been granted on the first application for the same made by the complainant.

23. Mr. Mitra next referred to Clauses (a) and (b) Sub-section (3) of Section 3 of the 1947 Act whereunder the State Government with a view to requisitioning any premises under Sub-section (1) of Section 3 was authorised to direct any person to furnish information in his possession relating to the premises as may be required and also to direct for a specified period the landlord, the tenant or any other person in occupation of the premises not to let out the premises without the permission of the State Government or such other authority as may be specified.

24. Mr. Mitter submitted that there is no such provision in the 1948 Act. The above provisions clearly show that in requisitioning a property under the 1947 Act the State Government may take time to consider and decide whether such property should be requisitioned or not and it could therefore give a hearing to the owner or the landlord or tenant or the occupier of such property as the case

might be, before coming to a decision by maintaining statute quo in the meantime by making a prohibitory order u/s 3(3)(b) of the 1947 Act. It will appear from paragraph 5 of the said affidavit of Bimal Kumar Bhattacharjee that such a prohibitory order u/s 3(3)(b) of the 1947 Act was made in this case and was purported to be served on the owners of the said property. Thus there was no difficulty in giving a hearing in this case. The urgency and speed which is the main purpose and object of the 1948 Act is wholly absent in the 1947 Act. In interpreting the 1948 Act it is possible to hold that giving a hearing was barred by necessary implication because a requisition under the 1948 Act is made for the purpose of speedy acquisition of the property for the purposes which are of great urgency and national importance which might not wait or be delayed but that was not so under the 1947 Act. Thus it could not be said that the principles of natural justice in giving a hearing before making an order of requisition under the 1947 Act was excluded by necessary implication or that the 1947 Act was in *pari materia* with the 1948 Act.

25. There is no dispute that the respondent No. 1 Pulin Krishna Roy Estate (P) Ltd. is the lessee of the said flat and Chittaranjan Pal the respondent No. 2 is the tenant under it in respect of the said flat and the occupier of the said flat. No doubt Pradip Kumar Roy is and Gouribala Roy since deceased had been, the owners of the said flat but none of them could be said to be landlord thereof within the meaning of the said expression as defined in Section 2(c) of the 1947 Act in relation to the respondent No. 2.

26. Pradip Kumar Roy and Gouribala Roy as the Lessors of the said flat are no doubt landlords thereof in relation to the respondent No. 1 the lessee but none of them could be said to be the landlords of the said flat in relation to the respondent No. 2 who is a tenant under the respondent No. 1. In our opinion the expressions "landlord and tenant" as used in Sub-section (2) of Section 3 do not refer to the superior landlord or the tenant of the first degree but the tenant in occupation of the premises sought to be requisitioned and his immediate landlord, who are directly affected by an order of requisition made under Sub-section (1) of Section 3 of the 1947 Act. Admittedly the order of requisition was not served on Pulin Krishna Roy Estates (P) Ltd. the respondent No. 1 the landlord of the said flat. Under Sub-section (2) of Section 3 of the 1947 Act service of the order of requisition made under Sub-section (1) of Section 3 of the 1947 Act, both on the landlord and on the tenant, if the property is let out to tenant, is mandatory and non-compliance with such mandatory provision, in our opinion, makes all subsequent proceedings and actions taken under the order of requisition wholly unauthorised, illegal, and bad.

27. Rule 3 of the West Bengal Premises Requisition and Control Rules 1947 specifies the manner of service of orders made under the 1947 Act. It is necessary to set out the said rule.

"Manner of service of orders.

"3. (1) Save as provided in Sub-rule (2) an order under Sub-section (2) or Sub-section (3) of Section 3 shall be served by tendering and delivering a copy thereof to the person on whom the order is to be served.

(2) Where--

(a) the person to whom a copy of the order to be served is tendered under Sub-rule (1) refuses to accept delivery thereof, the order may be served by fixing a copy thereof on the outer door or some conspicuous part of the premises in which such person ordinarily resides or carries on business or by sending the same by registered post with acknowledgement due or in any other manner as enumerated in Clause (b) of this sub-rule;

(b) the person on whom the order is to be served cannot be found or is not readily traceable and the order cannot be otherwise served without undue delay the order may be served on any adult male member of the family of such person residing with him, and if no such adult male member can be found or if such member refused to accept delivery thereof, the order may be served by fixing a copy thereof on the outer door or some conspicuous part of house in which the person therein named ordinarily dwells or carries on business or by publishing the order in the Calcutta Gazette and if practicable by fixing a copy thereof on the outer door or conspicuous part of the premises to which it relates or by fixing a copy thereof on the notice board in the office of the Collector and if practicable on the outer door or some conspicuous part of the premises to which it relates as the Collector, may deem fit in the circumstances of the case.

(c) If the ownership of the premises is in dispute the order may be served by publishing it in the Calcutta Gazette, and by fixing a copy thereof on the outer door or some conspicuous part of the premises to which it relates or by fixing a copy thereof on notice board in the office of the Collector, and if practicable also on the outer door or some conspicuous part of the premises to which it relates as the Collector may deem fit in the circumstances of the case."

28. Under the said Rule the primary mode of service of an order is by tendering and delivering a copy thereof to the person intended to be served as provided in Sub-rule (1). Under Clause (a) of Sub-rule (2) in case of refusal to accept service by such person the service may be effected by affixing a copy on the outer door or some conspicuous part of his residence or his business premises or by sending it by registered post with acknowledgement due or in any other manner enumerated in Clause (b) of Sub-rule (2). Under Clause (b) if the person intended to be served with the order cannot be found or is not readily traceable or cannot be otherwise served without undue delay the service could be effected on an adult male member of the family and in case such adult member cannot be found or he refused to accept service it may be served by affixing a copy on the outer door or some conspicuous part of his residence or business premises or by publishing the order in the Calcutta Gazette and if practicable by affixing a copy on the outer door or conspicuous part of the premises sought to be requisitioned

and also affixing a copy in the notice board in the office of the Collector.

29. Clause (c) has no application here as there is no dispute as to ownership of the said flat. In the writ petition service of the order of requisition and of the notice u/s 4(1) of the 1947 Act has been specifically challenged. In paragraph 6 of the said affidavit of Bimal Kumar Bhattacharjee it is stated that the order of requisition was served on the respondent No. 2 on the 6th June, 1979, by affixing as he was not found in the premises in question. It is not the case of the appellants that there was any refusal to accept service of the order of requisition or of the notice under Clause (a) of Sub-section (1) of Section 4 of the 1947 Act.

30. From the records produced before us on behalf of the appellants there is a copy of the order of requisition with an endorsement made on its back by the process server one Md. Yusuf on the 7th June, 1979, that he went to the said flat on the 6th June, 1979 and came to know that the person intended to be served with the order did not reside there and therefore he effected service by affixing a copy on the outer door of the premises. Nothing is stated who were his informants or what enquiries, if any, did he make. In our opinion, it is only when there were attempts to find a person at different hours of the day but he could not be found at any time, then only it could be said that the said person could not be found. But that was not the case here. No case has been made out either in the said affidavit of Bimal Kumar Bhattacharjee or in the said endorsement of the process server that respondent No. 2 could not be found or was not readily traceable and that the order could not otherwise be served on him without undue delay. In our opinion, the conditions precedent for service by affixing a copy of the outer door of the residence as provided in Rule 3 of the said Rules were not satisfied in effecting service of the order of requisition on the respondent No. 2. The service of the notice u/s 4(1)(a) of the 1947 Act on the respondent No. 2 was also effected on the same date exactly in the same manner and the endorsement of the process server is a verbatim copy of the endorsement as made at the back of the copy of the order of requisition. For the same reasons the said notice also cannot be said to have been validly served on the respondent No. 2.

31. With regard to service of the order of requisition on Pradip Kumar Roy and Gouribala Roy the owners, the case made out by Bimal Kumar Bhattacharjee in paragraph 6 of the said affidavit is that the same was served on the 6th June, 1979 on the said persons by affixing as they refused to accept service which is verified as based on information derived from the records in the office of the First Land Acquisition Collector, Calcutta the appellant No. 3. That Gouribala Roy had died on February 10, 1972 is neither denied nor disputed by the appellants. The only complaint made by Bimal Kumar Bhattacharjee in the said affidavit is that no intimation of her death was communicated nor any change of right or interest was intimated to his office. Neither we could find nor the learned Advocates for the appellants could find from the said records produced before us any document evidencing service of the said order either on Pradip Kumar Roy or on Gouribala

Roy on the 6th June, 1979 or on any other date. Thus there is no evidence that the order of requisition was at all served on Pradip Kumar Roy. The same could not have been served on Gouribala Roy at all as she was already dead. Admittedly the said order was not served on the respondent No. 1 the landlord of the respondent No. 2 Chittaranjan Paul. Thus there being no service of the order of requisition either on the landlord or on the tenant of the said flat which is mandatory under the provisions of Sub-section (2) of Section 3 of the 1947 Act all subsequent proceedings and actions taken under the said order of requisition were wholly unauthorised, illegal and bad.

32. Although Mr. Chatterjee urged that the provision for notice under Sub-section (1) of Section 4 of the 1947 Act was directory and not mandatory but he, however, candidly admitted that some notice had to be given to the landlord or the tenant to vacate the property requisitioned and to remove the articles and furniture lying therein. That apart, it is inconceivable that a person would be required to vacate or to remove his articles and furniture without being asked to do so and without any notice in that behalf. Thus much of the force of the contention of Mr. Chatterjee that the provisions of Section 4(1)(a) and (aa) as to service of notice being directory is taken away. Section 9 of the 1947 Act provides, inter alia, that a person failing to comply with an order under Clause (a) of Sub-section (1) of Section 4 may be forcibly removed from possession, while under Sub-section (2) of Section 4 in case of failure to comply with an order under Clause (aa) of Sub-section (1) of Section 4 by any person the Collector is authorised to remove and store the furniture and articles and to sell them by public auction. The above provisions clearly indicate that unless a person, required to vacate the property under requisition and to remove the furniture and articles lying therein, was served with a notice u/s 4(1)(a) or (aa) of the 1947 Act, there could be no question of or occasion for his being forcibly removed from such property or his articles and furniture being forcibly removed and sold away. A property is requisitioned for a public purpose and a person in occupation thereof has therefore to vacate the property and to remove his furniture and articles therefrom so that the order of requisition could be given effect to, except however, in cases where the requisition is made to accommodate the person or authority already in occupation of the requisitioned property. It would be an absurd proposition that an order of requisition would be made but it would not be given effect to and the person in occupation thereof would continue in occupation. The order of requisition could be given effect to only by directing the person in occupation to vacate the property and if there be any furniture, or articles to remove the same, This can only be done by making an order u/s 4(1)(a) and (aa) of the 1947 Act and by serving a notice on him under the said provisions. Thus although the expression "may" has been used in Sub-section (1) of Section 4 the same cannot but mean "shall" or "must" and the provisions of Sub-section (1) of Section 4 of the 1947 Act are therefore mandatory and not directory.

33. We are unable to accept the contention of Mr. Chatterjee that the period of

ten days for vacating the premises as provided in Clause (a) of Sub-section (1) of Section 4 or the period of fifteen days for removing the articles and furniture as contained in Clause (aa) of the said section, were the outer limits of the notice and such notice could be shorter than ten days, or fifteen days, as the case might be.

34. I am in respectful agreement with the view expressed by my learned brother R.M. Datta, J. in *Mrs. Elizabeth Stock* (supra) that the said period is the maximum time given to the occupier or the landlord as the case may be although they might vacate or remove the furniture and articles within a shorter period as well, but that was an option given to the occupier or the landlord as the case might be and not a right given to the Collector, The Collector was bound to comply with the period specified in Clauses (a) and (aa) of Sub-section (1) of Section 4 of the 1947 Act and he was bound to wait until the expiry of the said period, to proceed further in the matter, if the property under requisition was not vacated or the furniture and articles were not removed.

35. If the intention of the legislature was that the Collector could in his discretion abridge the said periods then the provision would have been that the Collector may by notice in writing: (a) order the person in occupation to vacate the premises within such period not exceeding ten days from the service of the order and (aa) order the landlord or the tenant as the case may be to remove the furniture or other articles, if any, lying therein, within such period not exceeding fifteen days from the service of the notice.

36. Admittedly the said flat was under requisition by the Central Government under the Defence of India Rules. It has never been the case of the owner or the lessee or the tenant of the said flat that the same ever was or is used exclusively or otherwise for the purpose of religious worship so that the said flat could not be requisitioned under the 1947 Act. Thus there may not be any question of giving a hearing to the owner or the lessee or the tenant of the said flat on that ground before the order of requisition was made.

37. It is not in dispute that factual existence of public purpose as made out by the appellants before this Court is justiciable and has to be proved by the authorities when the same is under challenge in a Court of law, although it is not necessary to set out or disclose the nature of the public purpose in the order of requisition. In *The State of Bombay Vs. R.S. Nanji*, the Supreme Court observed that it was impossible to precisely define the expression "public purpose" and whether a public purpose was established or not had to be found on a close examination of all the facts and circumstances of each case and although prima facie the Government was the best Judge as to whether public purpose was served by issuing the order of requisition but it was not the sole Judge, The Courts have jurisdiction and it was their duty to determine the matter whenever a question was raised whether a requisition order was or was not a public purpose,

38. Let us therefore examine the facts and circumstances of this case and find out whether a public purpose has been established or not. But before we embark upon such examination, it would only be proper to have a look at the definition of "public purpose" under the 1947 Act.

39. "Public purpose" as denned in Sub-section (ff) of Section 2 of the 1947 Act includes requisition for providing residential accommodation for employees of the State Government where the provision of such accommodation is, in the opinion of the State Government, necessary in the interest of public service. Thus under the above definition the requisition of a property for providing residential accommodation for an employee of the State Government would be for a public purpose only when the same was in the interest of public service and an opinion in that behalf was formed by the State Government, The only affidavit that was filed on behalf of the appellants in the Court below, in opposition to the writ petition was the affidavit of Bimal Kumar Bhattacharjee, wherein apart from merely stating that the said flat was requisitioned for the public purpose of accommodating Chandra Sekhar Bhattacharjee who is a public officer being a retired W. B. C. S. but appointed by the State Government as a Special Officer to the Corporation of Calcutta, nothing has been disclosed to show why it was necessary to accommodate Chandra Sekhar Bhattacharjee in the said flat for which the said requisition became necessary or what was the interest of public service that was sought to be served by accommodating Chandra Sekhar Bhattacharjee in the said flat. It is not even stated that the said requisition was in the interest of public service or that the State Government ever formed any such opinion. The records which have been produced before us on behalf of the appellants also do not contain anything which could show that the said requisition was in the interest of public service or that any such opinion was ever formed by the State Government, The affidavit of Chandra Sekhar Bhattacharjee filed pursuant to the directions given by the Appeal Court also does not advance the case any further. He has merely alleged that due to the difficulties and inconvenience experienced by him for acute shortage of accommodation in the flat he is occupying, he found it extremely difficult to maintain the high standard of work required of him in discharge of his functions as the said Special Officer. The work required of him to be discharged, are stated by Chandra Sekhar Bhattacharjee in his said affidavit as hearing assessment cases under the provisions of the Calcutta Municipal Act and to decide the same after hearing the parties including objections raised by them, Presumably he is not required to discharge such duties and functions at his residence but at his office. It is not understood how his work and discharge of duties would be affected on account of some inconvenience or some difficulties which he might fee facing in the flat where he is staying and why the standard of his work would be affected thereby. He has not disclosed anything in support of his case that the roof of a bed-room or of the kitchen is leaking. There is neither any complaint nor any step was ever taken by him in the matter. None of the tests as laid down by this Court in Govardhandas Jaiswal (1958-62 CWN 158) (supra) to establish public purpose is

satisfied in this case. Chandra Sekhar Bhattacharjee is residing in the same locality where the said flat is situate. Neither the appellants have made out any case nor do the records produced disclose anything which might go to show that it was necessary for the State Government to provide another residential accommodation for Chandra Sekhar Bhattacharjee for which the said flat had to be requisitioned. Merely because the flat where he is residing was inconvenient or there were some difficulties therein or that he required the said flat for his individual necessity or requirement would not be a public purpose for which the said flat could be validly requisitioned. Apart from a bald statement that he engaged brokers to find a flat there is nothing in the affidavit of Chandra Sekhar Bhattacharjee disclosing what efforts, if any, were made by him to procure an accommodation or that such efforts had failed. Merely because Chandra Sekhar Bhattacharjee wanted a larger flat or the said flat was one of his choice would not make the order of requisition for a public purpose. It is neither the case of the appellants nor has anything been shown to the Court by them that the State Government was under any obligation statutory or otherwise to provide accommodation to Chandra Sekhar Bhattacharjee. In our opinion, the appellants have failed to establish that the said order of requisition was made in the interest of public service so that the same could be said to be for a public purpose. The said flat was requisitioned by the State Government for providing accommodation to Chandra Sekhar Bhattacharjee a retired State Government employee but deputed by the State Government to act as a special duty Commissioner of the Corporation of Calcutta whose salary, allowances and other emoluments are paid and whose pension and provident fund are to be paid from the municipal fund and not by the State Government nor from the State exchequer. Although the State Government has control over his appointment and removal but it has no control over the discharge of his duties nor he is in the pay of the State Government as such Special Duty Commissioner. He is under the control of the Commissioner of the Corporation of Calcutta in the discharge of his duties. There is therefore no relationship of master and servant between him and the State Government.

40. Similar is the case with the Commissioner of the Corporation of Calcutta. In *Gowardhandas Rathi Vs. Corporation of Calcutta and Another*, this court held that the Commissioner of the Corporation of Calcutta was not in the service of the State Government, and there was no relationship of master and servant between the State Government and the Commissioner of the Corporation of Calcutta. For the same reasons Chandra Sekhar Bhattacharjee as the Special Duty Commissioner of the corporation of Calcutta could not be said to be an employee of the State Government so that requisition of the said flat for providing accommodation to him could be said to be for a public purpose within the meaning of the said expression as defined in Clause (ff) of Section 2 of the 1947 Act.

41. On the views that we have taken it is not necessary to go into or decide the other points urged by the parties before us and we do not express any opinion

there. For all the above reasons the appellants cannot succeed in this appeal. The appeal is accordingly dismissed with costs. Interim order made herein is vacated.

Ramendra Mohan Datta, J.

42. I agree.