

(1979) 02 BOM CK 0001

In the Bombay High Court

Case No : O.C.J. Appeal No. 12 of 1976 and Miscellaneous Petition No. 857 of 1970

The State of Maharashtra

APPELLANT

Vs

Ibrahim Ismailji Nagree

RESPONDENT

Date of Decision : 07-02-1979

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 6(4)(a)

Citation : (1980) 82 BOMLR 19 : (1979) MhLj 486

Hon'ble Judges : Deshmukh, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deshmukh, C.J.—The appellants, the State of Maharashtra, requisitioned the disputed premises by an order dated December 30, 1949 under the provisions of the Bombay Land Requisition Act, 1948 (hereinafter referred to as "the Act"). In the order of requisition no specific purpose was mentioned, though the order purported to be one under Clause (a) of Sub-section (4) of Section 6, for public purpose. This order was addressed to the two landlords, respondents Nos. 1 and 2 and to respondent No. 3, who was the proposed allottee. A copy thereof was endorsed to R-3, B.G. Dholakia, an Executive Engineer, Electric Grid Office in the State of Maharashtra; By another order bearing the same date, the premises was allotted to Dholakia. After having occupied the premises for about ten years, Dholakia vacated them, Soon after Dholakia left, the premises was "allotted by another order dated May 7, 1959 to the present respondent No. 3.

2. Respondents Nos. 1 and 2 objected to the allotment of the premises in favour of respondent No. 3 by their letter dated June 27, 1959. The Government replied to the respondents by their letter dated July 13, 1960, and stated" that the allottee was a homeless person, After having waited for more than ten years, respondents Nos. 1 and 2 filed a writ petition on the Original Side of this Court on December 19, 1970, They explained the delay by pointing out that till 1970

until the *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, was decided the earlier judgments of the Supreme Court in the case of *A.K. Gopalan Vs. The State of Madras*, , and *The State of Bombay Vs. Bhanji Munji and Another*, , held the field. It is after the judgment of the Supreme Court in the *Bank Nationalisation* case that they could specifically challenge, the constitutional validity of the Act and the order passed thereunder.

3. In the petition they raise principally two or three points for the consideration of the Court. One was that the original order of requisition was for a specific purpose of housing a Government servant. After Dholakia left, the purpose of requisition got itself exhausted and the order of requisition also got exhausted. So far as the allotment to respondent No. 3 is concerned, it was pleaded that he was not a homeless person, and the allotment to him was bad on facts. A legal question was also raised as an alternative that even if he is shown to be a homeless person, the original requisition order being for the purpose of accommodating a Government servant and that purpose having exhausted itself, no allotment could be made in favour of respondent No. 3. Such a course could not be followed under the provisions of the Act.

4. Respondent No. 3, who was the beneficiary under the second allotment, never filed any affidavit at all. The State of Maharashtra justified its order by pointing out that the original order was a general order of requisition! without indicating a particular public purpose. It was open to them to allot the premises in such a manner that the allotment always continues to be for public purpose, The allotment to Dholakia was an allotment to a Government servant, which was obviously an admitted public purpose. The subsequent allotment was to a homeless person and accommodating a homeless person is also a public purpose. So long as the allotment continues to be for a public purpose, the requisition order remains in force. On facts, it was pleaded that respondent No. 3 was in fact a homeless person, On these pleadings and after hearing the parties, the learned single Judge came to the conclusion that respondent No. 3 was admittedly not a Government servant and was also not shown to be, by satisfactory evidence, to be a homeless person. The allotment to respondent No. 3 was, therefore, to a person who was not shown to be a homeless person. Such an allotment in the year 1959 showed that the original order of requisition got itself exhausted. The occupation by respondent No. 3 was unauthorised. The learned Judge also rejected the challenge on the ground of delay or laches and held that the pleadings in para. 9 of the petition gave good ground for the original petitioners to file the petition for the first time in 1970. The learned Judge, therefore, allowed the writ petition and declared the requisition order as exhausted and quashed the same. Being aggrieved, the State of Maharashtra has filed this appeal.

5. All the points, that are raised before us, except the one which is separately mentioned, are covered by the earlier judgments of this Court. In fact, the learned single Judge has followed the two judgments, one by a single Judge and

the other by a division Bench which has confirmed that judgment. There is, a third judgment given by a division Bench viz. Rangubai Pandurang Joshi Vs. The State of Maharashtra, , which also takes the same view, though in a slightly different context. The question that is really posed under the Act is the nature of the Government's right to requisition the premises and to make use thereof. Section 6, which has already been interpreted, clearly points out that when the conditions of that section are fulfilled, the Government has a right to requisition the premises for "any public purpose", "and may use or deal with the premises for any such purpose". This is provided by Clause (a) of Sub-section (4) of Section 6. Initially, when the Act came into force, the Government's order always stated that the premises stood requisitioned under the provisions of Section 6(4)(a) of the Act. There was no reference to "public purpose" either in a general manner or a specific reference to a particular public purpose. However, the subsequent directions issued in the matter of allotment showed that the premises were allotted either to a Government servant or on occasions to a homeless person. This Court, therefore, construed, in the earlier decided cases, that the order of allotment immediately following the order of requisition can be read together and it could be safely concluded that the Government requisitioned the premises for a particular public purpose for which the allotment was made. When those orders were being challenged on the ground that the requisition is bad for want of reference to public purpose, the plea of the Government was accepted, and it was held that the order need not be held bad simply because, on the face of it, it does not disclose the public purpose. If, however, the public purpose can be proved and it could be shown to exist when the order was made, it could be upheld. Since a large number of petitions were filed agitating that point, the Legislature took care to amend the Act itself in consonance with the pronouncements of this Court, which were ultimately confirmed by the Supreme Court.

6. Section 21 was added, which declared that the absence of the mention of the public purpose in the requisition order shall not be a ground for challenging the validity of that order, provided it is shown that such purpose did exist and the order was passed for such a public purpose. One of us, Madct J,, while deciding the case of Ahmed R.V. Peermahomed v. The State of Maharashtra (1969) Miscellaneous Petition No. 747 of 1968, decided by Madon J., on September 5, 1969 (Unrep.), was called upon to construe the provisions of Section 6(4)(a). The facts of that case are almost identical with the facts of the present case, the requisition order did not mention the particular public purpose, but the copy of the order was endorsed to a Government servant.. On the same day by a separate allotment order the premises was allotted to the same Government servant for his use and occupation. The first conclusion drawn thereof is that the requisition was valid as it was for a particular public purpose of accommodating a Government servant. After that Government servant retired from service, the premises were allowed to be continued with his wife and children. It was at that stage that challenge was thrown to the continuance of the requisition order on

the ground that the particular public purpose for which the order of requisitioning the premises was made exhausted itself and the order became hereafter ineffective and a mandatory injunction was claimed requiring the Government to hand them back to the original owners in the same condition in which the Government had requisitioned the said premises thereof. The main defence raised on behalf of the Government was that the actual occupants of the premises may not be Government servants, but were homeless persons. To accommodate homeless persons in a requisitioned premises was also a public purpose. So long as, the requisitioned premises were being put to some public purpose, it could not be said that the original order had now exhausted itself or had become ineffective. It is precisely for this purpose that the provisions of Section 6(4)(a) were construed to mean that a requisition order should be made each time the premises is requisitioned for a public purpose or for a specific public purpose. Assuming that providing accommodation for a homeless person is a public purpose, it is undoubtedly a different category of public purpose than requisitioning the premises for a Government servant. The main argument that is again tried to be pressed before us is that the exception of Section 6(4)(a) is not that the order shall relate to some specific public purpose, so long as the Government is putting the requisitioned premises to the use of some public purpose from time to time, it should be possible for the Government to continue the requisition order and it is not necessary that each time the requisition must be made for some specific public purpose. This question in the present form is not answered in the earlier judgments, though it was considered at one stage.. Madon J. in his judgment in Ahmed R.V. Peermahomed. v. The State of Maharashtra has actually come to that conclusion, on the construction of the provisions of Section 6(i4)(a). When that matter was taken in appeal to a division Bench to The State of Maharashtra v. Ahmed R.V. Peermahomed (1969) O.C.J. Appeal No. 148 of 1969 decided by Palekar and Vaidya JJ,, on November 27, 1969 (Unrep.), the division Bench consisting of Palekar J. as he then was and Vaidya J., the, learned Judges took notice of the point,. They also expressed that public purpose could be of various kinds. If the premises are requisitioned for one kind of public purpose, it may be a matter of serious complaint if the requisitioned premises are used for any other purpose. They further say that they had their doubt as to whether a requisition made for one kind of public purpose could be used for another kind of public purpose. However, they did not go to the logical end of their reasoning. They found that the persons in actual occupation were not shown-to be homeless persons at all. Assuming, therefore, that the premises requisitioned for accommodating a Government servant could be utilised for accommodating a homeless person after the need of the Government servant is cover, it must be shown that basically the person accommodated is a homeless person. Since they accepted the finding of fact of the learned single Judge that the person in occupation was not a homeless person, there was no occasion for the Government to utilise the premises for any other public purpose. If the person to whom the requisitioned premises were allotted Was not a homeless person, the requisitioning of the premises for total

want of any public purpose would, be unauthorised. When the public purpose as such comes to an end, it was the bounden duty of the Government to derequisition" the premises and return them to the original owner.

7. Strictly speaking, so far as the facts of the present case are concerned, the position which now develops is the same. The learned single Judge whose judgment is under appeal has held that the original requisition order mentioning no purpose at all could be treated as a requisition for the public purpose, for accommodating a Government servant. He drew this conclusion from two circumstances. One was that the copy of the order was endorsed along with the land-lords to one Mr. Dholakia, an executive engineer in the service of the Maharashtra State. The other circumstance was that on the date of the passing of the requisition order, an allotment order was issued in the name of Dholakia. Since the Government requisitioned the premises and immediately allotted to a Government servant after having endorsed a copy of the order to that Government servant, the learned single Judge concluded that it was safe to assume that the public purpose for which the said order was made was to utilise the said premises for the use of a Government servant. He also noticed that the learned Counsel for the State in the trial Court conceded that that could be the correct position. We think that the concession must have been made in view of the provisions of Section 21 of the Act. The Legislature clarified the position by adding two sub-sections to Section 21, each of which is important. Subsection (1) declares that even though a particular public purpose is not mentioned on the face of the Order the validity of that order could not be challenged, if evidence is led to show that a public purpose existed to which the requisition order is related. Clause (b) of Sub-section (2) further directs that-

(2) Nothing contained in this section shall -...

(b) preclude any Court from requiring the State Government-or the Officer who made such order for requisition to produce before it evidence to show that the order for requisition was in fact made for the purpose of the State or any other public purpose.

This language of Clause (b) of Sub-section (2) of Section 21 owes its existence to similar language used initially in Section 6(4)(a). However, there was a further amendment of that clause, and the present provisions permitted the State Government-to requisition, the premises for "any public purpose." This expression Would now include either purpose of Government or any other public purpose.. If the provisions of Section 21 thus-cast an obligation upon the Government or the officer requisitioning the premises to justify the public purpose, if on the face of die order the purpose is not mentioned and also clothe the Court to compel the Government to disclose the record, it is but fair that the Government Pleader states before the Court the particular public purpose for which a particular order is passed. When the learned single Judge, therefore, drew: his conclusion that-the premises were requisitioned for the public purpose of housing a Government servant, the Government Pleader was under obligation

to "disclose the record and from the" record the Judge could find that for a considerable long time the premises were not used for the public purpose for which it was made and, "therefore, it exhausted itself, the Government Pleader had to concede that that would be the proper conclusion to draw.

8. If this is so, the public purpose of accommodating a Government servant seems to have exhausted itself or come to an end in the year 1959, when Dholakia vacated the premises. During the course of arguments, the learned Counsel for the State posed the question as to whether some other Government servant could have been accommodated after Dholakia left. However, the legal position appears to be clear. We need not give reply to the query for the simple reason that no other Government servant was accommodated. As a matter of fact, what is done in this case is that the premises were handed over to respondent No. 3 on the ground of being a homeless person. He continued to occupy them, until the present writ petition was filed and also during the continuance of the petition. This subsequent order of allotment to respondent No. 3 is challenged on two substantive grounds—one is that accommodating a homeless person is not the purpose for which the premises were requisitioned and such a change of purpose could not be brought about by mere allotment order. If the original purpose is exhausted, the premises must be derequisitioned. The second of the factual grounds raised is that the allotment is not to a homeless person at all. On this point the learned single Judge has come to a conclusion, and in our view rightly so, that respondent No. 3 is not shown to be a person who answers the description of being homeless. In the petition at paragraph 4 there is a specific pleading that respondent No. 3 was staying in a building known as "Deccan Lodge". Respondent No. 3, who was respondent No. 2 before the learned single Judge, did not care to put in any return at all. The officer from the Requisition Department, who signed the affidavit in reply, merely makes a vague statement that respondent No. 3 was found to be homeless and, therefore, accommodated. The learned trial Judge concludes that in the face of a specific charge on oath by the original petitioners, the landlords, this vague reply of the officer of the Government could not serve as proof and was not sufficient to hold that respondent No. 3 was a homeless person. Respondent No. 3 alone could have had personal knowledge of the nature of accommodation he had. Since he did not file any reply and the Government's affidavit is as vague as any affidavit could be, the learned single Judge was correct in concluding that respondent No. 3 is not shown to be a homeless person at all. In the face of this finding and in view of the judgments, to which we have already referred, there seems to be no substance in the appeal at all. The original public purpose of accommodation to a Government servant was over almost eleven years before the filing of the petition. The person to whom the premises were allotted must be deemed to be an unauthorised allottee in the sense that allotment to such a person who was not shown to be homeless was not a public purpose and the requisitioned premises cannot be utilised for a non-public purpose. * On this short ground alone, the appeal deserves to be dismissed.

9. Assuming, however, that this conclusion on facts is not correct, it would be appropriate to answer the point of law raised before us for our consideration. We have said that in an earlier judgment by one of us, Madon J., in *Ahmed R.V. Peermahomed v. The State of Maharashtra*, he did conclude that the particular public purpose for requisition must also be the public purpose for the utilisation of the premises. In other words, the wording of Section 6(4)(a) casts an obligation upon the Government to decide a public purpose, in the first instance, when certain premises are found vacant for the purpose of requisition and then requisition them only for that particular purpose. In the present case, though the order is not explicit, it is now concluded that the present order of requisition was one for accommodating a Government servant. Could such premises be utilised later on for the use of a non-Government servant, who is being described as a homeless person? It has now been held by the Supreme Court that housing a homeless person would be a public purpose. After the original purpose was over, viz. accommodating a Government servant, if the intention was to accommodate a homeless person the purpose undoubtedly would be a public purpose. The pointed question that arises is whether the provisions of Section 6(4)(a) of the Act, under which the requisition order had been passed, permit the Government to use the premises for some other public purpose than the one for which the order of requisition was passed? In our view, this could not be done. The language of Section 6(4)(a) is, in our view, clear enough. Under Clause (a) the Government may by an Order in writing requisition the premises for "any public purpose". Pausing here for a moment, it appears that there is no restriction on the choice of a public purpose for which the Government could requisition the premises. It is enough if the purpose is shown to be a public purpose. What follows is very important. The further portion of that clause vests the Government with the power to make use or deal with the premises "for any such purpose" in such manner as may appear to it to be expedient. The choice of the manner and expediency are permitted only when the use is being made "for any such purpose". Having therefore given the initial choice of purpose, which could be "any public purpose", it is that purpose which is now "such purpose" for which the premises could be utilised. The manner of utilisation is again left to the discretion of the Government, as it may appear from the circumstances. On the plain language of Section 6(4)(a), we have no doubt that each requisition order must relate to a specific public purpose and the utilisation of the premises so requisitioned must be towards that public purpose and none else.

10. We think there are good reasons why the State Legislature has chosen this language. In the first instance, the order is justiciable in the sense, the landlord could challenge an order of requisition by pointing out to the High Court in a writ petition that the alleged purpose for which the requisition is made is not a public purpose at all. If a landlord has to raise that challenge, he must first be informed of the purpose for which the property is being requisitioned. Then again the property of a citizen is being requisitioned and not acquisitioned under this Act. By the very nature of things, the requisition would be a temporary phase. So

long as the expediency of requisitioning the premises existed, the statute would continue to operate. If by some good fortune and chance the pre-1930 position arises where on every alternative house a sign-board of vacancy appeared, we assume that the Requisition Act would be scrapped. The point is that the requisition of the property of a private individual is a temporary phase. If that is so, he has a right to claim back the property u/s 9, the moment the particular public purpose for which the requisition order was passed is exhausted or no more in existence. Since requisition is permitted with reference to a particular public purpose, it would continue to be operative so long as that purpose exists. We are, thus, satisfied that the use of the language in Section 6(4)(a) is deliberate and it must be given its due effect.

11. In the present case, the Government Servant seems to have handed over the premises in the year 1959. A person, who is not a Government servant, is permitted to occupy the premises, almost permanently thereafter until the order was quashed by this Court. This long user by a non-Government servant on the basis of the allotment order of the Government itself proves conclusively that the original purpose had exhausted" itself so far as these premises are concerned. Apart from the factual aspect, to which we have already referred," even on this approach about the real meaning and intent of the provisions of Section 6(4)(a), the landlords, respondents Nos. 1 and 2, are entitled to a judgment in their favour. We are entirely in agreement with the reasoning of the learned single Judge in Ahmed R.V. peermahomed v. The State of Maharashtra and the order of the division! Bench confirming that judgment in The State of Maharashtra v. Ahmed R.V. Peermahomed.

12. The last point raised by the learned Counsel for the State was that the original petition challenging the requisition order was filed after considerable delay. Immediately after respondent No. 3 was inducted into the premises, a letter of complaint was written. It was replied to by the Government by stating that they have every right to allot the premises to a homeless person. The learned single Judge has pointed out towards the close of his judgment that one of the reasons which enabled the petitioners to raise constitutional challenge to the provisions of Section 6(4)(a) was the judgment of the Supreme Court in the Bank Nationalisation case (R.C. Cooper v. Union of India). It may be that in view or the later judgment of this Court, that challenge was given up. However, apart from that reason, what we find is that the occupation by respondent No. 3 of the requisitioned premises was a continuing wrong, and every minute and every day the State Government's using of the premises for the purpose for which they had not requisitioned gives a fresh cause of action to the petitioners. Moreover, as we have concluded earlier, the non-user by a Government servant for such a long time offers a conclusive proof of non-existence of the original purpose for which the requisition was made. The mere delay in filing the present petition does not adversely affect anybody's rights. On the contrary, it has permitted the Government to misuse the order for a long time. As a matter of fact, the question of condoning delay as such does not arise at all in the present case, but

in the light of the facts as disclosed, it could be condoned if necessary.

13. This being our view, the appeal fails and is dismissed. In view of the fact that there was no appearance on behalf of respondents Nos. 1 and 2 at the time of the final hearing of this appeal, except today when this judgment was part-delivered, we do not make any order regarding the costs of the hearing of the appeal. However, we direct that the appellants will pay respondents Nos. 1 and 2 the costs of the Notice of Motion, which was taken out, viz. Notice of Motion No. 93 of 1976, and the costs of the original petition. We also further direct that respondents Nos. 1 and 2 be at liberty to withdraw the costs of the notice of motion and the costs of the petition from out of the amount deposited by the appellants.