

H. D. VORA

STATE OF MAHARASHTRA & ORS.

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February 22, 1984

[P.N. BHAGWATI AND SABYASACHI MUKHARJI, J.J.]

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*Constitution of India 1950. Article 31 (2) & Seventh Schedule, List III Entry 42.
Acquisition and requisition of property—Differences—What are?*

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Power of requisition—When exercisable—For a public purpose of transitory character.

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Bombay Land Requisition Act 1948 Section 6(4)(a)—Requisition of residential flat—Whether could continue for an indefinite period—Tenant paying rent directly to landlord—Tenant whether becomes direct tenant of landlord—Whether requisition order should set out explicitly the public purpose.

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Practice and Procedure: Writ Petition—Challenging order of re-quisation of flat after a lapse of thirty years—Whether maintainable.

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The appellant applied to the Accommodation Department of the State Government for allotment of a flat. The State Government turned down the request but requisitioned the flat by an order dated 9th April, 1951 under clause (a) of sub-section (4) of section 6 of the Bombay Land Requisition Act, 1948. This order of requisition, did not set out the public purpose for which the flat was requisitioned. The Assistant Controller of Accommodation by an order dated 25th April, 1951 allotted the requisitioned flat to the appellant who entered into occupation and paid rent to the landlady from time to time but as he was irregular and committed several defaults the Controller of Accommodation sought to terminate the allotment.

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The 3rd respondent, on 30th May, 1973 purchased the building in which the requisitioned flat was situated, and requested the State Government to de-requisi-

A tion the flat, as the allotment of the flat in favour of the appellant could not be said to be for a public purposes. The State Government did not pay any heed to this request.

B The 3rd respondent, thereupon filed a Writ Petition in the High Court challenging the validity of the order or requisition, contending that it could not survive for such a long period of time and that the State Government was therefore bound to de-requisition the flat. The High Court allowed the Writ Petition and directed the State Government and the Controller of Accommodation to de-requisition the flat, take steps to evict the appellant, and hand over vacant possession.

C In appeal this Court, it was contended inter alia on behalf of the appellant-tenant that even if the order of requisition was invalid as having been made for a purpose other than a public purpose, the 3rd respondent was not entitled to challenge the order of requisition after a lapse of over 30 years and that the Writ Petition should have been dismissed by the High Court.

D Dismissing the Appeal,

E HELD : 1. The order of requisition even if it was valid when made, ceased to be valid and effective after expiration of a reasonable period of time. What period of time must be regarded as reasonable for the continuance of an order of requisition depends on the facts and circumstances of each case. [700 H]

F In the instant case, the order of requisition was made as far back as 9th April 1951 and even if it was made for housing a homeless person, and the appellant at that time, fell within that category, it cannot be allowed to continue for such an inordinately long period as thirty years. [700 G]

G 2. Requisitioning must be made for a public purpose, and so long as there is a public purpose for which an order of requisition is made, it would be valid irrespective of whether such public purpose is recited in the order of requisition or not. But if the order is challenged, the State Government would have to satisfy the Court by placing the necessary facts showing the public purpose for which the order of requisition was made. [698 B,G]

H 3. There is a basic and fundamental distinction recognised by law between requisition and acquisition. The Constitution itself in Entry 42 of List III of Seventh Schedule makes a distinction between acquisition and requisitioning of property. The original Article 31 clause (2) of the Constitution also recognised this distinction

between compulsory acquisition and requisition of property. The two concepts, one of requisition and the other of acquisition are totally distinct and independent. Acquiring means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. The concept of acquisition as an act of permanence and finality in that there is a transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of "domain or control over property without acquiring rights of ownership" and must by its very nature be of temporary duration. [699 F-H]

4. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the Government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would a fraud upon the statute. What ever be the public purpose for which an order of requisition made, it is by its very nature temporary in character and it cannot endure for an indefinite period of time. The period of time for which an order of requisition may be continued cannot be an unreasonably long period such as thirty years and it must therefore be held that the order of requisition, even if valid when made, ceased to be valid and effective. The Writ Petition challenging the order of requisition after a lapse of over thirty years was therefore maintainable. [700 C-F, 701 A]

5. The appellant was an allotee of the flat under the order of requisition and he was liable to pay compensation for the use and occupation of the flat to the State Government and the State Government was in its turn liable to pay compensation for the requisitioning of the flat. If, instead of the appellant paying compensation to the State Government and the State Government making payment of an identical amount to the owner, the appellant paid directly to the owner with the express or implied assent of the State Government, the order of requisition could not cease to be valid and effective. It did not matter whether the appellant described the amount paid by him to the owner as rent, because whatever was done by him was under the order of requisition and so long as the order of requisition stood, his possession of the flat was attributable only to the order of requisition and no payment of an amount described as rent could possible alter the nature of his occupation of the flat or make him a tenant in respect of the flat. [701 F-H]

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1212
of 1984.

B Appeal by Special leave from the Judgment and order dated
the 20th October, 1983 of the Bombay High Court in W. Appeal
No. 779 of 1983.

P.R. Mridul, G. Vishwanath & Parijat Sinha, for the Appellant.

C Ram Jethmalani & Soli J. Sorabjee, M.N. Shroff, Talegankar
& B.V. Desai, for the Respondents.

D The Judgment of the Court was delivered by

BHAGWATI, J. Special Leave Granted.

E This appeal by special leave raises a short question of law as
to whether an order of requisition of premises can be continued for
an indefinite period of time or it must necessarily be of temporary
duration. The facts giving rise to this appeal are few and may be
briefly stated as follows:

F One Rukmanibai was the owner of a building bearing House
No. 65, Police Station Road, Ville Parle West, Bombay. The
ground floor of this building comprised of a flat which was in the
occupation of one N.C. Shah as a tenant and since N.C. Shah was
going to vacate the flat, Rukmanibai gave intimation of the proposed
vacancy to the State Government and requested the State Govern-
ment to allot the premises to the appellant who was her nearest
relative. The appellant also addressed a letter dated 12th March
1951 to the Chief Officer of the Accommodation Department of the
Government of Bombay requesting that he should be allotted the
flat which was going to be vacated by N.C. Shah. It appears
however that the request of the appellant was turned down by the
State Government and ultimately the flat was requisitioned by an
order dated 9th April 1951 made by the State Government in exer-

cise of the powers conferred under clause (a) of sub-section (4) of section 6 of the Bombay Land Requisition Act 1948. This order of requisition did not set out the public purpose for which the flat was requisitioned. Now curiously enough, though it was decided by the State Government not to allot the flat to the appellant and his application for allotment was specifically rejected, the Assistant Controller of Accommodation passed an order on 25th April 1951 allotting the requisitioned flat to the appellant and pursuant to the order of allotment, the appellant entered into occupation of the flat. The appellant thereafter paid rent to Rukmanibai from time to time but the payment of rent was very irregular and the appellant committed several defaults in payment of rent with the result that not less than seven orders had to be passed by the Accommodation Department of the Government of Bombay directing the appellant to vacate the flat because his chronic defaults. Ultimately, however, each time no action for eviction was taken by the Controller of Accommodation, presumably because the appellant must have paid up the rent. It is significant to note that in the year 1964 the appellant requested the Controller of Accommodation to derequisition the flat and to allow him to become direct tenant of Rukmani Bai but his application was rejected by letter dated 25th March 1964. The appellant also thereafter in the year 1979 applied to the Controller of Accommodation for sanction to erect a kitchen platform in the flat but this application was turned down by a letter dated 20th March 1979 addressed by the Controller of Accommodation. The appellant throughout this period continued to occupy the flat as an allottee under the order of requisition and paid rent to Rukmanibai from time to time, though irregularly.

The building in which the requisitioned flat was situate, was purchased by the 3rd respondent from Rukmanibai on 30th May 1973. The 3rd respondent, after purchase of the building, requested the State Government to derequisition the flat inasmuch as the allotment of the flat in favour of the appellant could not be for a public purpose. The State Government did not pay any heed to this request of the 3rd respondent with the result that the 3rd respondent was constrained to file writ petition No. 1210 of 1980 in the High Court of Bombay challenging the validity of the order of requisition and contending that it could not survive for such a long period of time and the State Government was therefore bound to derequisition the flat.

A One of the grounds on which the validity of the order of requisition was challenged was that the order of requisition did not set out the public purpose for which it was made. This ground of challenge was negatived by the High Court and, in our opinion, rightly, because it is not necessary that the order of requisition must explicitly set out the public purpose for which it is made.

B The only requirement of the law is that the requisitioning must be made for a public purpose and so long as there is a public purpose for which an order of requisition is made, it would be valid irrespective whether such public purpose is recited in the order of requisition or not. It has, in fact, been so held by this Court in *State of Bombay v. Bhanji Munji & Anr.*⁽¹⁾ where Bose, J. speaking on behalf of the Court observed :

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

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F The order of requisition could not therefore be successfully attacked on the ground that it did not set out the public purpose for which it was made. But, as pointed out by Bose, J. in the above passage quoted from this judgment in *Bhanji Munji's* case (*supra*), the State Government would have to show that the order of requisition was made for a public purpose and the necessary facts showing the public purpose for which the order of requisition was made would have to be established by the State Government to the satisfaction of the court. The High Court held in the present case that no material was placed before it to show what was the public purpose for which the order of requisition was made and in fact, there was no denial on the part of the State Government or the appellant of the averment made on behalf of the 3rd respondent that the appellant was neither a government servant nor a homeless person. This view taken by the High Court appears to be well-founded and it is not

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(1) [1955] 1 S.C.R. 777.

possible to hold on the material placed before us that the order of requisition was made for a public purpose.

But it was contended on behalf of the appellant that even if the order of requisition was invalid as having been made for a purpose other than a public purpose, the 3rd respondent was not entitled to challenge the same after a lapse of over 30 years and the writ petition should therefore have been dismissed by the High Court. Now if the only ground on which the order of requisition was challenged in the writ petition was that it was not made for a public purpose and was therefore void, perhaps it might have been possible to successfully repel this ground of challenge by raising an objection that the High Court should not have entertained the writ petition challenging the order of requisition after a lapse of over 30 years. But we find that there is also another ground of challenge urged on behalf of the 3rd respondent and that is a very formidable ground to which there is no answer. The argument urged under this ground of challenge was that an order of requisition is by its very nature temporary in character and it cannot endure for an indefinite period of time and the order of requisition in the present case therefore ceased to be valid and effective after the expiration of a reasonable period of time and that it could not, under any circumstances, continue for a period of about 30 years and hence it was liable to be quashed and set aside or in any event the State Government was bound to revoke the same and to derequisition the flat. This contention has, in our opinion, great force and must be sustained. There is a basic and fundamental distinction recognised by law between requisition and acquisition. The Constitution itself in Entry 42 of List III of the Seventh Schedule makes a distinction between acquisition and requisitioning of property. The original Article 31 clause (2) of the Constitution also recognised this distinction between Compulsory acquisition and requisitioning of property. The two concepts, one of requisition and the other of acquisition are totally distinct and independent. Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. Vide : Observations of Mukherjee, J. in *Chiranjitlal's case*. The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of domain or control over pro-

A. perty without acquiring rights of ownership" and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the government. If the government wants to take over the property for an indefinite period of time, the government must acquire the property but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises, but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely. Here in the present case the order of requisition was made as far back as 9th April 1951 and even if it was made for housing a homeless person and the appellant at that time fell within the category of homeless person, it cannot be allowed to continue for such an inordinately long period as thirty years. We must therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a reasonable period of time. It is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because ultimately the answer to this question must depend on the facts and

circumstances of each case but there can be no doubt that whatever be the public purpose for which an order of requisition is made, the period of time for which the order of requisition may be continued cannot be an unreasonably long period such as thirty years. The High Court was, therefore, in any view of the matter, right in holding that in the circumstances the order of requisition could not survive any longer and the State Government was bound to revoke the order of requisition and derequisition the flat and to take steps to evict the appellant from the flat and to hand over vacant possession of it to the 3rd respondent.

There was also one other contention urged on behalf of the appellant in a desperate attempt to protect his possession of the flat and that contention was, since he had paid rent of the flat to Rukmanibai and such rent was accepted by her, he had become a direct tenant of Rukmanibai and the order of requisition had become totally irrelevant so far as his possession of the flat is concerned. This contention is, in our opinion, wholly unfounded. The appellant admittedly came into occupation of the flat as an allottee under the order of requisition passed by the State Government and even if any rent was paid by the appellant to Rukmanibai and such rent was accepted by her, it did not have the effect of putting an end to the order of requisition. The appellant was an allottee of the flat under the order of requisition and he was liable to pay compensation for the use and occupation of the flat to the State Government and the State Government was in its turn liable to pay compensation to Rukmanibai for the requisitioning of the flat and if, therefore, instead of the appellant paying compensation to the State Government and the State Government making payment of an identical amount to Rukmanibai, the appellant paid directly to Rukmanibai with the express or in any event implied assent of the State Government, the order of requisition could not cease to be valid and effective. It did not matter at all whether the appellant described the amount paid by him to Rukmanibai as rent, because whatever was done by him was under the order of requisition and so long as the order of requisition stood, his possession of the flat was attributable only to the order of requisition and no payment of an amount described as rent could possibly alter the nature of his occupation of the flat or make him a tenant of Rukmanibai in respect of the flat.

We are therefore of the view that the High Court was right

A in allowing the writ petition and directing the State Government and the Controller of Accommodation to derequisition the flat and to take steps to evict the appellant and to hand over vacant and peaceful possession of the flat to the 3rd respondent. We accordingly dismiss the appeal, and confirm the order passed by the High Court but in the circumstances of the case, the appellant shall not be evicted from the flat until 28th February, 1985, provided the appellant files an undertaking in this Court within two weeks from today that he will vacate the flat and hand over its vacant possession to the 3rd respondent on or before that date. There will be no order as to costs of the appeal.

C N.V.K.

Appeal dismissed.