

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2171 OF 1996

All India Cotton Seeds Crushers'
Association and Another

...Petitioners

vs.

State of Maharashtra and Others

..Respondents

Mr. Sharan Jagtiani a/w. Mr. Nirman Sharma, Ms. Pinky Patel and
Mr. Sahil Harjani I/b. M/s. Desai & Diwanji, for the Petitioners.
Mr. Rajiv Mane, AGP, for Respondent Nos. 1 and 2.
Mr. B.N. Poojari a/w. Ms. Srishti Poojari, for Respondent No. 3.

CORAM : R. M. BORDE AND

V. L. ACHLIYA, JJ.

RESERVED ON : 24th JANUARY, 2019

PRONOUNCED ON : 22nd FEBRUARY, 2019

JUDGMENT *(Per Borde, J.)*

. The Petitioner is a society registered under the provisions of Societies Registration Act, 1960 and has approached this Court praying for issuance of Writ of Mandamus or any other appropriate Writ, Order or direction in the nature of Writ of Mandamus to direct the Respondents to derequisition the Flat Nos. 2 and 3, Khetan Bhavan, 6th Floor, Jamshedji Tata Road, Bombay – 20 and hand over vacant possession thereof to the Petitioners.

2. Though the Petitioners by way of an amendment incorporated during continuance of Petition raised the challenge to Section 9 (B) of the Bombay Land Requisition Act, 1948, in view of the decision of the Supreme Court in the matter of ***Welfare Association A.R.P., Maharashtra and Anr. vs. Ranjit P. Gohil and Ors., (AIR 2003 SC 1266)***, the challenge raised no more survives. Thus issue that remains to be decided is, as to whether the Petitioners are entitled to claim an order of derequisition of the premises owned by them.

3. The subject property was given on leave and licence basis by the Petitioner No. 1 to the Maharashtra State Farming Corporation Limited between 1st January, 1970 to 31st July, 1975. Since the Maharashtra State Farming Corporation Limited agreed to vacate the subject property by the end of May 1975 and the subject property was vacated by the said Corporation on 31st July, 1975, the Petitioners intimated Respondent No. 1 in that regard on 6th August, 1975 and further informed that the same was required for its own use, however, the order of requisition was passed on 6th September, 1975 by Respondent No. 1.

4. According to the Petitioners, the allotment order dated 23rd December, 1975 issued by the State in favour of Maharashtra State Co-operative Marketing Federation Limited, for the use of the premises for office purpose and the compensation determined was required to be paid by the allottee to Respondent No. 2 on monthly basis. The monthly compensation was fixed at Rs. 9,000/- by the authorized officer of the Respondent No. 1 on 20th December, 1976. According to the Petitioners, it was noticed that the property is being used by Respondent No. 3 and its board was found affixed to the subject property. The Petitioners presented a Writ Petition claiming derequisitioning of the premises and for direction to handover the possession. It was the stand taken by Respondent No. 3 that the agency - Maharashtra State Farming Corporation Limited has been terminated and its functions have been taken over by Respondent No. 3. The Writ Petition presented by the Petitioners was initially admitted, however the same has been disposed of in terms of the agreement reached between the parties. The terms of the settlement incorporated in the agreement and annexed at Exhibit "C" are recorded as below:

"An Agreement made this day the 7th day of July, 1987 between the All India Cotton Seed Crushers Association (hereinafter called the Association) having their offices at 6th floor, Khetan Bhavan, 198, Jamshetji

Tata Road, Churchgate, Bombay 20 and the Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd. (hereinafter referred to as the Federation) having its registered office at Gautam Building, Zakeria Bunder Road, Behind Uptron T.V. Service Centre, Sewree, Bombay -15;

Whereas the Maharashtra State Corporation Marketing Federation Ltd. (hereinafter referred to as the MSCMF) had been allotted by the Controller of Accommodation the requisitioned premises consisting of Flat Nos. 2 and 3 on the 6th floor of a building known as Khetan Bhavan, 198, Jamschetji Tata Road, Churchgate, Bombay 30, for the location of their sales office pertaining to the sale of F.P. Bales procured as Govt. of Maharashtra's Chief Agent under the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act;

And Whereas the Govt. of Maharashtra vide its letter No. KPS 1084/41615/10-C dated 8th September, 1984 terminated the chief agency of the MSCMF and appointed the Federation as its Chief Agent and ordered the transfer of all assets and liabilities of the claims to the latter;

And Whereas the Association moved the High Court at Bombay in its Original Civil Jurisdiction by Writ Petition No. 32 of 1985 for possession of the said premises on the ground that the Federation has occupied the said premises illegally and unauthorizedly without following the legal procedure when the MSCMF transferred the said premises to the Federation.

And Whereas there is a proposal from the Association to settle the matter amicably.

And Whereas the said proposal of the Association was put up before the Executive Committee of the Federation and the said Executive Committee decided to settle the matter authorising the Managing Director of the Federation to settle the matter;

And Whereas after the discussions with the said Association, the Managing Director of the Federation settled the matter hereafter stated.

It Is Now Hereby Agreed To By And Between The Parties Hereto As Under:

1. That the Federation shall pay to the Association Rs. 16,000/- per month as compensation per month plus Rs. 1,400/- or such amount as may be payable to the Ek Omkar Premises Cooperative Society Ltd. from time to time, in respect of Flat No. 2 and Flat No. 3 as maintenance charges per month for the use of the said premises from 1st day of July, 1986.

2. The Federation agrees to hand over the possession of the premises to the Association when the Federation no longer requires the premises for its own use.

3. The Association shall forthwith withdraw the Writ Petition No. 32 of 1985 filed in the High Court.”

5. According to the Petitioners, the purpose of arriving at the agreement was to compromise the pending Writ Petition bearing No. 32 of 1985 and to secure enhancement of the compensation for continued requisition in favour of Respondent No. 3. It is further contended that no part of the agreement establishes or agrees privity between the Petitioners and Respondent No. 3 as the landlord and tenants and the language of terms of settlement also do not imply accordingly. Subsequent order of requisition, according to the Petitioners would preclude such an inference. The effect of the withdrawal of the Writ Petition

is not to impugn the order of requisition on the ground of illegal transfer of allotment in favour of Respondent No. 3. The Petitioners contend that the grounds on which the original order of requisition dated 23rd December, 1975 was impugned are not foreclosed either by withdrawal of Writ Petition or agreement dated 7th July, 1987.

6. The Petitioners received communication from the Controller of Accommodation & Additional Secretary on 9th November, 1995 informing that the premises is in occupation of the Maharashtra State Co-op. Cotton Growers' Marketing Federation Limited and the aforesaid Federation had entered into agreement dated 7th July, 1987 and determined the rate of rent which is increased. The communication further records that the premises are not derequisition by the Government and Government is proposing to derequisition the said place. Petitioners are further requested that as per the said agreement if Petitioners accepts Maharashtra State Co-op. Cotton Growers' Marketing Federation Ltd as its tenant & submit no objection certificate thereof, Government may proceed in the matter further. Petitioners have communicated its inability to issue no objection certificate as requested by State Government by letter Dt.22nd December, 1995.

7. The Petitioners contends that the decision of the State Government is reflected in the order dated 9th November, 1995 as regards the derequisitioning of the premises. Necessary inference therefore required to be drawn that the premises are no longer required by the State Government and there is a decision arrived at derequisition of the premises. The Petitioners further contends that imposition of pre-condition of accepting Respondent No. 3 as direct tenant of the Petitioners is not within the contemplation of law. It is submitted that the condition which is outside purview of law cannot be insisted upon by the State Government as pre-condition for passing of an order of derequisition. Since there was no response from the State Government and the premises belonging to the Petitioners remained in possession of Respondent No. 3 at the instance of State Government for an unreasonable period, the Petitioners have approached this Court praying for the reliefs as recorded above.

8. In response to the notice that the learned AGP has caused appearance on behalf of Respondent Nos. 1 and 2, however, no reply has been presented and the contentions raised by the Petitioners in the Petition have not been controverted by the State

Government. The Respondent No. 3 has presented reply and it is contended that the Respondent No. 3 is the Chief Agent of State Government appointed for the purpose of procuring cotton and cotton bales produced in the State of Maharashtra and acts as sole agency appointed by State for procurement, processing and marketing of cotton in the State of Maharashtra. The Respondent No. 3 is the successor of the Maharashtra State Co-operative Marketing Federation Ltd. which prior to the establishment of the Respondent No. 3 acted as the Chief Agent for the State of Maharashtra for the purpose of procurement, marketing and processing of cotton. The Respondent No. 3 came to occupy all the office premises those were occupied by the Maharashtra State Co-operative Marketing Federation Limited for the purpose of implementation of the cotton scheme. It is contended that some time in the month of August-September, 1984 the premises being Flat Nos. 2 and 3, Khetan Building, Mumbai 20 came to be occupied by the Respondent No. 3 after the same was vacated by the said Maharashtra State Co-operative Marketing Federation Limited.

9. According to the Respondents, the compensation amount was offered to the Petitioners after the said Respondents

came in occupation of the premises. However, the same was not accepted by the Petitioners and instead the Petitioners presented Writ Petition No. 32 of 1985 claiming possession of the premises on the ground that Respondent No. 3 had occupied the premises illegally and unauthorizedly. The Writ Petition was disposed of as withdrawn in terms of the agreement arrived at and the amount of the compensation was increased up to Rs. 16,000/- p.m. and the Petitioners agreed to accept the amount. According to the Respondent No. 3 in view of the agreement, the Respondent No. 3 becomes the tenant of the Petitioners.

10. According to the Petitioners, the communication issued by the State Government dated 9th November, 1995 is issued in ignorance of the agreement between Respondent No. 3 and the Petitioners and the same is issued without knowledge of Respondent No. 3. It is contended that the communication dated 9th November, 1995 does not take into account the aspect of withdrawal of Writ Petition No. 32 of 1985 by the Petitioners in view of the agreement dated 7th July, 1987 wherein according to the Respondent No. 3 it has been accepted as a tenant and the monthly rent has been prescribed. It is thus contended that since

Respondent No. 3 is the tenant of the premises, the request made by the Petitioners for derequisition the premises and for handing over the possession is not liable to be considered.

11. It is not the matter of dispute that the State Government has issued order of requisition of the premises on 23rd December, 1975 and the same has been allotted by virtue of allotment letter of the same date to Maharashtra State Co-operative Marketing Federation Limited. The order of requisition issued by the State Government is admittedly not revoked neither the same has been modified nor it can be construed to have been merged into the agreement allegedly executed between the Petitioners and Respondent No. 3 thereby transforming it into tenancy of Respondent No. 3. The contention of the Respondents that the Controller of Accommodation & Additional Secretary on 9th November, 1995 has issued the communication in ignorance of the agreement, is irrelevant for the reason that first of the paragraph of the said communication records reference to the agreement dated 7th July, 1987 where under the compensation amount has been increased. The letter issued by the Controller of Accommodation in unequivocal terms informed the decision of State in regard to

proposed derequisitioning of the said premises. The Petitioners have objection as regards the imposition of the pre-condition of accepting the Respondent No. 3 as a tenant. The agreement made between the parties on 7th July, 1987 does not refer Respondent No. 3 as tenant whereas the amount which is agreed to be paid by Respondent No. 3 is referred as compensation per month. The Petitioners have unequivocally rejected the proposal of the Controller of Accommodation of accepting Respondent No. 3 as tenant in view of communication dated 22nd December, 1995.

12. It would be appropriate to refer to the provisions of Bombay Land Requisition Act, 1948.

(1) Sub Section 2 of Section 4 of Bombay Land Requisition Act, 1948 defines the “*Landlord*” is a person who is, for the time being, receiving or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person, or as a trustee, guardian, or receiver for any other person, or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant, who from time to time derives title under

a landlord; and further includes in respect of his sub-tenant a tenant who has sublet any premises.

(2) Sub Section 5 of Section 4 of the Act defines “*Requisition*” means in relation to any land to take possession of the land or to require the land to be placed at the disposal of the Government.

(3) Section 5 of the Act authorized the State Government to pass an order in writing requisitioning any land for any public purpose.

(4) Section 6 of the Act refers to power of the Government of requisition of vacant premises. Section 6 is re-produced as below:

“6 (1) If any premises situate in an area specified by the [State] Government by notification in the Official Gazette, are vacant on the date of such notification and wherever any such premises are vacant or 'become vacant after such date by reason of the landlord, the tenant or the sub-tenant, as the case may be, ceasing to occupy the premises or by reason of the release of the premises from requisition or by reason of the premises being newly erected or reconstructed or for any other reason, the landlord of such premises shall give intimation thereof in the prescribed form to an officer authorised in this behalf by the [State] Government.

(2) The intimation shall be given by registered post within one month of the date of the notification in the case of premises which are vacant on such date and in other cases within seven days of the premises becoming vacant or, becoming available for occupation.

(3) A landlord shall not, without the permission of the State Government, let, occupy or permit to be occupied such premises before giving the intimation and for a period of one month from the date on which the intimation is received.

(4) Whether or not an 'intimation under sub-section (1) is given and notwithstanding anything contained in section 5, the State Government may by order in writing requisition the premises for any public purpose and may use or deal with the premises for any such purpose in such manner as may appear to it to be expedient; or Provided that, where an order is to be made under clause (a) 6 premises in respect of which no intimation is given by the landlord, the State Government, shall make such inquiry as it deems fit and make a declaration in the order that the premises were vacant or had become vacant, on or after the date referred to in sub-section (1) and such declaration shall be conclusive evidence that the premises were or had so become vacant.

(5) Any landlord who fails to give such intimation within the period specified in sub-section (2) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both and any landlord who lets occupies or permits to be occupied the premises in contravention of the provisions of sub-section (3), shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall also be punished with fine.”

(5) Section 8 of the Act relates to payment of compensation. It provides that the compensation shall have to be determined by the authorized officer prescribed.

(6) Section 8 C (1) of the Act lays down that if the competent authority after holding such inquiry as he deems

fit is satisfied -

(a)

(b)

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

(7) It is provided in Section 8 E (1) that “the allotment of any land or premises requisitioner continued under requisition under this Act by the State Government to any person or the continuance of any person or the permission to any person to continue to remain in occupation or possession of such land or premises shall be deemed to be a license in favour of person for the use and occupation of such

land or premises”.

(8) Section 9 of the Act refers to “*release from requisition*”.

Section 9(1) provides that “the State Government may, at any time, release from requisition any land requisitioned or continue to be subject to requisition under this Act”.

(9) Section 9(3) of the Act provides that “when any land is to be released from requisition, the State Government may, after making such inquiry, if any, as it deems fit, specify by order in writing the person to whom possession of the land shall be given”.

13. At this stage, it shall be noted that the words, brackets and letter “requisitioning the” were substituted by the words “*or (b) requisitioning or requiring to let*” as appearing in proviso to sub section 4(a) of Section 6 of the Act by virtue of an amendment by Act No.5 of 1952. The net result of this modification is that the power of the State Government or the State authorities to direct the 'requiring to let' the premises which were there in the original Act framed in 1948 has been deleted in the year 1952. The Petitioners referring to said deletion contends that it is no longer permissible for the Controller of Accommodation to issue direction

to the Petitioners to accept Respondent No. 3 as tenant. It is contended that imposition of condition beyond stipulation in the Act by the Controller of Accommodation is illegal and beyond the scope of powers exercisable by him.

14. Our attention is also invited to the amendment incorporated in Section 9 of the Bombay Land Requisition Act, 1948 by Maharashtra Ordinance No. XXIII of 1996 which read thus:

5. *Amendment of section 9 of Bom. XXXIII of 1948 – In section 9 of the Bombay Land Requisition, 1948 (hereinafter referred to as “the Land Requisition 948 Act”), after sub-section (7), the following sub-section shall be added namely :-*

(8) *On the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996, all the premises requisitioned or continued under requisition under this Act and allotted to Government allottees who, on the said date were allowed by the State Government to continue or to remain in occupation or possession of such premises, shall be deemed to have been released from requisition, and in respect of such, premises the State Government or as the case may be, the Government allottees referred to in clause (b) of the Explanation, shall become the tenants by virtue of the provisions of section 15B of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and the compensation, if any, due in respect of such premises shall be determined and paid to the persons entitled thereto as if such premises were actually released under this section,*

Explanation- For the purposes of this sub-section, the expression "Government allottee"- .

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

(b) In relation to any premises requisitioned or continued under requisition which are allotted by the State Government for residential purpose to any person and, on the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance Act, 1996, such person or his legal heir is allowed by the State Government to remain in lawful occupation or possession of such premises for his own or such legal heir's residence means such person or legal heir.

15. By virtue of the said Ordinance Section 15B has been added to Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Similarly, the definition of "Government Allottee" has been incorporated in Section 5(1)(a) of said Act which read thus:

(1A) "Government allottee",-

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

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

16. According to the Petitioners neither the amended provision of Bombay Land Requisition Act, 1948 nor the amendment to Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 confirm the status of a tenant on the Respondent No. 3. The subject premises is used for non residential

purpose and in view of the definition incorporated in Section 5(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 as well as Section 8(a) of Section 9 of the Bombay Land Requisition Act, 1948, Respondent No. 3 cannot be conferred with rights of a tenant.

17. It would be the State Government who can claim the tenancy in respect of non-residential premises which remain in their occupation and possession which means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or consulate. So far as in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for residential purpose, the tenancy rights accruable to any person and on the date of coming into force of the Act of 1947 such person or his legal heir who is allowed by the State Government to remain in occupation or possession of such premises for his or such legal heir's own residence means such person or legal heir would be tenant.

18. In the instant matter since the premises have been requisition for non residential purpose, it would be the State

Government which would be covered by the definition of "Government Allottee" and in view of Section 15 B (a) of the amended Rent Act, it would be the State Government in respect of the premises requisitioned or continued under requisition which are allowed by the State Government referred to in Section 5(a) of the amended Act would be a "tenant". In any eventuality, even the amended Ordinance if pressed in service would not confirm the rights of tenant in favour of Respondent No. 3.

19. The Petitioner contends that since the law does not confer the status of tenant on the Respondent No. 3, the Controller of Accommodation or the State Government cannot direct the Petitioners to accept the Respd. No. 3 as tenant & to submit no objection. It is contended that recording such an illegal pre condition in order of de-requisition is beyond the scope of authority exercisable by the Controller of Accommodation. It also and must be noted that by virtue of deletion of reference to authority of the State 'requiring to let' the premises by the landlord in view Bombay Act of 5 of 1952, such a stipulation cannot be enforced by the Controller of Accommodation. The condition that has been imposed is clearly illegal and deserves to be directed to be deleted.

20. The State Government has already taken a decision of proposing derequisitioning the premises and the same has been communicated to the Petitioner on 9th November, 1995. Thus, an inference needs to be drawn that the public purpose for which the premises are requisitioned has come to an end by virtue of decision dated 9th November, 1995 and continued requisitioning of the premises is no longer required. In these circumstances, the amendments those have been incorporated by virtue of an Ordinance No. XXIII of 1996 also shall not be attracted.

21. Apart from this, State Government has not controverted the contentions raised by the Petitioners in this Petition and has not disputed its decision to de-requisitioning of the premises communicated to Petitioner on 9th November, 1995. The Petitioner would be justified in contending that the Government no longer requires the premises for public purpose & as such the order directing derequisitioning of premises shall have to be issued.

22. In this context, it would be appropriate to refer the decision of Supreme Court in the matter of ***H.D. Vora vs. State of Maharashtra and Ors., AIR 1984 S.C. 866***. One Rukminibai

was the owner of the building situate at Bombay. The ground floor of the said building was let out to one Mr. N.C. Shah who was going to vacate the flat and as such Rukminibai gave intimation of the proposed vacancy to the State Government and requested the State Government to allot the premises to the Appellant who was her nearest relative. The request was turned down by the State and ultimately the flat was requisitioned on 25th April, 1951 by the State Government on the ground that the order of requisition did not set out the public purpose of the flat requisitioned. It was decided by the State Government not to allot the flat to the Appellant. Though his request was rejected, the Controller of Accommodation passed order 25th April, 1951 allotting the requisitioned flat to the Appellant and pursuant to the said order the Appellant entered in to occupation of the flat. He then paid rent to Rukminibai which was accepted by her on some occasion and on several occasion he committed default in payment of rent and or such several orders were passed by competent authority directing him to pay the rent. In 1964 the request of Rukminibai to derequisition of the flat and allow the Appellant to become direct tenant of Rukminibai was rejected. The building in which the requisitioned flat was situate was purchased by the third

Respondent from Rukminibai in 1973 and his request for derequisitioning of flat was turned down. The third Respondent presented a Writ Petition No. 1210 of 1980 in the High Court of Bombay challenging the validity of the order of requisition, contending that it could not survive for such a long period of time and the State Government was therefore bound to derequisition the flat. There were two grounds raised. (1) The public purpose for which the flat was requisitioned has come to an end and secondly an order of requisitioning premises cannot be continued for unreasonably long period. While dealing with the issue, the Supreme Court has observed in paragraph 5 of the judgment as under.

“But it was contended on behalf of the appellant that even if the order of requisition was invalid as having been made for a purpose other than a public purpose, the 3rd respondent was not entitled to challenge the same after a lapse of over 30 years and the writ petition should therefore have been dismissed by the High Court. Now if the only ground on which the order of requisition was challenged in the writ petition was that it was not made for a public purpose and was therefore void, perhaps it might have been possible to successfully repel this ground of challenge by raising an objection that the High Court should not have entertained the writ petition challenging the order of requisition after a lapse of over 30 years. But we find that there is also another ground of challenge urged on behalf of the 3rd respondent and that is a very formidable ground to which there is no answer. The argument urged under this ground of challenge was that an order of requisition in the present case therefore ceased

to be valid and effective after the expiration of a reasonable period of time and that it could not, under any circumstances, continue for a period of about 30 years and hence it was liable to be quashed and set aside or in any event the State Government was bound to revoke the same and to derequisition the flat. This contention has, in our opinion, great force and must be sustained. There is a basic and fundamental distinction 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 the there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of "domain or control over property without acquiring rights of ownership" and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the government can under the guise of requisition continued for an indefinite period of time, in substance

acquire the property, because that would be a fraud on the power conferred on the government. If the government wants to take over the property for an indefinite period of time, the government must acquire the property but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premisses being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely. Here in the present case the order of requisition was made as far back as 9th April 1951 and even if it was made for housing a homeless person and the appellant at that time fell within the category of homeless person, it cannot be allowed to continue for such an inordinately long period as thirty years. We must therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a reasonable period of time. It is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because ultimately the answer to this question must depend on the facts and circumstances of each case but there can be no doubt that whatever be the public purpose for which an order of requisition is made the period of time for which the order of requisition may be continued cannot be an unreasonably long period such as thirty

years. The High Court was, therefore, in any view of the matter, right in holding that in the circumstances the order of requisition could not survive any longer and the State Government was bound to revoke the order of requisition and deregulation the flat and to take steps to evict the appellant from the flat and to hand over vacant possession of it to the 3rd respondent.”

23. So far as the contention of the Appellant before the Supreme Court that since Rukminibai accepted the rent from him, he becomes the direct tenant and the order of requisition becomes, irrelevant is answered in negative. In paragraph No. 6 of the judgment, it is observed thus :

“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 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.

24. On analysis of the judgment, it would be clear that the order of requisition under any circumstances cannot be allowed to continue for a period of 30 years which is unreasonably long period and hence it was liable to be quashed and set aside and in any event the State Government was bound to revoke the order and to derequisition the flat. 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 acquiring body leaving nothing to the former. Whereas in the case of requisition what is merely taken over is the domain or control over property without acquiring rights of ownership under the guise of requisition, the

property cannot be continued to remain with allottee or State for unreasonable period. The domain over the property cannot be continued for indefinite period of time which would otherwise be in substance acquisition of the property. The Supreme Court in terms held that such an action would be a fraud on the power conferred on the government. The second aspect that gets clear on reading judgment in **H.D. Vora** (supra) case is that merely acceptance of the rent from the person in possession will not have any effect on putting an end to the order of requisition. Even if the amount paid is described as rent, it would not alter the nature of the occupation of the premises and make the allottee a tenant of the landlord.

25. The view taken by the Supreme Court in the case of **H.D. Vora** (supra) has been confirmed in the later judgment between **Grahak Sanstha Manch and Ors. vs. State of Maharashtra, AIR 1994 S.C. 2319** by the Constitutional Bench with only modification that the view adopted in **H.D. Vora** (supra) case that the requisition order can not be made for permanent public purpose has been disapproved. It would be relevant to refer the paragraph Nos. 15 & 16 of the said judgment which read thus:

15. We find ourselves in agreement with the view taken in the cases of *Collector of Akola* and *Jiwani Kumar Paraki* that the purpose of a requisition order may be permanent. But that is not to say that an order of requisitioning can be continued indefinitely or for a period of time longer than that which is, in the facts and circumstances of the particular case reasonable. We note and approve in this regard, as did this Court in *Jiwani Kumar Paraki* case, the observations of the Nagpur High Court in the case of *Mangilal Karwa v. State of M.p.* which have been reproduced above. That the concept of requisitioning is temporary is also indicated by the Law Commission in its Tenth Report and, as pointed out earlier, by the terms of the said Act itself, as it originally stood and as amended from time to time. There is no contradiction in concluding that while a requisition order can be issued for a permanent public purpose, it cannot be continued indefinitely. Requisitioning might have to be resorted to for a permanent public purpose to give an example, to tide over the period of time required for making permanent premises available for it. The concepts of acquisition and requisition are altogether different as are the consequences that flow there from. A landlord cannot, in effect and substance, be deprived of his rights and title to property without being paid due compensation, and this is the effect of prolonged requisitioning. Requisitioning may be continued only for a reasonable period; what that period should be would depend upon the facts and circumstances of each case and it would ordinarily, be for the Government to decide.

16. For the aforesaid reasons, we hold that the decision in *H.D. Vora* case does not require reconsideration. We, however, do not approve the observations therein that requisition orders under the said Act cannot be made for a permanent purpose. We make it clear that the said decision does not lay down, as has been argued, a period of 30 years as the outer limit for which a requisition order may continue. The period of 30 years was mentioned in the decision only in the context of the date of the requisition order there concerned. An order of requisition can continue for a reasonable period of time and it was

held, as we hold, that the continuance of an order of requisition for as long as 30 years was unreasonable.

26. In the instant matter the order of requisition has been passed in 1975 and the same is continued for a period of 44 years which period shall have to be considered as an unreasonable. In the case of **H.D. Vora** (supra) continuance of order for the period of 30 years was considered as unreasonable. In the instant matter, on consideration of the communication dated 9th November, 1995 issued after about 20 years from the date of requisition, the State Government has proposed to derequisition of the premises, however has imposed in equitable condition. Referring the judgment in the matter of **Godrej and Boyce Manufacturing Company Limited vs. State of Maharashtra and Ors. (2009) 5 Supreme Court Cases 24**, it is contended by the Petitioner that it cannot be left in the hands of the executive to impose conditions in addition to those provided in the statute. The authority vested in the State to direct the premises 'to be let' by the landlord has been deleted in the year 1952 by virtue of amendment incorporated in that regard cannot be enforced in the year 1995. The net effect of the issuance of the order dated 9th November, 1995 is that, firstly it confirms the decision of the Government to derequisition of the

premises meaning thereby the public purpose for which property has been requisition no longer survives. When the decision is taken to derequisition the premises, said decision cannot be made conditional and imposition of condition outside purview of law cannot be upheld. Even otherwise the Respondent No. 3 cannot claim to be a direct tenant even in view of Act of 1996.

27. For the reasons recorded above, we direct the State Government and the Controller of Accommodation to derequisition the subject premises and take steps to place the Petitioners in vacant possession of flat/premises, the subject matter of the Petition as expeditiously as possible preferably within a period of three months from the date of this order.

28. Rule is accordingly made absolute.

29. In the facts and circumstances of the case, there shall be no order as to costs.

(V. L. ACHLIYA, J.)

(R. M. BORDE, J.)