A GRAHAK SANSTHA MANCH AND ETC. ETC.

*v.*

STATE OF MAHARASHTRA

APRIL 27, 1994

B [M.N. VENKATACHALIAH, CJ. J.S. VERMA, P.B. SAWANT, S.C. AGRAWAL AND S.P. BHARUCHA, JJ.]

*Bombay Land Requisition Act, 1948—Sections 1 & 6—Act being not a rent control legislation—Purpose of a requisition order may be permanent—Requisition intended to be only a temporary arrangement—Requisition may be continued only for a period of time—Continuance of order of requisition for 30 years—Unreasonable—Desirability and feasibility of providing alternate accommodation to allottees of requisitioned premises—It is for State Government to consider.*

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**Premises were requisitioned under the Bombay Land Requisition Act, 1948 for the purposes of residential use and also for commercial use more than 45 years back. The Petitioners, an association of cooperative societies running fair price ration shops in requisitioned premises, were served with a notice by the State Government calling upon them to vacate the premises so that the premises might be de-requisitioned. The petitioners prayed for a writ of *mandamus* commanding the State Government not to evict them from the requisitioned premises and also for reconsideration of the judgment in *H.D. Vora's* case.**

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F **The petitioners submitted that requisitioning was resorted to in conditions of emergency and there had been an acute shortage of accommodation in the then Bombay State, and therefore, in such a situation the continuance of requisition orders could not be held to be bad in law, nor could the court specify that requisitions could not continue beyond a particular number of years; that no provision of the Constitution made invalid a law of requisitioning under which property could be requisitioned for an indefinite period and the mere fact that requisitioning for a long period might amount, in substance to acquisition did not impair the validity of a provision which continued the requisition for an indefinite period; that there was no reason why the requisition of the premises occupied by the writ petitioners cooperative societies should not be con-**

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tinued while they served the public purpose of supplying food grains and the like at fair price under the Public Distribution Scheme and the need for requisitioning arising out of scarcity of accommodation in Bombay continued; that the provisions for requisitioning of premises under the Act had been made to control rents and the said Act was meant to cure the mischief of scarcity of accommodation and it could not be said to be finite in time; that "land" and premises were separately defined for the purposes of the Act so that there was no compulsion upon the State Government to release from requisitioning "premises", namely, any building or part of a building let or intended to be let and that, insofar as premises were concerned, requisitioning was not intended to be a temporary arrangement.

The respondents submitted that the purpose of requisitioning could be of permanent nature but not the period and it was inherent in the concept of requisitioning that possession and user was limited in duration; that in the Tenth Report of the Law Commission of India on Acquisition and Requisitioning of Land, the Law Commission was of the view that the power of requisitioning the property of a private owner was an extra ordinary power and could justifiably be invoked only when an emergency arose and the Law Commission recommended that the law of requisitioning should be embodied in a permanent code but should be brought into force by a notification only when such action was deemed necessary and that property should not be kept under requisition for a period longer than five years.

Dismissing the writ petitions, this court

HELD : *Per Majority* (S.P. Bharucha, J. for himself and the M.N. Venkatachaliah, CJ. J.S. Verma, S.C.Agrawal).

1.1. The Bombay Land Requisition Act as originally enacted, empowered the State Government to require landlords to let out premises. The provisions in that regard were deleted. Therefore, the Act as it stands is not a rent control legislation. That the said Act as originally enacted had contemplated both the requisitioning of premises and compulsory letting out thereof indicates the legislative intent that whereas letting out was intended to be only a permanent arrangement, requisitioning was intended to be only a temporary arrangement. The purpose of a requisition order may be a permanent. But an order of requisitioning cannot be continued

A indefinitely or for a period of time longer than that which is, in the facts and circumstances of the particular case, reasonable. That the concept of requisitioning is temporary is also indicated by the Law Commission in its Tenth Report and 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. The concept of acquisition and requisition are altogether different as are the consequences that flow therefrom. A landlord cannot, in effect and substances, be deprived of his right 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. The continuance of an order of requisition for as long as 30 years is unreasonable. [760-D-E, 761-B-F, 762-A]

*Collector of Akola & Ors.* v. *Ramachandra & Ors.* [1968] 1 SCR 401 and *Mangilal Karwa* v. *State of M.P.,* ILR (1955) Nag 34, approved.

*H.D. Vora* v. *State of Maharashtra,* [1984] 2 SCC 337, partly overruled.

E 1.2. The State Government cannot be compelled to provide alternate accommodation to the allottees of all the requisitioned premises. It is for the State Government to consider the desirability and feasibility of providing alternate accommodation to such of them as would be in the interest of the administration. [762-F-G]

F 1.3. Having regard to the known difficulty of finding alternate accommodation in Bombay and other large cities in Maharashtra the protection of interim orders passed by the High Court would be continued until 30-11-1994, on which date all occupants of premises the continued requisition of which had been quashed shall be bound to vacate and hand over vacant possession to the State Government. [763-B-C]

*Per Sawant, J.* Agreeing with findings on questions of law but dissenting from the proposed order.

1.1. Those allottees who availed of the fair price ration shops were H mostly drawn from the middle and low income groups. They were large in

number. The allottee-consumer cooperative societies among themselves also employed sizable number of employees who will have overnight to face unemployment when the shops were required to be vacated and as a consequences, the societies may have to wind up. It is, therefore, necessary that the State Government should, for the benefit of the consumers, first, make suitable arrangement for housing the ration shops in the shops run by others in the same localities where at present the allottee-consumer cooperative societies were running their shops, before they were evicted from the present shops. Secondly, the consumer societies should have sufficient time to search for new premises and the employees of the societies should also have sufficient time to find out alternative employment. Hence, the State Government should not derequisition and evict the consumer cooperative societies from the allotted premises before 31st May, 1996. [764-B-D]

1.2. As regards the allottees of the requisitioned residential premises, they belonged to different strata of the society, and the requisitioned premises also differed in size. Most of the allottees belonged to the middle and low income groups and they were identifiable by the criteria laid down by the State Government and other authorities for allotting houses for such groups. The premises in their occupation were also small in size. Even among the MIG and LIG, some may have secured other residential premises either in their own name or in the name of the spouses and dependents. As a result of this decision, it was only those allottees belonging to the MIG and LIG who had not acquired other premises in the meanwhile, who would be hit hard inasmuch as they will be dishoused and thrown on the street with their families overnight. The State Government should, therefore, give preference to such MIG and LIG allottees in providing residential accommodation. It was possible for the State Government to do so (a) by giving priority in the allotment of its own plots of land, (b) by requiring or making suitable arrangement with the City and Industrial Development Corporation of Maharashtra Ltd. and Maharashtra State Housing Board for giving them priority in the allotments of plots, and tenements which are either already constructed or are proposed to be constructed by them, (c) by requiring the said organization to construct tenements specially for such allottees, or (d) in any other manner the State Government deems fit. The State Housing Board has at present sufficient number of residential premises (about 6000) available for being allotted on hire-purchase as well as on rental basis to the MIG and LIG. The allottees

**of the requisitioned premises were not more than about 3000. Since for making the premises available to the eligible among these groups sufficient time will be required, the State Government should not derequisition, and evict the said allottees from, the present premises till they are offered suitable alternative premises. The State Government should make such premises available at the latest before 31st May, 1996. [764-E-H, 765-A-B]**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 53 of 1993 etc. etc.

(Under Article 32 of the Constitution of India).

F.S. Nariman, Ex. Joseph, Vijay Kumar Mehta, Pawan K. Bahl and Mithilesh K. Singh for the Petitioner in W.P. (C) No. 27/94.

V.M. Tarkunde, V.M. Ganpule, Umesh Bhagwat and V.B. Joshi for the Petitioner in W.P. (C) No. 53/93.

V.B. Joshi for the Petitioner in WP (C) No. 1023/86.

Mrs. Indira Jai Singh, R.N. Keswani, B.Y. Kulkarni and Ms. Aparna Bhat for the Petitioner in W.P. (C) No. 404/86.

S.K. Dholakia and A.S. Bhasme for the Respondents in WP (C) No. 53/93, 1023/86 & 404/86.

R.F. Nariman, Kirti Dhamani, Anip Sachthey, H. Munshi and Vidya Sagar for the Respondents Nos. 3-4.

Soli J. Sorabjee, P.H. Parekh and S. Fazal for the Respondents No. 2-3.

Krishan Mahajan and P.H. Parekh for the Respondents No. 4-5.

Y. Adhyaru and K.V. Sreekumar for the Intervenor.

The Judgment of the Court were delivered by

**BHARUCHA, J.** Writ Petition (C) No. 404 of 1986. *President Association of Allottees of Requisitioned Premises, Bombay* v. *State of Maharashtra,* originated upon a letter written to the then Chief Justice of India. It was treated as a writ petition and numbered accordingly. On 21st July, 1986

rule was issued upon the writ petition and it was referred to a five Judge bench for hearing. Accordingly, it comes to be heard by us. The writ petition, in effect, seeks reconsideration of the decision in *H.D. Vora* v. *State of Maharashtra,* [1984] 2 S.C.C. 337, which was decided by a bench of two learned Judges of this Court. A

While the aforementioned writ petition concerns premises requisitioned for the purposes of residential use under the Bombay Land Requisition Act, 1948 (hereinafter called "the said Act"). Writ Petition No. 53 of 1953, *Grahak Sanstha Manch and ors.* v. *State of Maharashtra,* concerns premises requisitioned under the said Act for commercial use. Therein the petitioners are an association of cooperative societies running fair price ration shops in Bombay in premises requisitioned under the said Act. Some of its members are also petitioners and others are respondents. Each of these premises was requisitioned more than 45 years back. Some of these cooperative societies have now been served with a notice by the State Government calling upon them to vacate the premises on or before 26th December, 1992 so that the premises may be derequisitioned. The writ petition prays for a writ of *mandamus* commanding the State Government not to evict the petitioners from the requisitioned premises, in effect, this writ petition too seeks reconsideration of the judgment in *H.D. Vora's* case. B C D

Both writ petitions have been heard together and may conveniently be disposed of by a common judgment. E

In *H.D. Vora's* case a flat in a residential building was requisitioned by an order dated 9th April, 1951, by the State Government in exercise of powers conferred by section 6(4)(a) of the said Act. The flat was allotted to the appellant, H.D. Vora, who was neither a Government servant nor a homeless person. The allotment was made despite an earlier refusal by the State Government to do so. The ownership of the building having changed hands, the new owner requested the State Government to derequisition the flat on the ground that its allotment in favour of the appellant could not be said to be for a public purpose. This not having been done, the owner filed a writ petition in the High Court at Bombay challenging the continuance of the order requisitioning the flat on the ground that it could not survive for such a long period of time. Upon an examination of the material that was placed before it the High Court held that there was no material which showed the public purpose for which the order of requisition of the F G H

A flat was made and there was no denial on the part of the State Government of the averment that the appellant was neither a Government servant nor a homeless person. This Court, in appeal, found the High Court's view well founded and held that it was not possible to say on the material on record that the order of requisition had been 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 owner of the building was not entitled to challenge, the same after a lapse of over 30 years and the writ petition ought, therefore, to have been dismissed. This Court said :

> "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 respondent 3 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 the 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 passed on acquisition to the acquired leaving nothing to the former, vide : Observations of Mukherjee, J. in *Chiranjit Lal* 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 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 quise 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."

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This Court observed that the power of requisition was exercisable only for a public purpose which was of a transitory character. If the public purpose for which the premises were required was of a perennial, to permanent character from the very inception, no order could be passed requisitioning the premises. Where the purpose for which the premises was required was of such a character that from the very inception it could never be served by requisitioning the premises but could be achieved only by acquiring the same, which would be the case where the purpose was of a permanent character or likely to subsist for an indefinite period of time, the Government could acquire the premises but it certainly could not requisition the same and continue the requisitioning indefinitely. It was also observed by this Court that it was not necessary to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a

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A given case, because, ultimately, the answer to this question depended on the facts and circumstances of such cash; but there could be no doubt, that, whatever to the public purpose for which an order of requisition was made. the period of time for which it could be continued could not be an unreasonably long period such as thirty years. This Court, therefore, upheld the view of the High Court that the order of requisition could not survive B any longer, that the State Government was bound to revoke it and to derequisition the flat and to take steps to evict the appellant from it and to hand over its vacant possession to the owner.

Before we proceed to discuss the provisions of the Act and submis- C sions of counsel it is convenient to notice three judgments of this Court concerning the said Act.

In *State of Bombay* v. *Bhanji Munji,* [1955] 1 S.C.R. 777, the validity of the said Act was upheld by a Constitution Bench. This Court noted that D at the time the said Act was passed the housing situation in Bombay was acute largely due to the influx of refugees. The question of public decency, public morals, public health and the temptation to lawlessness and crime, which such a situation brought in its train, at once arose; and the public conscience was aroused on the ground of plain humanity. A race of proprietors in the shape of rapacious landlords who thrived on the misery E of those who could find no decent roof over their heads sprang into being. The efficiency of the administration was threatened because Government servants could not find proper accommodation. Milder efforts to cope with the evil proved ineffective. It was necessary, therefore, for Government to take more drastic steps in the form of the said Act, and in doing so it had F acted for the public weal. There was, consequently, a clear public purpose and an undoubted public benefit.

In *Collector of Akola & Ors.* v. *Ramchandra & Ors.,* [1968] 1 S.C.R. 401, land owned by the respondents was requisitioned under the said Act for the public purpose of establishing a new village site to resettle flood G victims. The requisition was challenged on the ground that an order passed for a permanent purpose was outside the scope of the said Act, which, at that time, was a temporary Act. This Court held that the words of Section 5(1) of the said Act, namely, 'any land for any public purpose' were sufficiently wide to include any public purpose, whether temporary or H otherwise. To read, it was said, into the section a limitation that the

purpose contemplated by it was only temporary was to confound the temporary life of the statute with the character of the purpose for which the power thereunder could be exercised. The life of the power of requisitioning and the purpose for which it was exercised were two distinct ingredients, which were not to be confused. The words "for any public purpose" were wide enough to include any public purpose and did not contain any restriction regarding the nature of that purpose. They placed no limitation on the competent authority as to the kind of public purpose necessary for the valid exercise of its power nor did they confine the exercise of that power to a purpose which was only temporary. Except for the limitation that the purpose must be a public purpose, no restriction was imposed as to the manner in which the land which was requisitioned was to be used. It could be used for a temporary purpose or for a purpose which was not temporary, if the requisitioning authority used the land for a purpose which was not temporary, such as setting up a new village site and for construction of houses thereon, it was for the Government and those who put up the structures to contemplate the possibility of having to return the land to the owner in its original state, but that did not mean that the power was restricted only to a temporary purpose.

Next, we turn to a judgment subsequent to that in *H.D. Vora's* case. Sabyasachi Mukharji, J., who was one of the two learned judges who heard. *H.D. Vora's* case, spoke for a bench of three learned Judges. He said that there was no contradiction between the decision in the cases of *Collector of Akola* and *H.D. Vora.* In the *Collector of Akola's* case no question was raised as to whether the order of requisition could continue for an indefinite duration. In *H.D. Vora's* case no one contended that the purpose of housing homeless persons was not a temporary purpose but a permanent purpose and, therefore, the order of requisition was bad. The principal argument that was advanced was that though the order of requisition was good when made, it had ceased to be valid and effective because it could not legitimately be continued for an indefinite length of time. The order of requisition had been allowed to continue for a period of almost 30 years and that is why it was said that the order of requisition had ceased to be valid and effective and the premises must therefore be derequisitioned. The Court said :

> "It is no doubt true that some observations have been made in the judgment in that case with regard to the permanent or temporary

character of the purpose for which an order of requisition could be made and to that extent what is said in that judgment may have to be slightly modified, but the principal decision in that case was that an order of requisition is by its very nature temporary in character and cannot be allowed to continue for an indefinite length of time, because then it would tantamount to an order of acquisition and would amount to a fraud on the exercise of the power of requisition, especially where there is no impediment in making the acquisition and no effort was made to acquire, must be regarded as a correct enunciation of the law which does not in any way conflict with what was laid down in the case of *Collector of Akola* v. *Ramchandra.*"

The Court approved the observations of the Nagpur High Court in *Mangilal Karwa* v. *State of Madhya Pradesh,* I.L.R. 1955 Nag. 34, which read thus :

"If the term 'requisition' has acquired any technical meaning during the two World Wars it has been used in the sense of taking possession of property for the purpose of the State or for such purposes as may be specified in the statute authorizing a public servant to take possession of private property for a specified purpose for a limited period in contradistinction to acquisition of property by which title to the property gets transferred from the individual to the State or to a public body for whose benefit the property is acquired. In 'requisition' the property dealt with is not acquired by the State but is taken out of the control of the owner for the time being for certain specified purposes. Even for this limited purpose, however, the owner becomes entitled to compensation, because 'requisition' of the property amounts at least to a temporary deprivation of the property."

The Court observed that, normally, the expression 'requisition' meant the taking of possession of property for a limited period in contradistinction to acquisition. This popular meaning had to be kept in mind in judging whether in a particular case there had been in fact any abuse of power. Orders of requisition and acquisition had different consequences. The two concepts were different. In one title passed to the acquiring authority and in the other, while title remained with the owner, possession was taken over

by the requisitioning authority. A

Mr. V.M. Tarkunde, learned counsel for the writ petitioners in Writ Petition No. 53 of 1993, submitted that requisitioning was resorted to in conditions of emergency. An Ordinance passed in 1947 had preceded the said Act, which had been passed in the next year. There had then been an acute shortage of accommodation in several cities in the then Bombay State. That stringency of accommodation had not diminished but had become more acute. In such a situation the continuation of requisition orders could not be held to be bad in law, nor could the court specify that requisitions could not continue beyond a particular number of years. The Constitution did not lay down any maximum period for which a requisition could continue. No provision of the Constitution made invalid a law of requisitioning under which property could be requisitioned for an indefinite period. The mere fact that requisitioning for a long period might amount, in substance, to acquisition did not impair the validity of a provision which continued the requisition for an indefinite period. *H.D. Vara's* case was, therefore, incorrectly decided. There was no reason why the requisition of the premises occupied by the writ petitioner cooperative societies should not be continued while they served the public purpose of supplying food grains and the like at fair prices under the Public Distribution Scheme and the need for requisitioning arising out of scarcity of accommodation in Bombay continued. The said Act had been extended until 31st December, 1994 and ought to be extended further. B C D E

Ms. Indira Jaisingh, learned counsel for the petitioners' in Writ Petition No. 404 of 1986, contended that the provisions for requisitioning of premises under the said Act had been made to control rents. The said Act was meant to cure the mischief of scarcity of accommodation and it could not be said to be finite in time. In this behalf reference was made to certain provisions of the Act to which we shall presently advert. F

Mr. Nariman, appearing for the writ petitioners in a newly-filed, unadmitted writ petition (being *The Maharashtra State Government Employees' Confederation through its General Secretary Shri R.G. Kamik and ors.* v. *The State of Maharashtra through Chief Secretary to the Government of Maharashtra,* WP(C) No. 27 of 1994) was permitted to intervene, and he submitted that the judgments in the cases of *Bhanji Manji* and *Collector of Akola* bound the Bench that decided *H.D. Vora's* case and that G H

A the judgment in *H.D. Vora* was inconsistent therewith.

The principal argument on behalf of the respondents was addressed by Mr. S.J. Sorabji, learned counsel for the landlords in writ petition No. 404/86. He did not dispute that the purpose of requisitioning could be of a permanent nature. His submission was that the period of requisitioning B could not be permanent. It was inherent in the concept of requisitioning that possession and use was limited in duration and he emphasised the judgment in the case of *Jiwani Devi Panaki* (ibid). Mr. Sorabji also referred to the Tenth Report of the Law Commission of India on Acquisition and Requisitioning of Land. The Law Commission was of the view that the C power of requisitioning the property of a private owner was an extraordinary power and could justifiably be invoked only when an emergency arose. That was perhaps the reason why most of the Requisitioning Acts were temporary. The Law Commission recommended that the law of requisitioning should be embodied in a permanent code but should be brought into force by a notification only when such action was deemed necessary. D It was also recommended that property should not be kept under requisition for a period longer than five years. If before the expiry of that period, Government thought it necessary to acquire the property it was at liberty to do so; if, however, it was decided not to acquired it then it was not proper for it to keep the property indefinitely in its possession. It was E pointed out by Mr. Sorabji that the said Act as also the Requisitioning and Acquisition of Immovable Property Act, 1952, had been amended accordingly. Mr. Dholakia, learned counsel for the State Government adopted, in the main, the submissions of Mr. Sorabji.

F The said Act, as it now stands on the statute book, defines "land" in section 4(1) to include benefits that arise out of land and buildings and all things attached to the earth or permanently fastened to the buildings or things attached to the earth. "Premises" are defined in section 4(3) to mean any building or part of a building let or intended to be let. The expression "to requisition" is defined in section 4(5) to mean, in relation to any land, G to take possession of the land or to require the land to be placed at the disposal of the State Government. Section 5(1) empowers the Government to requisition any land for any public purpose by order in writing if in its opinion it is necessary or expedient so to do. The proviso thereto states that no building or part thereof wherein the owner, the landlord or the H tenant, as the case may be, has actually resided for a continuous period of

six months immediately preceding the date of the order shall be requisitioned. Sub-section 2 of section 5 requires an enquiry in this behalf to be made. Section 6(1) obliges the landlords of premises situated in any area specified by the State Government by notification in the Official Gazette to give intimation in the prescribed form to the State Government of any vacancy therein. Sub-section 3 of section 6 precludes the landlord, without the permission of the State Government, from letting, occupying or permitting to be occupied such premises before giving such intimation and for a period of one month from the date on which the intimation is given. Under sub-section 4 the State Government may, whether or not an intimation under sub- section (i) has been given and notwithstanding anything contained in section 5, requisition premises for any public purpose and use, them in such manner as may appear to it as expedient. Section 8 provides for payment of compensation when any land is requisitioned under the said Act. It contemplates, *inter alia,* payment of compensation in a lump sum. Section 8B empowers the State Government to appoint a competent authority for the purposes of the said Act. Under Section 8C that competent authority, if satisfied after holding such inquiry as it deems fit, that an allottee of requisitioned land or premises has not paid the due monthly compensation or has sub-let the whole or any part thereof without permission or has committed any acts in contravention of the terms and conditions of the allotment or has been in unauthorised occupation thereof or that some other person is in unauthorised occupation or that such land or premises are to be released from requisition, may order the allottee to vacate the same. Section 8E makes it clear that the allotment of requisitioned land or premises shall be deemed to be a licence in favour of the allottee for its use and occupation. Section 9 authorises the State Government to release at any time from requisition any requisitioned land. Sub-section 1A thereof states that the State Government shall release from requisition, notwithstanding anything contained in sub-section 1, any land requisitioned under the said Act on or before 31st December, 1994, and by reason of sub-section 2 such land must be restored, as far as possible, in the same condition in which it was when the State Government was put in possession thereof. With the other provisions of the Act we are not here concerned. We need only note that the said Act repealed the provisions of the Bombay Land Requisition Ordinance, 1947 and sub-section 2 of section 20 stated that, notwithstanding the repeal of the Ordinance, any land requisitioned or continued to be subject to requisition under the Ordinance

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A would be deemed to be subject to requisition under the said Act.

When the said Act was originally enacted it provided (section 3) that it would remain in force upto 31st March, 1950. Section 6(4)(B) of the said Act as originally enacted empowered the Provincial Government, as it then was, to "require the landlord to let the premises to specified persons or B class of persons or in specified circumstances". The said Act was amended so that section 3 stood deleted by section 2 of Maharashtra Act 51 of 1973. At the same time sub-section 1A was introduced in section 9, which obliged the State Government to release land from requisition on the expiry of a stated period. That period was extended from time to time by successive C amendments and, as the said Act presently stands, the period expires on 31st December, 1994. Section 6(4)(b) was deleted by section 3(2) of the Bombay (Amendment) Act 5 of 1952 and consequential amendments in the proviso to sub-section 4 were made.

D The said Act as originally enacted, therefore, empowered the State Government to require landlords to let out premises. The provisions in that regard were deleted. It is, therefore, not possible to accept Ms. Jaisingh's submission that the said Act as it stands is rent control legislation. That the said Act as originally enacted had contemplated both the requisitioning of premises and compulsory letting out thereof indicates the E legislative intent that whereas letting out was intended to be a permanent arrangement, requisitioning was intended to be only a temporary arrangement. Emphasis was laid by counsel for the petitioners upon the fact that section 9 authorises the State Government to release "land" from requisition and under the provisions of sub-section 1A thereof obliges it to do so F before the period stated therein. It was urged that "land" and "premises" were separately defined for the purposes of the Act so that there was no compulsion upon the State Government to release from requisitioning "premises", namely, any building or part of a building let or intended to be let and that, insofar as premises were concerned, requisitioning was not intended to be a temporary arrangement. "Land" has been defined to G include benefits that arise out of land and buildings and all things attached to the earth or permanently fastened to the buildings or things attached to the earth and "premises" to mean any building or part of a building let or intended to be let. The definition of land is, in our view, wide and clearly includes a building or part thereof let or intended to be let. Premises would H appear to separately defined only because the said Act as originally

enacted empowered the State Government not only to requisition premises but also to compel landlords to let out premises. It is, therefore, not possible to accept the contention that under sub-section 1A of section 9 the State Government is not obliged to release premises from requisition within the period stated therein.

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's* case, the observations of the Nagpur High Court in the case of *Mangilal Karwa* v. *State of M.P.*, I.L.R. 1955 Nag. 34, 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 therefrom. A landlord cannot, in effect and substance, be deprived of, his right 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.

For the aforesaid reasons, we hold that the decision in *H.D. Vora's* 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

A 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.

The position in respect of requisitioned premises in the State is set out in the affidavit filed on 21st April, 1986 by Vasant J. Patwardhen on behalf of the State Government in Writ Petition No. 404 of 1986 thus :

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> "After requisitioning the premises, the Government of Maharashtra has been allotting such requisitioned premises to State Government servants/State Government Offices/other category of persons/offices permissible under the policy of Government. The residential requisitioned premises in the State of Maharashtra has not only been allotted to the State Government servants but also to persons of other categories such as homeless persons. At present, there are about 2300 requisitioned residential and about 247 non-residential premises in Maharashtra. Out of these about 1928 residential premises are in Bombay alone and out of which 1779 premises were requisitioned in or before 1960 i.e. have already been under requisition for over 25 years. In Bombay, about 1404 premises stand allotted to Government Servants and about 276 of them are continued in possession of Government Servants who have ceased to be Government Servants. About 497 of the residential premises stand allotted to persons of other categories like victims of house collapse, homeless persons etc."

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F We may add that of these residential premises some are large flats in the best localities of Bombay city.

The State Government cannot, in our opinion, be compelled to provide alternate accommodation to the allottees of all the requisitioned premises and we reject the plea of counsel for the petitioners in this behalf. It is for the State Government to consider the desirability and feasibility of providing alternate accommodation to such of them as would be in the interests of the administration.

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The continuance of requisition orders made in the late 1940's and early 1950's and thereabouts, particularly of residential premises, have been

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struck down by the Bombay, High Court it numerous cases following the judgment in *H.D. Vora's* case. There are no appeals thereagainst except one which was, by a separate order of this bench, dismissed. The allottees of these requisitioned premises (except retired Government servants allotted premises requisitioned for the purpose of housing Government servants) and their legal representatives have continued in occupation thereof by reason of the interim orders of this Court passed from time to time in Writ Petition No. 404 of 1986. Having regard to the known difficulty of finding alternate accommodation in Bombay and other large cities in Maharashtra, the protection of these interim orders is hereby continued until 30th November, 1994, on which date all occupants of premises the continued requisition of which has been quashed as afore-stated shall be bound to vacate and hand over vacant possession to the State Government so that the State Government may, on or before 31st December, 1994, derequisition such premises and hand back vacant possession thereof to the landlords.

The Writ Petitions are, accordingly, dismissed. There shall be no order as to costs.

**SAWANT, J.** I have had the benefit of perusing the draft of the judgment prepared by Bharucha, J. While I agree with the findings on the questions of law, I am unable to agree with the proposed order. I am of the view that notwithstanding the legal position, the following directions can be given to mitigate the hardship of the allottees of the requisitioned premises. These directions will in no way prejudice the interests of the landlords of the premises. At present that are receiving the same rent from the allottees as from the other tenants. On account of the Rent Act, they will not receive more rent from the new tenants whom they may induct after the premises are released from requisition. It is in rare cases that the premises would be required by the landlords for *bona fide* personal requirement. All that, therefore, they will be deprived of for some time more, on account of these directions, is the right to induct new tenants of their choice. It is a notorious fact that such choice is, more often than not, exercised in favour of those who can offer competing illegal consideration, commonly known as "pugree" which is escalating with passage of time.

I would, therefore, pass the following order:

There are two sets of allottees before us:- (a) Consumer Cooperative Societies which are allotted premises to run fair price ration shops and (b) individuals who are allotted residential premises.

Those who avail of the fair price ration shops are mostly drawn from the middle and low income groups. They are large in number. The allottee-consumer cooperative societies among themselves also employ a sizeable number of employees who will have overnight to face unemployment when the shops are required to be vacated and as a consequence, the societies may have to wind up. It is, therefore, necessary that the State Government should, for the benefit of the consumers, first, make suitable arrangements for housing the ration shops in the shops run by others in the same localities where at present the allottee-consumer cooperative societies are running their shops, before they are evicted from the present shops. Secondly, the consumer societies should have sufficient time to search for new premises and the employees of the societies should also have sufficient time to find out alternative employment. Hence, the State Government should not derequisition and evict the consumer cooperative societies from the allotted premises before 31st May, 1996.

As regards the allottees of the requisitioned residential premises, they belong to different *strata* of the society, and the requisitioned premises also differ in size. Most of the allottees belong to the middle and low income groups (hereinafter referred to as 'MIG and LIG') and they are identifiable by the criteria laid down by the State Government and other authorities for allotting houses for such groups. The premises in their occupation are also small in size. Even among the MIG and LIG, some may have secured other residential premises either in their own name or in the name of their spouses and dependents. As a result of this decision, it is only those allottees belonging to the MIG and LIG who have not acquired other premises in the meanwhile, who would be hit hard inasmuch as they will be dishoused and thrown on the street with their families overnight. The State Government should, therefore, give preference to such MIG and LIG allottees in providing residential accommodation. It is possible for the State Government to do so (a) by giving priority in the allotment of its own plots of land, (b) by requiring or making suitable arrangements with the City and Industrial Development Corporation of Maharashtra Ltd. and Maharashtra State Housing Board for giving them priority in the allotments of plots, and tenements which are either already

constructed or are proposed to be constructed by them, (c) by requiring the said organisations to construct tenements specially for such allottees, or (d) in any other manner the State Government deems fit. I understand that the State Housing Board has at present sufficient number of residential premises (about 6000) available for being allotted on hire-purchase as well as on rental basis to the MIG and LIG. The allottees of the requisitioned premises are no more than about 3000. Since for making the premises available to the eligible among these groups sufficient time will be required, the State Government should not derequisition, and evict the said allottees from, the present premises till they are offered suitable alternative premises. The State Government should make such premises available at the latest before 31st May, 1996.

The other premises may be derequisitioned as directed in the order proposed by the majority.

I dismiss the writ petitions subject to the above order.

R.A. Petitions dismissed.