

before it for deciding what was the *bona fide* annual value of this property. But it rightly points out that that by itself is not conclusive, and what it has accepted is the municipal valuation of this property. Sir Jamshedi's grievance is that the Tribunal was wrong in accepting the municipal valuation. Sir Jamshedji says that the Tribunal did not take the trouble to find out for itself what was the proper annual value, but it borrowed the opinion formed by the municipality of the proper annual value. If the Tribunal had laid down as a principle that in every case municipal valuation should be the only determining factor, we would undoubtedly have interfered and we would have asked the Tribunal to state a question on which we would have laid down what the correct law was. But as far as this particular case is concerned, it is clear that the municipal valuation by itself has not been the only evidence which the Tribunal has considered. Not only that, but the Tribunal has not laid down that in every case the municipal valuation should be the only test that should be applied in order to determine what is the annual value of a property. As it happens in this particular case on a consideration of all the factors the Tribunal has come to the conclusion that the proper annual value of the property is the value fixed by the Municipality. Under these circumstances we do not think any question of law arises which we should ask the Tribunal to refer to us.

The result is that the motion fails and must be dismissed with costs.

With regard to the question submitted to us, our answer must be in the negative. There will be no order as to costs on the reference.

Attorneys for Applicant: *Manilal, Ambalal & Co.*

Attorneys for Respondents: *N. K. Petigara.*

Appeal dismissed with costs.

A. J. P.

ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

THE STATE OF BOMBAY, APPELLANT *v.* MOHANLAL KAPUR,
RESPONDENT.*

*Bombay Land Requisition Act (Bom. XXXIII of 1948), s. 6 (4) (a)—
Order of Requisition—The purpose of the State or any other public*

* App. No. 31 of 1951 Misc. Appln. No. 4 of 1951.

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purpose to be stated in the Order—Order bad if purpose is not stated.

The very foundation of the power of the State to requisition premises under s. 6 (4) (a) of the Bombay Land Requisition Act is the existence of a purpose of the State or other public purpose. It is a condition precedent to the making of the order of requisition that the Requisitioning Authority must state the purpose of the State or any other public purpose for which the requisition is made.

It is not sufficient for the Requisitioning Authority simply to state that the requisition is for the purpose of the State or for other public purpose. It is necessary to indicate on the face of the order itself the specific purpose of the State or other public purpose for which the requisition is made so that the subject may be in a position to know whether the power of requisitioning has been properly and validly exercised.

Whether a particular purpose is a purpose of the State or any other public purpose, is a justiciable issue for the determination of the Court and if the Court is satisfied that the purpose is not for the State or for any other public purpose, the order would be bad.

On December 12, 1950, the Assistant Controller of Accommodation passed an order of requisition requisitioning the premises of the petitioner under s. 6 (4) (a) of the Bombay Land Requisition Act. The order did not recite that the requisition was for the purpose of the State or for other public purpose.

Held, that under cl. (a) sub-s. (4) of s. 6, it was necessary that the requisition order should on the face of it show that the requisition was for the purpose of the State or for other public purpose and as the order did not do so, it was bad.

Petition for a writ of certiorari or a direction or order under art. 226 of the Constitution.

The petitioner was in occupation of a flat in a building called Rupyatan on Marine Drive, Bombay.

On December 12, 1950, the following order of requisition was served upon the petitioner, signed by the Assistant Controller of Accommodation:—

“Whereas, on inquiry it is found that the premises specified below had become vacant on/or after the month of April 1950.

Now, therefore, in exercise of the powers conferred by clause (a) of sub-s. (4) of s. 6 of the Bombay Land Requisition Act, 1948, (Bom. XXXIII of 1948) the Government of Bombay is pleased to requisition the said premises:—

Premises

Flat No. 20 (with the attached garage) on the 4th floor of a building known as Rupyatan at 69 Marine Drive, Bombay.

By order of the Governor of Bombay,

(Sd.) Assistant Controller
of Accommodation.”

The petitioner thereupon filed this petition on January 9, 1951, for a writ of *certiorari* or a direction or order under art. 226 of the Constitution for quashing the requisition order.

The petition was heard by Shah J. who ordered the issue of a writ restraining the State of Bombay from enforcing the order.

In the course of his judgment Shah J. said:—

The order purports to have been made by the Governor of Bombay and is signed by the Assistant Controller of Accommodation.

Now, this order purports to have been passed under s. 6, sub-s. (4), cl. (a), of the Bombay Land Requisition Act, XXXIII of 1948, on December 12, 1950. On the day on which the order was passed sub-s. (4), cl. (a), of s. 6, of the Act, stood in the following form:

“Whether or not an intimation under sub-s. (1) is given and notwithstanding anything contained in s. 5, the provincial Government may, by order in writing,

(a) requisition the premises for the purpose of the State or any other public purpose and may use or deal with the premises in such manner as may appear to it to be expedient; or

(b) require the landlord to let the premises to specified persons or class of persons or in specified circumstances.”

This sub-section of s. 6 was amended by the addition of the words “for the purpose of the State or any other public purpose” in cl. (a) of sub-s. (4) by s. 3 of Bombay Act XXXIX of 1950. The section as it originally stood before November 11, 1950, (on which date the Bombay Act XXXIX of 1950 came into operation) enabled the Provincial Government by order in writing to requisition premises and to use or deal with the premises in such manner as appeared to the Provincial Government to be expedient. By the amending Act XXXIX of 1950 it is now made obligatory upon the Provincial Government that the requisition must be for the purpose of the State or any other public purpose. Presumably the Act was passed with a view to bring it into consonance with the provisions of the Constitution of India which enables legislation to be passed under item 42 of List III, that is the Concurrent List, “relating to principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined.”

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Before the amendment, the Provincial Government was required to requisition premises by order in writing, but it was not necessary that the Provincial Government must have any particular purpose to be served for requisitioning the premises. Under the amended section requisition can only be made for the purpose of the State or for any other public purpose, and that requisition must be made by an order in writing.

Mr. K. T. Desai on behalf of the respondent submits that even though by reason of the amendment in s. 6 (4) (a) of the Land Requisition Act it is made obligatory upon the Provincial Government to requisition premises for the purpose of the State or for any other public purpose, it is not thereby provided that the order of requisition must specify the purpose for which requisition is ordered. According to Mr. Desai, an order which merely states "that the Government is pleased to requisition" certain premises (which may be specified) is sufficient compliance with the terms of s. 6 (4) (a). In support of that argument Mr. Desai has referred me to the words of s. 3 of the Bombay Land Requisition Ordinance V of 1947, and has contended that under the terms of that section it was open to the Provincial Government by an order in writing to requisition premises, and even though under that Ordinance land could be requisitioned by the Provincial Government for any public purpose, it was not necessary to specify the purpose for which the land was being requisitioned. The terms of s. 3 of the Bombay Land Requisition Ordinance V of 1947 were as follows:

"Requisition of land.—If in the opinion of the provincial Government it is necessary or expedient to do so, the Provincial Government may by an order in writing requisition any land for any public purpose."

Then followed a proviso with which we are not concerned in the present case.

In my judgment the phraseology of s. 3 of Ordinance V of 1947 was different from the phraseology of sub-s. (4), cl. (a), of s. 6 of the Land Requisition Act XXXIII of 1948. Even if the view propounded by Mr. Desai as to the meaning of s. 3 of the Ordinance is right (on which question I express no opinion), I am unable to construe the words of Act XXXIII of 1948 as amended, by referring to the words of the Ordinance. Whatever may have been the position under s. 3 of Ordinance V of 1947, I am concerned in the present case to construe the provisions of sub-s. (4) of s. 6 of the Bombay Land Requisition Act, XXXIII of 1948. That sub-section enables the Provincial

Government to requisition premises for the purpose of the State or for any public purpose, and requisition can be made by an order in writing. Mr. Desai urges that the words 'by order in writing' qualify the expression, 'requisition the premises', and have no connection with the clause 'for the purpose of the State or any other public purpose' and therefore it is unnecessary to state in the order that the premises sought to be requisitioned were requisitioned for the purpose specified in the statute.

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If the construction contended for by Mr. Desai is adopted, it would mean that the section would have to be considerably rewritten. According to Mr. K. T. Desai the section means that the Provincial Government may requisition the premises for the purpose of the State or for any other public purpose, but the order in writing which carries out that intention of the Provincial Government may only specify that the Government intends to or does requisition the premises. If the contention is accepted, the expression 'by an order in writing' would govern only a part of the clause 'requisition the premises for the purpose of the State or any other public purpose' and not the whole clause. In effect the sub-section would have to be read as under:

"Whether or not.....the Provincial Government, may for purpose of the State or for any other public purpose, by an order in writing (a) requisition the premises and....."

In the absence of any overriding reason, I do not see any justification for dissecting the section in that manner, and transferring the clause added by the Legislature in the body of the clause into the operative part of the sub-section, so as to make it applicable not only to cl. (a) but also to cl. (b). It appears that at the time when the order was issued on December 12, 1950, the authorities did not fully appreciate the effect of the amendment made by Bombay Act XXXIX of 1950, and failed to specify in the order the purpose for which the premises were sought to be requisitioned. That argument is supported by the complete absence of reference to Bombay Act XXXIX of 1950 in the body of the order. It may be that the order may have been drawn up before the Bombay Land Requisition Act XXXVIII of 1948 was amended on November 11, 1950, and may have been issued on December 12, 1950.

Mr. K. T. Desai has also argued that even if the order is defective, it does not affect the validity of the requisition.

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In my judgment, that argument does not avail the respondent. If under the provisions of the Bombay Land Requisition Act XXXIII of 1948 extensive authority is conferred upon the executive Government to deprive citizens of their rights to property, it must at least appear that the executive Government did apply its mind to the provisions under which it was seeking to exercise its authority; and if, as in the present case, the order in terms fails to specify the purpose which is required to be specified in the order, it cannot be assumed without evidence that the authority (i.e. Governor of Bombay) which issued the order was conscious of the requirements of the statute and did have in mind the requirements of the statute that the premises were required for the purpose of the State or any other public purpose. In view of the fact that the order is a defective order, I hold that the petitioner is entitled to the issue of a writ restraining the State of Bombay from enforcing the order dated December 12, 1950.

The State of Bombay appealed.

H. M. Seervai, with *R. J. Joshi*, for the appellant.

N. A. Palkhivala, for the respondent.

CHAGLA C. J. An order of requisition dated December 12, 1950, was challenged by the petitioner, and the learned Judge below Mr. Justice Shah held that the order was bad on the ground that the order did not recite that the requisition was for the purpose of the State or for other public purpose. The order in question is to the following effect:

"WHEREAS, on inquiry it is found that the premises specified below had become vacant on or after the month of April 1950.

Now, therefore, in exercise of the powers conferred by clause (a) of sub-s. (4) of s. 6 of the Bombay Land Requisition Act, 1948, the Government of Bombay is pleased to requisition the said premises."

Then follows a description of the premises.

Now, Mr. Seervai's first contention is that the law does not require that the order should state the purpose for which the premises are requisitioned. In order to appreciate this contention it is necessary to look at the language of s. 6 (4) as amended. That section provides:

"Whether or not an intimation under sub-s. (1) is given and notwithstanding anything contained in s. 5, the State Government may, by order in writing.

(a) requisition the premises for the purpose of the State or any other public purpose and may use or deal with the premises for any such purpose in such manner as it may appear to it to be expedient."

It is clear, and Mr. Seervai does not dispute it, that the very foundation of the power of the State to requisition premises is the existence of a purpose of the State or any other public purpose. It is also beyond dispute that the purpose of the State or any other public purpose is not a purpose which in the opinion of the State satisfies the qualifications laid down in the statute. Whether a particular purpose is a purpose of the State or any other public purpose is a justiciable issue and the Court may investigate into the purpose for which the State has requisitioned a particular property. If the Court is satisfied that the purpose for which the requisition was made was not a purpose of the State or any other public purpose, then it would be open to the Court to say that the order was made without the condition precedent being satisfied. It is also clear that before an order of requisition can be made, the requisitioning authority must have determined for itself what the purpose of the State or other public purpose is for which the requisition order is being made. It is not open to the requisitioning authority to make up its mind as to why it wants to requisition the premises or what use it wants to put those premises after the requisition is made. The condition precedent and the foundation of the exercise of the power must be present in the mind of the requisitioning authority before it issues the order by which it takes away the property of the subject. Now, on the question as to whether the order in writing contemplated by s. 6 (4) requires the purpose for which the property is being requisitioned to be stated or not depends upon the construction of the sub-clause. What the order in writing is to be is stated in s. 6 (4) (a), and Mr. Seervai's contention is that all that the order in writing requires is the statement that the premises are being requisitioned, or, in other words, Mr. Seervai suggests that the order in writing only qualifies "requisition the premises" and not the phrase that occurs after the word "premises". There is no reason why, looking to the place of the expression "order in writing" in s. 6 (4) and looking to the language of cl. (a), we should hold that the "order in writing" only qualifies "requisition the premises" and not the whole expression "requisition the premises for the purpose of the State and any other public purpose." It is clear to my mind that the order in writing qualifies the whole expression

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up to "public purpose" from the fact that when the Legislature did not intend that expression to qualify any subsequent words they have again used the expression "and may use or deal with the premises for any such purpose." Therefore, the Legislature did not intend that the order in writing should qualify "use or deal with the premises for any such purpose" and therefore they repeated the expression "and may" which occurs in the operative part of s. 6 (4). Therefore, if that be the true construction, then the order in writing must not merely contain a statement that the premises are being requisitioned, but it must also state the purpose of the State or any other public purpose for which the premises are being requisitioned.

It is next argued by Mr. Seervai that in fact if that be the true construction, the order does contain the necessary averment required by s. 6 (4) (a). Mr. Seervai says that although the words of s. 6 (4) (a), viz. "for the purpose of the State or any other public purpose" are not set out in terms, by a reference they are so set out, and Mr. Seervai says that the very fact that the order says that the power is being exercised under cl. (a) of sub-s. (4) of s. 6 of the Bombay Land Requisition Act makes it clear that the power that is being exercised is the power referred to in s. 6 (4) (a), not any power but the power with the limitations laid down in s. 6 (4) (a). Therefore, by reference to the section the order does comply with the mandatory provisions of s. 6 (4).

Even if we were to accept this argument of Mr. Seervai, the next question that arises—and that is of considerable importance—is whether it is sufficient for the requisitioning authority merely to state that they are requisitioning a certain property for the purpose of the State or any other public purpose, or whether it is necessary for the requisitioning authority to indicate in the order the specific purpose of the State or any other public purpose. Once it is accepted that the State can only requisition a premises for purposes of the State or any other public purpose and that is the condition precedent for the exercise of its power to requisition, if requisition is done for a purpose other than that indicated in s. 6 (4) (a), then the order of requisitioning is bad. It will immediately be appreciated how necessary it is for the subject to know for what purpose the requisitioning powers of the Government are being exercised. The validity of the order must appear on the face of the order. The subject who is served with the order should be in a position to know that the order has been

validly made. He should also be in a position to know that if the order is defective, he has a right to challenge it and he has a right not to obey it. If the order merely states that the property is being requisitioned for the purposes of the State or any other public purpose, it would be impossible for the subject to determine whether in fact the specific purpose for which the order of requisition was passed was a purpose of the State or any other public purpose. The officer or authority exercising the power under s. 6 (4) may honestly and *bona fide* come to the conclusion that a particular specific purpose which he or it had in mind was a purpose specifying the conditions laid down in s. 6 (4) (a), yet in law it may not be a purpose of the State or a public purpose. Whether that is so or not could only be tested provided the specific purpose was set out in the order. Therefore, it is necessary that the subject should be given proper intimation that the exercise of the power of requisitioning by the Government is a proper exercise and a valid exercise, and that intimation can only be given to the subject by stating the specific purpose for which the requisitioning is being made on the face of the order.

Mr. Seervai has drawn our attention to the difficulties that may arise if we were to put this interpretation upon s. (4) (a). He himself dealing with some other argument drew our attention to the fact that the argument of inconvenience is the last argument to which we should have recourse. But even assuming we were to appreciate the argument of inconvenience and difficulty, we see no difficulty that should result to the State in our putting this interpretation upon the section, because, as I said before, if the Government realises the limitation of its power under s. 6 (4) (a), it will appreciate the fact that there must be some specific purpose which it must determine upon before it issues an order of requisitioning. If such a specific purpose has been determined upon, we see no difficulty whatever in the way of the Government in stating that object on the face of the order. The Courts have always construed liberally a purpose of the State or public purpose. After all, ultimately it is for the State and the Government to lay down the policy and *prima facie* to decide what is in the interests of the State or the public, and therefore Government should not feel any difficulty in stating what in its opinion has led to an order being made which deprives the subject of his property, because the interests of the State are paramount and the interests of the individual must take a second place.

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Mr. Seervai has also drawn our attention to the fact that in the proviso to s. 6 (4) where it was intended by the Legislature that something definite should appear in the order the Legislature has made provision for it, and what is pointed out is that in the proviso the Legislature has specifically provided that the declaration as to the vacancy to be made must be embodied in the order itself. The reason why this is not so stated in s. 6 (4) (a) with regard to the purpose for which the requisition is to be made is obviously because the earlier expression "order in writing" in s. 6 (4) qualifies the whole of the expression occurring in s. 6 (4) (a), and therefore it would have been redundant for the Legislature again to state that the order in writing should also contain the purpose for which the premises were being requisitioned.

Therefore, in our opinion, the view taken by Mr. Justice Shah that the order is invalid *ex facie*, inasmuch as it did not contain the necessary declaration that the property was being requisitioned for a purpose of the State or a public purpose, was right. The appeal, therefore, fails and must be dismissed with costs.

Attorneys for appellants: *Little & Co.*,

Attorneys for respondents: *Madhavaji & Co.*

Appeal dismissed.

A. J. P.

ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

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P. R. NAYAK APPELLANT, (ORIGINAL RESPONDENT) v. EBRAHIM ABOO-
BAKER AND ANOTHER, RESPONDENTS, (ORIGINAL PETITIONERS).*

Administration of Evacuee Property Act (XXXI of 1950), ss. 2 (f), 10 (1), 56 and r. 9—Custodian taking possession of whole property in which evacuees had four-seventh share—Custodian has no power to take possession of property of strangers—Joint property—Rule 9, sub-r. 2 (b) empowering possession of joint property by Custodian ultra vires.

The scope and intent of the Administration of Evacuee Property Act is confined to the securing administering, preserving and managing

* O. C. J. App. No. 101 of 1950: Misc. No. 204 of 1950.