

## APPEAL FROM ORIGINAL CIVIL

*Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Dixit.*

ALI GULSHAN, SON OF HAJI SIDDICK, APPELLANT (ORIGINAL PETITIONER) *v.* THE STATE OF BOMBAY, RESPONDENT.\*

1952  
Dec. 16

*Bombay Land Requisition Act, (XXXII of 1948), s. 6 (4) (a)—Constitution of India, Article 226, 73 and 162; schedule VII, List I, Entry II, —Order of requisition issued by State Government—Requisitioning premises for housing a member of the staff of a foreign consulate—Whether such purpose a public purpose—Whether such purpose is a purpose of the State or of the Union—If purpose of the Union, whether order issued by the State Government for the purpose of the Union valid.*

In exercise of the powers conferred by s. 6 (4) (a) of the Bombay Land Requisition Act, 1948, the Accommodation Officer issued an order against the Appellant requisitioning the premises in his occupation for a public purpose, namely, for housing a member of the staff of a foreign Consulate. On the questions, firstly, whether housing a member of the staff of a foreign consulate was a public purpose and secondly, as the subject of consular representation fell within the Union List, whether the State Government had the power to requisition property for a purpose which is not a purpose of the State but that of the Union.

*Held*, that housing a member of the staff of a foreign Consulate is a public purpose.

*Held*, further that 'Diplomatic, Consular and trade representation' being a subject in the Union list, legislation with regard to this subject and all executive functions relating thereto can only be undertaken by the Union. Legislative competence of the State Legislature is restricted to passing a Requisition Act only for the purposes of the State. The State Government therefore cannot requisition property for a purpose which is not a purpose of the State but that of the Union.

*Held*, therefore, that the order issued by the State of Bombay against the Appellant requisitioning the premises for the use of the member of the staff of a foreign consulate was invalid.

By a Requisition Order dated January 12, 1952, the State of Bombay (Respondent) in exercise of the powers conferred by s. 6 (4) (a) of the Bombay Land Requisition Act, 1948, requisitioned Room No. 16 on the 2nd floor of the Building known as Dadachandji Building situated at 178, St. Mary's Road, Mazgaon, which was in the occupation of Ali Gulshan (Petitioner) for a public purpose, namely, housing a member of the staff of a foreign Consulate. The order was received by the

\* Appeal No. 110 of 1952; Misc. Petition No. 14 of 1952.

1952  
ALI  
GULSHAN  
v.  
STATE  
Chagla  
C. J.

petitioner on January 15, 1952. On January 17, the Petitioner filed a petition for a writ of mandamus and other reliefs Mr. Justice Tendolkar who heard the petition dismissed it on July 30, 1952. The Petitioner appealed.

N. K. Gamadia for the appellant.

M. P. Amin, Advocate General, for the respondent.

CHAGLA C. J. This appeal arises out of a petition filed by the petitioner to challenge a requisitioning order. The petitioner is a tenant of a certain room on the second floor of Dadachanji Building situated at Mazagaon, and the requisition order complained of was passed on January 12, 1952. The order was passed under cl. (a) of sub-s. (4) of s. 6 of the Bombay Land Requisition Act, 1948, and the order stated that the premises were being requisitioned for a public purpose, viz. for housing a member of the staff of a foreign Consulate. The petition came before Mr. Justice Tendolkar and the learned Judge dismissed it.

Now, various points have been urged before us by Mr. Gamadia on behalf of the petitioner. In our opinion it is sufficient to dispose of this appeal on one ground alone and it is unnecessary to consider the other grounds raised in the appeal. It is contended by Mr. Gamadia that housing a member of the staff of a foreign Consulate is not a public purpose. We are unable to agree with that contention. We agree with the view taken by the learned Judge that housing a member of the staff of a foreign Consulate does constitute a public purpose. It is obvious that it is so because if a foreign Consulate is stationed in Bombay it does serve a public purpose. A foreign Consul renders services to the public by giving the public information about trade and commerce in the country of which he is a Consul, he gives visas for those wishing to travel to the foreign country, and he also performs certain notarial duties. But the other contention raised by Mr. Gamadia is that although housing a member of the staff of a foreign Consulate may be a public purpose, it is not a purpose of the State but a purpose of the Union, and therefore the State Government did not possess the power under the Act to requisition the property for a public purpose which was a purpose of the Union and not of the State.

Now both s. 5 and s. 6 gives the power to the State Government to requisition property for the purpose of the State or any other public purpose, and the Advocate General's contention

is that the purpose for which this property has been requisitioned is a public purpose and therefore it is unnecessary to consider whether it is a purpose of the State or a purpose of the Union. According to the Advocate General there may be a purpose which may neither be the purpose of the Union nor the purpose of the State, and yet may be a public purpose. The Advocate General says that if we are satisfied that the public is benefited by a foreign Consulate being stationed in Bombay, then we must hold that finding accommodation for a member of the staff of that Consulate is a public purpose, and if we are satisfied then it is unnecessary further to investigate whether that purpose is a purpose of the State or a purpose of the Union. In our opinion, every public purpose must be either a purpose of the Union or a purpose of the State. The Constitution casts upon the Union and the State the obligation not only to legislate with regard to matters which are specified in the Lists to the 7th Schedule, but also to exercise their respective executive functions with regard to those matters. In a sense it may be said that everything that the State does and everything that the Union does is for a public purpose, but the Constitution demarcates the functions of the State and of the Union. The State must act within its own ambit and the Union must act within its own ambit, and when they are so acting within their own respective ambits they are, in everything they do, serving a public purpose. It is difficult to contemplate a public purpose which is not a purpose of the State or a purpose of the Union. In this particular case it is clear from the Union List that diplomatic, consular and trade representation is a Union subject, that legislation with regard to this subject can only be undertaken by the Union, and turning to Art. 162 of the Constitution, the executive power of the State cannot extend to this subject because under that Article the executive power of the State is restricted to the matters with respect to which the Legislature of the State has power to make laws. There is a corresponding Article, art. 73, which confers upon the Union executive power with respect to those matters which Parliament has power to make laws. Therefore all executive functions relating to diplomatic, consular and trade representation can only be undertaken by the Union Government. To test the matter simply, if a foreign Consulate has a grievance about one of its officers not being properly housed, the grievance can only be ventilated before the Union Government and not before the State Government. The State

1952

ALI  
GULSHAN  
v.  
STATE

Chagla  
C. J.

1952

ALI  
GULSHAN  
v.  
STATE  
Chagla  
C. J.

Government under the Constitution has nothing whatever to do with diplomatic representation in this country. If the Advocate General's argument were sound, it would result in this that if a servant of the Central Government in any one of the important departments like the Army, Railways, Post and Telegraph had to be housed in Bombay, the State Government would have the power to requisition property for that purpose, because it could be said that a member of any of these departments by being in Bombay is serving a public purpose because the public wants the facility of Post and Telegraphs and Railways and wants to be defended by the Army. It is clear that that argument cannot be tenable. It is pointed out by the Advocate General that the Land Requisition Act uses the expression "the purpose of the State or any other public purpose" and in using this expression it draws a distinction between a purpose of the State and a public purpose, and the Advocate General says that this expression makes it clear that there may be a public purpose which may not be the purpose of the State. Now, if the legislative competence of the Legislature is restricted to pass a Requisition Act only for the purpose of the State, then we must read "any other public purpose" as *ejusdem generis* with the purpose of the State and the expression used by the Legislature can only mean that the power of the State to requisition is restricted to a public purpose which is also a purpose of the State, or, in other words, the State Government cannot requisition property for a public purpose which is a purpose of the Union. In this connection it is significant to note the very precise language used by the Central Act No. XXX of 1952 which is also a Requisitioning Act, and s. 3 provides that where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the Union, then the power can be exercised. Therefore the Central Act makes it perfectly clear that the power of the Union executive to requisition is restricted to requisitioning only for that public purpose which is also a purpose of the Union. Therefore, in our opinion, every public purpose for which land or property can be requisitioned can be divided into two categories. It must either be a purpose of the Union or a purpose of the State. If it is a purpose of the State, then our State Government has the power to requisition the property or the land. If it is a purpose of the Union, then only the Union executive has the power under Act XXX of 1952.

While agreeing with the learned Judge below that the purpose for which this property was requisitioned is undoubtedly a public purpose, in our opinion this public purpose happens to be a purpose of the Union and not a purpose of the State. In those circumstances the State Government has erroneously and improperly exercised the power of requisitioning this particular property. The result is that we must hold that the order is invalid.

The petition will therefore succeed and there will be a direction in terms of prayers (a) and (b) of the petition. The petitioner is entitled to his costs throughout from the respondent.

*Appeal allowed.*

P. M. P.

*Attorneys for appellant: Chhatrapati & Co.*

*Attorneys for respondent: Little & Co.*

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### APPELLTAE CRIMINAL

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*Before Mr. Justice Bavdekar and Mr. Justice Chainani.*

KALU *alias* HUSSEIN MAHAMAD (ORIGINAL EXTERNEE), PETITIONER  
v. STATE.\*

1952  
Dec. 16

*Bombay Police Act (XXII of 1951), s. 56—Whether Additional District Magistrate has power under s. 56 also—Criminal Procedure Code (Act V of 1898), s. 10 (2)—Notification issued by Provincial Government investing Additional District Magistrates with powers of District Magistrates—Whether notification has effect of investing them with powers under laws passed subsequent to the notification—Interpretation.*

On March 3, 1952, the Additional District Magistrate of Surat served an order on the petitioner under s. 56 of the Bombay Police Act, 1951, directing him to remove himself out of Surat district. The petitioner applied to the High Court under art. 226 of the Constitution. It was contended on his behalf (i) that as s. 56 empowers only a District Magistrate or Sub-Divisional Magistrate specially empowered in that behalf to take action under that section, the Additional District Magistrate had no power to issue the order, (ii) that the notification issued by the Government on April 21, 1950, empowering all Additional District Magistrates in the State of Bombay to exercise the powers of a District Magistrate was *ultra vires* as it could not invest the former

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\* Criminal Application No. 1024 of 1952 with Criminal Application Nos. 1025 and 1026 of 1952.