MONGIBAI HARIRAM

v.

STATE OF MAHARASHTRA AND ANOTHER

October 25, 1965

[A. K. SARKAR, RAGHUBAR DAYAL AND V. RAMASWAMI, JJ.]

Bombay Rents, Hotel and Lodging House Rates Control Act (57 *of* 1947), *ss.* 13 *and* 17—*Bombay Land Requisition Act* (33 *of* 1948), *ss.* 4(3) *and* 6—*Room in a building—If "Premises"—Eviction of tenant on ground of landlord's bona fide requirement—If premises could be requisitioned.*

P, the tenant of a room, in a block of buildings owned by a trust of which the appellants were trustees, left the room without informing the appellants and leaving K in occupation thereof. The appellants never recognised K as a tenant. No rent was paid from 1st January 1956. The appellants gave the tenant P a notice to quit and thereafter filed a suit against P and K for recovery of possession of the room under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 on three grounds, namely, sub-letting without permission, non-payment of rent and *bona fide* requirement of the room for their own use and occupation. Evidence was led on the second and last grounds. An *ex parte* decree in ejectment was passed and on 30th April 1959, the appellants obtained possession. On 1st May 1959, K wrote to the Accommodation Controller that he was evicted and rendered homeless, and the Controller on September 10, 1959 passed two separate orders under the Bombay Land Requisition Act, 1948, requisitioning the room by one and allotting the room to K by the other. The appellants moved the High Court under Art. 226 for quashing these orders but were unsuccessful.

In appeal to this Court, it was contended by the appellants that: (i) Since the appellants obtained an ejectment decree on the ground that they wanted the room for their own use and they did not intend to let it out at the time of requisition, the room would not be 'premises' under s. 4(3) of the Act of 1948 which could be requisitioned; and (ii) the order of requisition was passed *mala fide*.

HELD: (i) (By Full Court): The room was 'premises' within the definition of that word in the Act of 1948 and could be requisitioned. [327 H; 338 F]

Per Sarkar J: The expression "let or intended to be let separately" in the definition of premises in the Act of 1948 is only applicable to a part of a building for there is no question of a whole building being let separately. The words "intended to be let" in this definition do not refer to any intention to let, actually existing at the time of the requisition; they have been used to indicate that a part of a building which had never been let before would not be "premises" within the Act unless the lessor had intended to let it separately. If it is proved that the landlord had at any time let or intended to let a part of a building separately, it would for all time to come be 'premises' within the Act of 1948. [326 H; 327 D, E]

Per Raghubar Dayal and Ramaswami, JJ: The words 'let or intended to be let separately' can apply only to the letting of a part of building, as rightly, a landlord of a building is not to be forced to let a part of the building when he is in occupation of it. Therefore, from the date of the

A enforcement of the Requisition Act, every building comes within the expression "premises" and a part of a building comes within the expression, if it is let or if it is intended to be let separately on that date. It would be impracticable to decide every time a part of a building fell vacant, whether the landlord intends or does not intend to let it. [337 G-H; 338 B, E]

(ii) *Per* Raghubar Dayal and Ramaswami, JJ. : The facts that the B allottee had not paid rent previously to the appellants, took various steps to delay the execution of the decree for ejectment and applied to the Accommodation Controller for allotment to himself on the day following the ejectment, do not, in law, make the requisition order *mala fide,* when the order was not made on account of any animus against the appellants or for a purpose for which requisition could not be made. [339 F-H]

Requisitioning of premises for allotment to a person who is homeless C is requisitioning for a public purpose. The allotment to a person who was a tenant of the premises and who remiss in his duties as a tenant and had been evicted in execution of a decree of a court, in pursuance of the practice that the first informant of the existence of a "suppressed vacancy" would be allotted the premises, is not against law. Moreover, the conditions of allotment of the requisitioned premises ensure that the landlord would not be put to any further trouble so far as the collection of rent is concerned. [339 H; 340 B-D]

D

The first part of s. 13(1)(g) of the Rent Act refers to persons who receive or are entitled to receive rents on their own account and not to persons who receive or are entitled to receive rents as a trustee. Such a trustee-landlord can require the premises under the section for occupation for purposes of the trust, but since the suit was uncontested, no occasion arose in the ejectment suit for the court to determine whether reasonable accommodation was available for the tenant and whether E greater hardship would be caused to the landlord if no ejectment was ordered. If the Government happens to requisition the premises for the person who had been evicted therefrom in execution of a decree of a civil court, it does not mean that the Government is not respecting the decree of the court and is acting against public interest or against the interests of administration of justice. [341 A-C; 343 B-C]

There is no conflict between the provisions of s. 6 of the Requisition F Act and the provisions of ss. 13 and 17 of the Rent Act and the requisition was valid. [342 C]

Under s. 17(1) of the Rent Act, the court may order the landlord to re-allot the premises to the tenant who had been evicted in case the landlord does not occupy the premises within a period of one month, or, if the landlord reallots the premises to another person within a year of the eviction. Since the Requisition Act provides by s. 6, that the land- G lord cannot occupy the premises which had become vacant on the eviction of the tenant within a month of the receipt of the intimation of vacancy by the State Government, the court will not exercise its discretionary power of reallotment to the tenant when another enactment by its language provides for the landlord's non-occupation. Under s. 17(2), a landlord is liable to conviction if he keeps the premises unoccupied without reasonable cause or if he fails to comply with the order passed under s. 17(1). The non-occupation of the premises within one month H of the ejection of the tenant, when s. 6(1) of the Requisition Act applies to the premises, will be non-occupation for a reasonable cause and therefore, there can be no occasion for a conviction on the ground that the premises were kept unoccupied. [341 F-G, H; 342 A-B]

Further, the Requisition Act was enacted later than the Rent Act and since no exception from requisition with respect to premises becoming vacant on the eviction of a tenant on the ground of *bona fide* requirement by the landlord had been made, the Requisition Act would apply to such premises also. [342 C-E]

The fields of operation of the two Acts are different. Under the Rent Act, the civil court in deciding a suit for eviction, simply takes into consideration the needs of the landlord *vis-a-vis* the tenant and the grounds of eviction. Under the Requisition Act, the State Government, when considering the question of requisitioning the premises does not consider such matters but considers only whether the purpose for which it is to requisition is a public purpose or not. To hold that the benefit of the Act cannot be given to persons evicted on the ground that the landlord required the premises for his own use would not only deprive the evicted person from getting the premises allotted to himself but would also deprive many other homeless persons besides some special class of persons, allotments to whom would clearly come within public purpose. [342 F, G, H; 343 C-D]

It is not open to the appellants to urge that the premises did not become vacant or were not vacant when the requisition order was passed, because, a declaration was made in the requisition order that the premises were vacant and such a declaration operates as conclusive evidence of the premises being vacant. [339 A-B]

The fact that the allottee was not made a party to the proceedings, is also fatal to the maintainability of the writ petition. [343 F]

Per Sarkar, J. (Dissenting) : The orders of requisition and allotment passed in this case were not within the contemplation of the Act. In the circumstances of the case it has to be held that the ejectment decree was passed on the ground mentioned in s. 13(1)(g) of the Act of 1947, that is to say, the court ordering ejectment found that the appellants required the room for their own occupation and they were entitled to it in preference to the defendants P and K. The result of the orders under the Act of 1948 was to annul the decision of the court granting the ejectment. It cannot be said that the powers under the Act of 1948 were intended to be exercised to set at naught the judgment of a court. [329 A-B, D]

If the powers to requisition and allot under the Act of 1948 could be exercised in a case where an ejectment decree had been passed under s. 13(1)(g) of the Act of 1947, a conflict would arise between s. 17 of the Act of 1947 and s. 6 of the Act of 1948. This conflict has to be harmonised and the only way to do so is to say that the Requisition Act does not apply to a case where the landlord has been permitted to recover possession for his own occupation. [330 H; 331 A-B]

The Act of 1948 does not contemplate a requisition in vacuo; there must be a prospective or actually homeless person in view before an order requisition can be passed. [331 H]

The Act of 1948 does not give larger powers of requisition where the landlord has failed to give notice of a vacancy as required by s. 6 of that Act. [332 D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 577 of 1964.

Appeal by special leave from the judgment and order dated September 13/14th 1960, of the Maharashtra High Court in Appeal No. 14 of 1960.

A *A. V. Viswanatha Sastri, B. R. Agarwala, H. K. Puri,* for the appellants.

Purushottam Trikamdas, B. R. K. G. Achar and *R. H. Dhebar,* for the respondents.

Sarkar, J. delivered a dissenting Opinion. The Judgment of
B Raghubar Dayal and Ramaswami, JJ. was delivered by Raghubar Dayal, J.

Sarkar J. The appellants are trustees of a certain trust which owns a big block of buildings situate at Matunga in the city of Bombay. The rooms in this block of buildings are let out to vari-
C ous tenants. One P. S. Nambiar was a tenant of room No. 26 in this block for a long time. He had left the room without informing the appellants and having put one K. A. Nambiar in possession. It is not known when P. S. Nambiar left. The appellants never accepted K. A. Nambiar or any one else as the tenant. No rent had been paid in respect of the room since January 1, 1956 which
D was prior thereto being paid in the name of P. S. Nambiar.

The appellants terminated the tenancy of P. S. Nambiar by a notice to quit, expiring on December 31, 1957, and thereafter on March 26, 1958 filed a suit in the Court of Small Causes, Bombay against P. S. Nambiar and K. A. Nambiar for recovery of posses-
E sion of the room, P. S. Nambiar being sued as the tenant and K. A. Nambiar as the person in occupation of the room. The grounds on which ejectment was sought were that (1) P. S. Nambiar had sublet the room without the permission of the appellants, (2) he had been in arrears with his rent from January 1, 1956 and (3) the premises were required by the appellants for their own use and
F occupation. On proof of any of these grounds an ejectment decree could be passed against the tenant under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereafter referred to as the Rent Act. The defendants could not be personally served and eventually service of the summons was effected by affixing it on the room. That was due service of
G the summons but the defendants did not enter appearance to the suit. Evidence was led on behalf of the appellants to prove that the rents were in arrear as stated and that they required the room reasonably and *bona fide* for their own use and occupation as such trustees. No evidence appears to have been led as to any sub-letting by P. S. Nambiar. So this ground of eviction may be left
H out of consideration.

An *ex parte* decree in ejectment was passed in the suit on August 18, 1958. The execution of that decree was obstructed in various

ways including an application by K. A. Nambiar to set aside the decree on the ground of non-service of summons which was dismissed by the trial Court and an appeal from that order also failed. Eventually the appellants obtained possession of the room on April 30, 1959. On the next day, that is, May 1, 1959, K. A. Nambiar wrote to the Controller of Accommodation appointed under the Bombay Land Requisition Act, 1948, stating that he was evicted from the room in execution of a decree and requesting that the room be requisitioned and allotted to him under the Requisition Act as he had no other accommodation. Thereafter, by a notice dated July 11, 1959 the appellants were called upon to show cause why the room should not be requisitioned under the Act and after certain enquiries had been made, an order was passed on September 10, 1959 declaring the room to be vacant and requisitioning it and by another order dated the same day, it was allotted to K. A. Nambiar. The appellants took certain steps under the Requisition Act in the nature of an appeal to have these orders annulled but their attempts were unsuccessful.

On September 30, 1959, the appellants moved the High Court at Bombay under Art, 226 of the Constitution for a writ directing the State of Bombay and the Accommodation Officer appointed under the Requisition Act to withdraw the orders of requisition and allotment and also for a writ quashing these orders. The petition was heard by a learned Single Judge of the High Court who dismissed it. The appellants then went up to a Division Bench in appeal against the judgment of the learned Single Judge but in this appeal also they were unsuccessful. They have now appealed to this Court with special leave.

On behalf of the appellants it was pointed out that the premises which could be requisitioned under the Act were defined as any "building or part of a building let or intended to be let separately". It was said that where a building or a part of it was not intended to be let, it would not be premises and the intention to let had to be determined at the date of the order of requisition. It was, therefore, contended that as the appellants had obtained an ejectment decree on the ground that they wanted to occupy the room themselves, they did not intend to let it out and so, in the absence of such intention at the date of requisition, the room was not premises within the Act and could not be requisitioned. According to the appellants the order of requisition was hence bad. This argument does not seem to me to be well founded. The words "let or intended to be let separately" are only applicable to a part of a building for there is no question of a whole building being let

A separately; a whole building is not joint with anything else separately from which it can be let. That being so, it seems to me that the words "let or intended to be let, were used only to indicate that a part of a building is not to be understood as premises capable of being requisitioned unless the landlord let it or intended to let it separately from the rest which might be in his occupation. The reason for treating a part of the building in this way was apparently that that it would cause hardship to a landlord to force him to accept in a part of his house a stranger as a tenant. A part of building was considered by the statute to be fit for requisition only when the landlord had out of his free choice let it separately from the rest or intended so to let it. Such a view would be understandable for in such a case there would be no question of any hardship on him.

The words "intended to be let" did not, in my view, therefore refer to any intention to let actually existing at the time of the requisition. They had been used to indicate that a part of a building which had never been let before would not be premises within the Act unless the lessor had intended to let it separately at any time. It would not be taking an unreasonable view to hold that if it is once proved that the landlord had at any time intended to let a part separately, it would for all time to come be premises within the Act, for if once the landlord had wanted to let out the part, the letting could not cause any hardship to him. If the Act thereafter did not take any notice of any change in the landlord's mind regarding the letting of a part, that would only mean that it did not think it right to give him the luxury of changing his mind from time to time. That does not seem to me to be an unnatural interpretation of the Act.

Again, the definition does not say that the building or a part of it must have been intended to be let at the date of the requisition. I find no justification either in the context or the intendment of the Act to warrant the addition of words to that definition to support the appellant's contention. Furthermore, if the words "intended to be let" were meant to refer to an intention at the time of requisition, it had also to be held that the word "let" meant that the premises to be requisitioned were let at the time of requisition. That would, of course, be absurd for what could be requisitioned under the Act was what was not let and not occupied by a landlord or a tenant, namely, vacant premises. I am, therefore, unable to agree that the room was not "premises" within the definition of that word in the Act. The order of requisition is not open to challenge on the ground that it related to premises as defined in the Act.

That however does not, in my opinion, conclude the matter. I confess that this case has caused me great anxiety but having given it the utmost thought that I could, I have not been able to persuade myself that the orders that were made in this case can be sustained. I think that though they may be within the letter of the Act, they are not within its spirit or intendment. In my view, the requisition made in this case was not for a public purpose contemplated by the Act nor was the power of requisition conferred by the Act intended to be exercised in the circumstances that prevailed. There has been in a legal sense, a *mala fide* use of the powers conferred by it. I proceed to set out the reasons which have led me to this view. I should state here that this aspect of the matter had not been presented to the High Court for its consideration.

Under the Act premises could be requisitioned only for a public purpose. Public purpose would no doubt include the purpose of finding a shelter for a homeless person. This has indeed been held by this Court in *The State of Bombay* v. *Bhanji Munji*(1). A person evicted from a premises in his occupation may be a homeless person. Now in the present case the requisition had been made for K. A. Nambiar. He had no doubt been evicted from the premises in question. I will assume he had no other home in which he could take shelter and that he was a homeless person. But the question still remains whether he was a homeless person within the contemplation of the Act, that is, whether his requirement was a public purpose within the Act. I do not think he was.

Now s. 13(1)(g) of the Rent Act provides that an order for eviction from premises may be made against a tenant where the landlord requires them reasonably and *bona fide* for his own occupation. Section 12 of this Act provides for eviction for non-payment of rent. As I have said earlier, the appellants had asked for eviction on both these grounds and had given evidence in support of them. It is not necessary to consider the ground of non-payment of rent for the purposes of this judgment for it does not annul the other ground of eviction and does not affect the order of eviction made under s. 13(1)(g). With regard to s. 13(1)(g) the appellants' case was that they required possession of the room for storing building materials of the trust and also for their occupation when they came from Calcutta where they resided to Bombay to look after the properties of the trust of which they were trustees as they had no residential accommodation in Bombay. It has not been disputed that this, if proved, would satisfy s. 13(1)(g). They

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

A gave evidence to prove this requirement. This they repeatedly stated in their affidavits and it has not been denied by the respondents. That evidence was unchallenged, as it must be held in view of the proceedings in the ejectment suit earlier referred to, that the tenant and occupier had deliberately kept away from the hearing of the ejectment suit. It follows, therefore, that the ejectment B must have been ordered also on the ground that the appellants wanted the room for their occupation. It is true that there was no judgment in the ejectment suit but only an order for ejectment without stating the reasons on which it was based but that cannot affect the rights of the appellants. The omission of the Court to state the reasons for its order would not show that the order had C not been passed on the ground of the *bona fide* personal requirement of the premises by the landlord.

The result of this order is that the Court acting under the Rent Act found after due trial that the appellants were also homeless persons and between them and the defendants they had a greater D right to occupy the room: see s. 13(2). The result of the requistion order was to annul this decision. It does not seem to me that powers under the Requisition Act were intended to be exercised to set at naught the judgment of a Court and restore possession to the evicted tenant. In my opinion, in the circumstances prevailing, the premises could not be requisitioned at all for if they E were requisitioned even for putting a third person in possession the result might be that the evicted tenant rendered homeless for no fault of his own would have to go without a shelter while the third person to whom the premises were allotted was provided with a home. It would be unnatural to think that the Act intended such an anomalous situation. I, therefore, think that the requisition F order was outside the Act and invalid.

This view finds some support from the judgment of the Appellate Bench of the High Court. It was there said that if the premises had been allotted to K. A. Nambiar though he was in arrears with the rent and for that reason evicted, then it would have to be G held that the orders of requisition and allotment "were not free from *mala fide*". The learned Judges however held that K. A. Nambiar had no liability for rent as he was not the tenant, that liability being only that of P. S. Nambiar who was the tenant, and, therefore, the orders could not be said to have been made *male fide*. With respect, I am unable to see what difference the H fact that K. A. Nambiar was not liable for rent and could not be said to have been evicted for non-payment of rent by him, made. Admittedly, he was in occupation of the premises all along. He

knew that rents had not been paid and that he was occupying the premises free. Is not that fact as strong to show *mala fides* as the fact, if it had been so, that he was liable to pay rent and did not pay ? It seems to me impossible that the Act contemplated a requisition to restore possession to him. It is not necessary however to pursue this aspect of the matter further. The point that I wish to make is that the learned Judges of the Appellate Bench of the High Court thought it a *mala fide* application of the Act to allot premises to a tenant who had been evicted from them on the ground that he had not paid rent. I find no distinction between that case and one allotting premises to a person who has been directed by a court to be evicted on the ground that the landlord is entitled to their possession in preference to the person in whose right he was there. In my view, the Requisition Act was not intended to be utilised for putting the evicted person back in possession in either case; in each case the requisition would be *mala fide*. The requisitioning authorities were fully aware of all the facts of the litigation between the appellants and the Nambiars and I cannot help wondering how notwithstanding that they thought fit to make the order of requisition. I do not wish to say that they deliberately set the decree of court at naught but I am clearly of opinion that they completely misconceived their powers under the Requisition Act.

There is yet another aspect of the case which has led me to the view that the requisition order was outside the Act. I have already stated that the Rent Act provides by s. 13(1)(g) that an order of eviction may be made against a tenant where the premises are reasonably and *bona fide* required by the landlord for his own occupation. Section 17 of the Act states that where a decree for eviction has been passed on such a ground—I have held that the decree for eviction in the present case was passed on that ground—and the premises are not occupied within a period of one month from the date the landlord recovers possession, the landlord is liable to a penalty of imprisoment or fine and, what is important, the Court may also on the application of the evicted person order the landlord to place him in occupation of the premises on the original terms and conditions. Now s. 6 of the Requisition Act says that when premises become vacant as a result of the tenant having been evicted, the landlord shall give intimation of the vacancy to the prescribed authority within seven days and he shall not occupy the premises or permit them to be occupied by anyone before giving the intimation of vacancy and also for one month from the date when the intimation given is received by the authority. It would appear, therefore, that a conflict will arise between the two Acts if both were applicable at the same

A time in a case where the tenant has been evicted on the ground that the landlord required the premises for personal occupation; under one the landlord has to occupy the premises within a month while under the other he cannot occupy them for a month or longer. This conflict must be harmonised and the only way to do so is to say that the Requisition Act does not apply to a case B where the landlord has been permitted to recover possession for his own occupation. This would leave both the Acts a fair field on which to operate. Otherwise the provision of the Rent Act requiring the landlord to occupy the premises earlier referred to would become completely ineffective. I may also add that the C Rent Act is a special law dealing with the relations between landlords and tenants while the Requisition Act is a general Act dealing with the requisition of all vacant premises. To give the Requisition Act preference over the Rent Act would be to hold that a general statute overrides a special one. This would be against the accepted canons of interpretation. To my mind, this D affords a further ground for saying that it was not intended that the Requisition Act would apply to such a case. The present is precisely a case of the same kind.

A suggestion was made on behalf of the respondents that the order of requisition and the order of allotment were separate and that being so the requisition order would not become invalid E because the allotment had been made to a person to whom it could not be made under the Act. I should at once state that in the view that I have earlier taken, the question does not arise for in my view the requisition order made in this case was itself bad for no requisition could be made in a case where a landlord has been held entitled by court to evict the tenant as he requires the pre- F mises for his personal occupation. I will also consider the argument apart from this aspect of the case. I do not think that the two orders were separate. Assume however that they were so. Even then *ex concessis* the order of allotment is outside the Act and therefore bad. If both were good or both were bad, it would be to no purpose to discuss whether there were two orders or one. G The allotment order has, therefore, in any event, to go. If the allotment order was unjustified, the requisition order would also fall, for it is not said that there was any homeless person other than K. A. Nambiar to whom the allotment had been made, for whom it was necessary to requisition the premises. I do not think the H Act contemplates a requisition in vacuo; there must be a public, that is to say, a prospective or actually homeless person in view before a requisition can be made. I think that there are observa-

tions in *Bhanji Munji's* case(1) supporting that view. It is not in dispute that in this case there was no homeless person prospective or actual to the knowledge of the requisitioning authorities who required accommodation, except K. A. Nambiar. He had given intimation of the vacancy and had at the same time requested that the room be requisitioned and allotted to him. Both the orders were besides made on the same day. It is obvious that the two orders are connected and, therefore, really one. The contention that the orders were separate is, to my mind, too naive to be accepted. There is in the present case, therefore, really one order and that must go.

In the course of the hearing in this Court our attention was repeatedly drawn to the fact that this was a case of a "suppressed vacancy". What was meant by "suppressed vacancy" was that the appellants had failed to give notice of the vacancy as required by s. 6 of the Requisition Act. On the facts, it has to be held that the appellants had not given the necessary notice. But I do not see that that makes any difference to the present case. The Requisition Act nowhere says that larger powers of requisition may be exercised where the required notice has not been given. Those powers are the same whether notice has or has not been given. All that the Act says is that on the failure to give notice the landlord would incur a penalty by way of imprisonment or fine : see s. 6(5). I find nothing in the case of *Bhanji Munji*(1) contrary to this view or contrary to anything that I have said in this judgment.

I would for these reasons allow the appeal with costs throughout.

Raghubar Dayal, J. The appellants, in this appeal by special leave, are the trustees-owners of Kutchi House situate at Brahmanwada Road, Matunga, Bombay. They purchased the property in 1948.

One P. S. Nambiar was at the time tenant in occupation of room No. 26 on the second floor of the Kutchi House. He paid rent at Rs. 20.68 per month exclusive of electricity. He did not pay rent from January 1, 1956. He left the premises sometime without informing the appellants and after putting K. A. Nambiar in possession of the room. In 1958 the appellants sued for

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

A ejectment of P. S. Nambiar and K. A. Nambiar from room No. 26 in the Court of Small Causes, Bombay, on grounds :

(a) that the defendant P. S. Nambiar has sublet and/or assigned his interest in the suit premises without the permission of the plaintiffs and in breach of the
B provisions of Bombay Act 57/47;

(b) that the said defendant No. 1 has been in arrears of rent and/or compensation from 1st January, 1956 at the rate of Rs. 20.68 exclusive of electricity charges; and

C

(c) that the premises are required by the plaintiffs for their own use and occupation *bona fide* and reasonably.

On any of these grounds the landlord could evict the tenant in view of the provisions of s. 13 of Act 57/47 *viz.*, the Bombay
D Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called the Rent Act). The proceedings were to be taken in the Court of Small Causes, Bombay, in view of s. 28 of that Act.

E The suit was decreed *ex parte* on August 5, 1958. The decree directed the defendants to vacate the room by August 16, 1958. The decree-holders actually got possession of the room on April 30, 1959 as proceedings were taken against K. A. Ramakrishnan who had obstructed the execution of the warrant of possession on September 30, 1958 and as K. A. Nambiar also took proceedings
F for the setting aside of the *ex parte* decree.

On May 1, 1959 K. A. Nambiar applied to the Controller of Accommodation for requisitioning the premises, room No. 26, under the Bombay Land Requisition Act, 1948 (Act XXXIII of 1948), hereinafter called the Act, and for allotting it to him as
G he had been evicted therefrom on April 30, 1959. On July 11, the Accommodation Officer issued a notice to the appellants to show cause why the room be not requisitioned under the Act. The appellants showed cause and, by his letter dated August 17, 1959, the Accommodation Officer informed the appellants that on the evidence available to him he had come to the conclusion that it
H was a case of suppressed vacancy. Against this order of the Accommodation Officer the appellants appealed to the Government of Bombay.

On September 10, 1959 the Government of Bombay issued the requisition order. It reads :

"Whereas, on inquiry it is found that the premises specified below had become vacant on the 30th day of April, 1959.

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (4) of section 6 of the Bombay Land Requisition Act, 1948 (Bom. XXXIII of 1948), the Government of Bombay, is pleased to declare that the said premises had become vacant after 4th December, 1947 and to requisition the said premises for a public purpose, namely, for housing a homeless person.

Premises

Room No. 26, 2nd Floor, Kutchi House etc.

By the order and in the name of the

Governor of Bombay.

Sd/-

Accommodation Officer."

On September 12, room No. 26 was allotted to K. A. Nambiar. He was required to pay to the land-lord on behalf of the Government, in advance, on or before the 10th day of every month, compensation at the rate of Rs. 20.68 per month in respect of the premises and to send to the Controller of Accommodation a certificate of such payment counter-signed by the land-lord on or before the 15th day of each month.

The appellants then addressed an application to the Revenue Minister on September 14, 1959. On September 25, the Deputy Minister of Revenue interviewed the representatives of the appellants in the presence of K. A. Nambiar and the Controller of Accommodation.

On September 30, the appellants filed a petition in the High Court of Bombay against the State of Bombay and the Accommodation Officer, Bombay, praying *inter alia* for the issue of a writ of *mandamus* under art. 226 of the Constitution against the respondents directing them to cancel or withdraw the orders of requisition and allotment. The petition was contested by the respondents. The learned Single Judge who heard the petition held

A that room No. 26 came within the definition of 'premises' and that the requisition order was not *mala fide*. The contention to the effect that the appellants had given necessary intimation of vacancy by their letter dated May 3, 1959, was not pressed in view of the denial of the receipt of any such notice by the Government. The other contention about the requisition order being against the B pronounced policy of the Government was rejected. The result was that the appellants' petition was dismissed.

The appellants then filed an appeal under the Letters Patent. This appeal also failed. The appellate Bench agreed with the findings of the learned single Judge on the question of room No. 26 C being 'premises' within the definition of that word in the Act and on the requisition order being not made *mala fide*. The contention that there was no statutory vacancy in respect of room No. 26 which could have been the subject matter of requisition by the respondents was not pressed. It is against this order of the appellate Bench of the High Court that this appeal has been filed.

D

Besides the two contentions urged before the High Court, it has also been contended for the appellants that the premises were not vacant as contemplated by the Act and that therefore they could not have been requisitioned.

E The requisition order is made under s. 6(4) of the Act. Sub-s. (1) of s. 6 reads :

> "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 F 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 G prescribed form to an officer authorised in this behalf by the State Government."

Sub-s. (2) requires the landlord to give an intimation to the State Government by registered post within 7 days of the premises becoming vacant or becoming available for occupation. Sub-s. H (3) prohibits the landlord without the permission of the State Government to 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 by the State Government. Sub-s. (4) reads : A

> "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—
>
> (a) requisition the premises for any public purpose and may use or deal with premises for any such purpose in such manner as may appear to it to be expedient; . . B
>
> Provided that where an order is to be made under clause (a) requisitioning the 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." C D

Sub-s. (5) provides for penalty for failure to give the necessary intimation required by sub-s. (2). Explanation to s. 6 reads :

> "For the purposes of this section— E
>
> (a) premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises or otherwise, notwithstanding any instrument or occupation by any other person prior to the date when such landlord tenant or sub-tenant so ceases to be in occupation; F
>
> (b) premises newly erected or re-constructed shall be deemed to be or become vacant until they are first occupied after such erection or reconstruction." G

It is true that the State Government can requisition premises only. 'Premises' is defined in cl. (3) of s. 4. The relevant portion of the definition is : H

> " 'premises' means any building or part of a building let or intended to be let separately."

A The contention for the appellants is that the appellants had sought and got decree for the ejectment of P. S. Nambiar and K. A. Nambiar *inter alia* on the ground that they required the premises reasonably and *bona fide* for occupation by themselves, a ground mentioned in s. 13(1)(g) of the Rent Act, that room No. 26 could not be said to be intended to be let on the ejectment of the Nambiars B on April 30, 1959 and therefore did not come within the term 'premises'. The argument is that the intention about the letting of the building or part of it is not to be determined once for all when it is let but is to be determined on each occasion the part of the building falls vacant. If the same intention exists then, the part of the building will answer the definition of premises, but C if such an intention does not exist and the landlord intends to occupy the building himself or even does not intend to let it, the building would not come within the definition of the word 'premises'. We consider this argument unsound. If accepted, the purpose of the Act will be mostly defeated. While the object of the Rent Act was to control the rent payable by a tenant and his D eviction from the premises, the object of the Act was to requisition premises for making them available to the persons in need of accommodation. Both sections 5 and 6 empower the State Government to requisition land or premises for a public purpose. The Government has to have complete control over the buildings from the time the requisition Act came into force, so that it could E effectively meet the requirements of the persons in need of accommodation. Such a control has been given to the Government by the provisions of the Act.

The word 'premises' means, as already stated, any building or F part of a building let or intended to be let separately. It has been urged for the appellant that the expression 'let or intended to be let separately' govern both the word 'building' and the expression 'part of a building'. We are of the view that this is not really so and that this expression governs only the clause 'part of a building'. 'Intended to be let separately' cannot have any reasonable meaning G with reference to a building. There is no question of its being intended to be let separately. It is to be let or not to be let. 'Let or intended to be let separately' can apply only to the letting of a part of a building as rightly a landlord of a building is not to be forced to let a part of the building when he be in occupation of it. It follows then that all buildings, irrespective of the fact whether H they were let or were intended to be let at the time the Act came into force came within the expression 'premises' and therefore could be requisitioned by the Government if the requirements of

ss. 5 and 6 were satisfied. If the buildings come under the control of the Government from the date of the enforcement of the Act, there is no reason why part of a building which was let or which was intended to be let separately on such a date be not thereafter under the control of the Government for the purposes of the Act. It would be impracticable to decide every time a part of a building fell vacant, whether the landlord intends or does not intend to let it. It appears that the Act contemplated every building to be available for letting whenever it fell vacant be it in the occupation of the tenant or of the landlord at the time the Act came into force, as sub-s. (1) of s. 6 contemplates premises becoming vacant after the date of the notification by the State Government under that section by reason of the landlord ceasing to occupy premises or by reason of the release of the premises from requisition. The premises on the landlord's ceasing to occupy them, become vacant and therefore subject to an order of requisition by the State Government. So long as the landlord was occupying the building or part of a building, it would not come within the definition of 'premises' if the argument for the appellants that the intention to let must be determined on each occasion of a building or part of a building falling vacant. The expression 'premises' in s. 6(1) of the Act clearly contemplates buildings in the occupation of the landlord, buildings which were neither let nor could possibly be said during the period of occupation to be intended to be let. We are therefore of the view that from the date of the enforcement of the Act, every building comes within the expression 'premises' and that a part of a building comes within the expression if it is let or if it is intended to be let separately on that date. Room No. 26, which had been let, was 'premises' within the meaning of that term in the Act. The fact that the appellants got the Nambiars ejected from room No. 26 on the ground that they themselves reasonably and *bona fide* required the premises for their use and intended to occupy it, does not make room No. 26 cease to be 'premises'.

A B C D E F

The second contention about the premises being not vacant when requisitioned has no force. There is no doubt that the Government can requisition premises which are vacant. Sub-s. (2) of s. 6 requires the landlord to give notice of the vacancy of the premises within a week of its falling vacant. If such notice is received and the Government requisitions the building within a month of receiving the notice, no question about the vacancy of the premises can arise for determination. If no such intimation is given by the landlord, the proviso to cl. (a) of sub-s. (4) of s. 6

G H

A requires the State Government to make such enquiry as it deems fit and make a declaration in the order of requisition itself that the premises were vacant or had become vacant on or after the date of the notification under sub-s. (1) of s. 6. Such a declaration is made conclusive evidence of the premises being vacant or having become vacant. Such a declaration is made in the B requisition order dated September 10, 1956 requisitioning the premises in suit. It is therefore not open to the appellant to urge successfully that the premises in suit did not become vacant or were not vacant when the requisition order was passed.

It may be further mentioned that the premises became vacant C in view of sub-s. (1) of s. 6 and explanation to s. 6 when the tenant ceased to occupy it due to eviction in execution of the decree secured by the appellant. The premises became vacant on April 30, 1959. The act that the appellants secured the eviction of P. S. Nambiar and K. A. Nambiar *inter alia* on the ground that they required the premises for their use, does not affect the D question of the premises becoming vacant on April 30. Even if the appellants had actually occupied the premises after April 30, 1959, of which there is no good evidence on record, the fact remains that the premises had become vacant on the eviction of the tenant. In view of these considerations, we reject the second E contention.

The other contention is that the requisition order was made *mala fide*. There is no allegation that the State Government is in any way interested in K. A. Nambiar in whose favour the allotment order was made after the requisitioning of the premises. *Mala fides* are alleged merely on the ground that the premises were F requisitioned for allotting them to K. A. Nambiar who had illegally occupied them when P. S. Nambiar ceased to occupy them, had not paid the rent to the landlords-appellants, took various steps to delay the execution of the decree for ejectment secured by the landlords-appellants and applied to the Accommodation Officer for allotment of the house on the day following the G ejectment. These circumstances, do not, in law, make the requisition order *mala fide* when the order was not made on account of any animus against the appellants or for a purpose for which requisition could not have been made.

H Sub-s. (4) of s. 6 empowers the State Government to requisition premises for a public purpose. It has been held that requisitioning the premises for allotment to a person who is homeless *i.e.*, who has no premises to occupy, would be requisitioning for a

public purpose, vide *The State of Bombay* v. *Bhanji Munji*(1) where this Court said at p. 785 : A

> "If therefore a vacancy is allotted to a person who is in fact houseless, the purpose is fulfilled."

It may not appear very right, on grounds of sentiment and propriety, that a tenant who has not behaved properly towards the landlord and had been remiss in his duties as a reasonable tenant be allotted the same premises after he had been evicted in execution of a decree passed by a Court of law in pursuance of the practice that the first informant of the existence of a suppressed vacancy would be allotted those premises but allotment to such a person is not against the law. One homeless person is as good as another. The conditions of allotment of requisitioned premises ensure that the landlord would not be put to any further trouble so far as the collection of rent is concerned. B C

Section 8B of the Act empowers the State Government to realise the dues which the allottee has to pay and has failed to pay as arrears of land revenue. The allotment order, Exhibit J, dated September 12, 1959, required the allottee to deposit a certain sum by way of security for the due observance of the terms and conditions subject to which the allotment was made. It also required the allottee to pay to the landlord in advance, on or before the 10th day of every month, compensation at the rate of Rs. 20.68 per month in respect of the premises. The allotment order is subject to some other conditions also which, in the ultimate analysis, enures to the benefit of the landlord. D E

It has been urged that 'homeless person' does not include one who has been evicted on the ground that the landlord requires the premises for his own use and occupation as the decree for ejectment on such a ground can be passed only if the Court is satisfied that having regard to the circumstances of the case, including the question whether other reasonable accommodation will be available for the landlord or the tenant, greater hardship would not be caused by passing the decree than by refusing to pass it. F G

Section 13(1)(g) of the Rent Act entitles the landlord to recover possession of the premises if the Court is satisfied that the premises are reasonably and *bona fide* required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public H

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

A charitable trust that the premises are required for occupation for the purposes of the trust. It is open to doubt whether a trustee-landlord, as the plaintiffs-appellants are, can be said to require the premises for occupation for himself. The first part of s. 13(1)(g) appears to contemplate persons who receive or are entitled to receive rents on their own account and not to persons who receive B or are entitled to receive rents as a trustee. A trustee-landlord can require the premises under s. 13(1)(g) for occupation for purposes of the trust. The trustee-landlord himself need not be a homeless person. No occasion arose in the ejectment suit for the Court to determine whether reasonable accommodation was available for the tenant and whether greater hardship would be C caused to the landlord if no ejectment be ordered as the suit was uncontested.

The provisions of s. 13(2A) of the Rent Act show that the needs of the armed forces of the Union or their families get precedence over the needs of the landlord. The needs of the landlord D therefore are not such a controlling factor as to over-ride the provisions of the Act if the requisition of the premises in suit comes within them. Requisition under the Act is for a public purpose and there seems to be no good reason why the needs of the landlord be not deemed subservient to the requirements of public purpose as judged by the State Government.

E

Another ground for the non-applicability of the Act to such ejected person, is urged on the basis of the provisions of s. 17 of the Rent Act. Sub-s. (1) of s. 17 empowers the Court to order the landlord to re-allot the premises to the tenant who had been evicted therefrom in case the landlord does not occupy the premises F within a period of one month or if the landlord re-allots the premises to another person within a year of the tenant's eviction. The Court has a discretion to pass such an order on the application of the tenant. If the Act provides by s. 6 that the landlord cannot occupy the premises which had become vacant on the eviction of the tenant within a month of the receipt of the intima- G tion of vacancy by the State Government, there is no conflict between that provision and the discretionary power vested in the Court under sub-s. (1) of s. 17. The Court, undoubtedly, cannot exercise such a discretionary power when another enactment by its language provides for the landlord's not occupying the premises for a period in excess of a month. Under sub-s. (2) of s. 17, a H landlord is liable to conviction if he keeps premises unoccupied without reasonable cause or if he fails to comply with the order passed under sub-s. (1) of s. 17. No question of conviction in

the latter circumstances arises if as indicated earlier the Court will not pass an order of re-allotment to the evicted tenant in case the premises are subject to the provisions of s. 6 of the Act. The non-occupation of the premises within one month of the ejection of the tenant on the ground that the premises are situate in an area covered by the notification under s. 6(1) of the Act will be non-occupation of the premises for reasonable cause and therefore there can be no occasion for a conviction on the ground that the premises were kept unoccupied within a period of one month from the date of recovery of possession.

We do not therefore consider that there is any real conflict between the provisions of s. 6 of the Act and the provisions of ss. 13 or 17 of the Rent Act.

It is also to be noticed that the Act was enacted later than the Rent Act. The legislature is presumed to know the provisions of the Rent Act. It did not make an exception from requisition with respect to premises becoming vacant on the eviction of a tenant on the ground mentioned in s. 13(1)(g) of the Rent Act. On the contrary, not only sub-s. (1) of s. 6 speaks of the vacancy of the premises on a tenant ceasing to occupy them but the Explanation to s. 6 clearly states that the premises which are in the occupation of a tenant shall be deemed to become vacant when such tenant ceases to be in occupation by eviction. An exception could have been made in case of evictions for a particular reason, such as in cl. (g) of sub-s. (1) of s. 13 of the Act. The legislature made no such exception.

The fields of operation, of the two Acts, the Rent Act and the Act, are different. The Rent Act deals with the question arising between the landlord and the tenant on account of the incidents of tenancy, while the Act deals with the necessities of a public purpose as determined by Government in a particular area for which a notification under sub-s. (1) of s. 6 has been issued, keeping in mind the interests of the landlord also.

The Civil Court, in deciding a suit for eviction, simply takes into consideration the needs of the landlord *vis-a-vis* the tenant and the grounds of eviction. It does not take into consideration the requirements of any public purpose. It adjudicates between the rights of the landlord and the tenant in accordance with the statutory provisions of the Rent Act. The State Government, on the other hand, when considering the question of requisitioning the premises under sub-s. (4) of s. 6 does not consider such matters

A but considers only whether the purpose for which it is to requisition the premises is a public purpose or not. If it is satisfied that it requires the premises for a public purpose, it has not to consider the considerations affecting the landlord except when the landlord applies for permission under s. 6(3) of the Act. It has certainly no occasion to consider the interests of the tenant as the premises B can be requisitioned only when they are vacant or are deemed vacant in view of somebody occupying it in contravention of the provisions of the Act. If the Government happens to requisition the premises for the person who had been evicted therefrom, in execution of a decree of a civil Court, it does not mean that the C Government is not respecting the decree of the Court and is acting against public interest or the interests of administration of justice.

To hold that the benefit of the Act cannot be given to persons evicted on the ground that the landlord required the premises for his use would not only deprive the evicted person from getting the premises allotted to himself but would also deprive many other D homeless persons besides some special class of persons allotments to whom would clearly come within public purpose. Merely because there is a possibility of the evicted person getting allotted the premises he had been evicted from, does not appear to us to be good reason for holding that the provisions of s. 6 of the Act do not apply to the requisitioning of premises when the premises be- E came vacant on the eviction of a tenant by a Civil Court on the ground that the landlord required the premises for his own use.

K. A. Nambiar is no party to these proceedings and this should also prove fatal to the writ petition by the appellants when the appellants seek the quashing of the order of requisition and the F order of allotment to K. A. Nambiar.

We therefore agree with the High Court that the requisition order cannot be said to be *mala fide*. The result will be that the appeal fails and is dismissed with costs.

G

ORDER

In accordance with the opinion of the majority the appeal is dismissed with costs.