Rajendra Kumar Gupta And Anr vs State Of U.P. And Ors on 10 February, 1997

Equivalent citations: AIRONLINE 1997 SC 243, 2017 (5) SCC 496, (1997) 1 CUR CC 480, (1997) 1 SCR 1056, (1997) 2 CIV LJ 889, (1997) 2 SCALE 26, (1997) 2 REC CIV R 393, 1997 (4) SCC 511, (1997) 2 ALL WC 634, (1997) 1 SCJ 423, (1997) 1 LACC 233, (1997) 2 SUPREME 683, (1997) 2 JT 581, (1997) 2 JT 581 (SC), (1997) 1 SCR 1056 (SC), 1997 UJ(SC) 1 676, (2012) 112 ALLINDCAS 95, (2012) 4 ALL WC 2, (2017) 121 ALL LR 861, (2017) 172 ALLINDCAS 1, (2017) 1 ALL RENTCAS 752, (2017) 1 GUJ LH 817, (2017) 1 RENCR 268, (2017) 1 RENTLR 449, (2017) 1 WLC(SC)CVL 513, (2017) 2 BOM CR 713, (2017) 2 CAL HN 115, (2017) 2 CIVILCOURTC 537, (2017) 2 ICC 437, (2017) 2 RECCIVR 310, (2017) 3 ALLMR 431, (2017) 3 SCALE 315, (2017) 5 MAD LW 332

Author: S.B. Majmudar

Bench: S.B. Majmudar

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           CASE NO.:
Appeal (civil)  373 of 1987

PETITIONER:
RAJENDRA KUMAR GUPTA AND ANR.

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT: 10/02/1997

BENCH:
DR. A.S. ANAND & S.B, MAJMUDAR

JUDGMENT:
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JUDGMENT 1997 (1) SCR 1056 The Judgment of the Court was delivered by :

S.B. MAJMUDAR, J.: The appellants in this appeal by special leave have brought in challenge the order of a Division Bench of the High Court of Judicature at Allahabad dismissing the writ petition moved by the appellants before that Court. The appellants had challenged an order dated 29th October 1976 passed by the second respondent, District Magistrate- cum-Competent Authority, Kanpur, requisitioning 777 sq. yards and 7- 1/3 sq. ft. of lands comprising of plot Nos. 36 and 36-A situated on The Mall, Kanpur in exercise of the powers of the second respondent under

Section 23 of Defence and Internal Security of India Act, 1971 (hereinafter referred to as 'the Act'). The impugned order of second respondent merely mentioned that the said order of requisition was issued as it was necessary and expedient to requisition the property in question for maintaining supplies and services essential to the life of the community. The appellants were called upon by the said order to deliver by 15th November 1976 possession of the said immovable property to the Director, Handlooms and Managing Director of U.P. State Handloom and Power-loom Finance and Development Corporation Ltd., Kanpur, U.P., respon-dent no. 3 herein. During the writ proceedings it transpired that the said requisition order was issued with a view to seeing that the concerned respondent-Corporation could construct shops and showrooms in the land in question for exhibiting its handloom products which were manufactured by handloom weavers. The appellants contended before the High Court that the aforesaid purpose of requisition was dehors the provisions of Section 23 of the Act. It was next submitted that as it was a permanent purpose power of requisition under the Act would not be invoked for fructifying the said purpose and in any case such a requisition order could not continue indefinitely and hence the continued enforcement of the said order resulted in unreasonable exercise of power on the part of the second respondent. The Division Bench of the High Court was not persuaded to accept the aforesaid contentions raised on behalf of the appellants and dismissed the writ petition. That is how the appellants are before us in this appeal.

Rival Contentions Shri Sibal, learned senior counsel for the appellants vehemently contended that the Act itself was a temporary Statute having the limited existence being enacted during emergency, both external and internal, and had already ceased to operate since long and that the purpose for which the requisition was resorted to was dehors the provisions of Section 23 of the Act as providing a showroom for exhibiting the wares manufactured by weavers could not be said to have any nexus with the maintenance of supplies and services essential to the life of the community. He also submitted that in any case the purpose being of the permanent nature could not have been the subject-matter of an order of requisition under Section 23 of the Act.

He lastly submitted that in any view of the matter the continued enforcement of the impugned order for all these years till date has become totally unreasonable and even on that ground the requisition order which had outlived its existence and legal efficacy deserves to be quashed.

On the other hand learned counsel for respondent No. 2 and Shri Altaf Ahmed, learned Additional Solicitor General appearing for respon-dent no. 3 contended that the impugned requisition order was within the forecorners of Section 23 of the Act and that it was not as if the requisition could be resorted to only for a limited period or only for a temporary purpose. That requisition can be made for subserving even a permanent purpose.

It was next contended that the lands under requisition belonged to the State. They were Nazul lands. They were earlier leased out by two separate Lease Deeds in favour of one J.N. Mehrotra in the years 1920 and 1932 respectively. That the initial period of 30 years in respect of each of the leases had already expired and there had been no renewal in respect of plot no. 36 whereas renewal in respect of plot no. 36-A was effected in 1948 for a further period of 30 years which had also admittedly expired in 1978 and thereafter no further renewal was ef-fected by respondent no. 1 - State of U.P. It was, therefore, contended that on the expiry of one year from the date of the impugned requisition order there remained no occasion for the State to acquire these lands and their possession stood reverted to the State authorities in their ownership and consequently the appellants cannot have any grievance in connection with the lands in question. In Rejoinder it was submitted by learned senior counsel for the appellants that both these leases contained clauses giving absolute option to the lessees to get renewal of leases for further periods of 30 years subject to the maximum period of 90 years from the date of the original leases. That the appellants had legally acquired right, title and interest of the original lessee in these lands and that they had exercised their option under the Lease Deeds to get the leases renewed for a further period of 30 years. That even the. Municipal authorities at Kanpur had accepted Nazul rent from the appellants from time to time and there was nothing on the record to indicate that the State had resumed these Nazul lands at any time or had terminated the leasehold interest of the appellants in the lands. Consequently it could not be said that the appellants had no locus standi to put forward their grievance in the present proceedings.

In view of the aforesaid rival contentions the following points arise for our determination :

Points for determination

1. Whether the impugned requisition order dated 29th October 1976 was validly passed under Section 23 of the Act.

2. Whether the appellants have got locus standi to challenge the said order.

3. Whether the requisition order had outlived its existence and its continuance any further would amount to colourable exercise of power and would be unreasonable.

We shall deal with these points seriatim. Point No. 1 While considering the efficacy of the impugned requisition order under Section 23 of the Act it is necessary to note a few relevant statutory provisions in the light of which the said order will have to be scrutinised.

The Defence of India Act, 1971 was enacted in 1971 with a view to providing for special measures to ensure the public safety an interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith. The Preamble of the Act laid down that whereas the

President has declared by Proclamation under clause (1) of article 352 of the Constitution that a grave emergency exists whereby the security of India is threatened by external aggression; and whereas it is necessary to provide for special measures to ensure the public safety and interest, the defence of India and civil defence, and for the trial of certain offences and for matters connected therewith that the Act was enacted by the Parliament in the twenty second year of the Republic of India. The said Act was subsequently amended by Defence of India (Amendment) Act, 1975 being Act 32 of 1975 whereby concept of internal security was also introduced in the said Act for enabling the authorities to exercise powers under the said Act as amended and that is how the Act was thereafter known as Defence and Internal Security of India Act, 1971. Section 23 of the Act as amended, with, which we are concerned reads as under :

> "23. Requisitioning of immovable property. - (1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India. Civil Defence, (internal security), public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the com-munity, that Government may by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning :
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> Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.
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> (2) The requisition shall be effected by an order in writing ad-dressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.
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> (3) Whenever any property is requisitioned under sub- section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-

section."

Section 24 deals with 'Payment of Compensation'. It reads as under :

> "24. Payment of compensation. - Whenever in pursuancesI of Sec-tion 23, the Central Government or the State Government, as the case may be, requisitions any immovable property, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:

(i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality ?

(ii) if in consequence of the requisition of the property the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change :

(iii) such sum or sums, if any as may be found necessary to compensate the person interested for damage caused to the property on entry after requisition or during the period of requisition, other than normal wear and tear :

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine :

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such ar-bitrator.

ExplanatIion. - In this section and in section 31, the expres-sion "person interested" in relation to any property includes all persons claiming or entitled to claim an interest in the compen-sation payable on account of the requisitioning or acquisition of that property under this Act."

Section 30 deals with 'Acquisition of requisitioned property'. It reads as follows :

"30. Acquisition of requisitioned property. - (1) Any immovable property which has been requisitioned under section 23 may, in the manner hereinafter provided, he acquired in the circumstances and by the Government specified below, namely :

(a) where any works have, during the period of requisition, been constructed on, in or over the property wholly or partly at the expense of any Government, the property may be acquired by that Government if it decides that the value of or the right to use, such works shall by means of the acquisition of the property, be preserved or secured for the purposes of any Government, or

(b) where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at that time, the property may

be acquired by that Government.

(2) When any Government as aforesaid decides to acquire any immovable property, it shall serve on the owner thereof or where the owner is not readily traceable or the ownership is in dispute, by publishing in the Office Gazette, a notice stating that the Government has decided to acquire it in pursuance of this section.

(3) Where a notice of acquisition is served on the owner of the property or is published in the Official Gazette under sub-section (2), then, at the beginning of the day on which the notice is so served or published the property shall vest in the Government free from any mortgage, pledge, lien or other similar encumbrances and the period of requisition thereof shall come to an end.

(4) Any decision or determination of a Government under sub-section (1) shall be final, and shall not be called in question in any court.

(5) For the purposes of this section, "works" includes every description of buildings, structures and improvements of the property."

A conjoint reading of the aforesaid provisions indicates that the requisitioning of immovable property under the Act is with a view to cater to the emergent situations arising out of the currency of external and/or internal emergency fcr which the President of India might have issued relevant proclamations under the provisions of the Constitution of India. Obviously, therefore, the powers conferred on the authorities functioning under the Act are emergency powers. By their very nature they pertain to emergent situations of a temporary nature and not of a permanent nature. Under such emergent situations when power to requisition immovable property is to be exercised under Section 23 of the Act the Legislature in its wisdom has clearly indicated the limited sphere in which and purposes for which such power could be exercised. An order under Section 23(1) during such emergent situations can be passed - (a) either for securing defence of India; (b) civil defence; (c) public safety; (d) maintenance of public orders; (e) for efficient conduct of military purposes or for maintaining the supplies and services essential to the life of the community. In the context in which the power of requisition for maintaining supplies and services essential to the life of the community is conferred by the Section leaves no room for doubt that an order in exercise of such power can be passed only under circumstances of grave urgency as contemplated by other similar types of orders which could be passed under this very Section. It must, therefore, be held that a competent authority exercising powers under Section 23(1) can requisition any immovable property for the purpose of main-taining supplies and services essential to the life of the community if it is found that but for such an order the community would be deprived of the concerned supplies and services essential for its life. It is per- tinent to note that the impugned requisition order only recites that the second respondent was of the opinion that it was necessary and ex-pedient to requisition the appellants' property, of which they were in possession for maintaining supplies and services essential to the life of the community. By a mere reading of the said order it is difficult to find out as to what supplies and services were required to be maintained being essential for the life of the community which necessitated the passing of the said order. In the last paragraph of the order it is mentioned that

possession of the said property was to be delivered by 15th November 1976 to Director, Handlooms and Managing Director of the U.P. State Handloom and Powerloom Finance and Development Corporation Ltd., Kanpur, U.P. The affidavit filed by respondent no. 3 before the High Court indicated that the said order was issued for the benefit of the third respondent- Corporation to enable it to run a hand-loom showroom, which purpose was considered expedient for maintain-ing essential supplies and service to the life of the community. In the counter affidavit filed in the present proceedings the third respondent has averred that the Corporation aims only to give commercial and material help and guidance to the poor weavers and to provide a ready market to them so as to protect them from unscrupulous middlemen. Paragraphs 6 and 7 of this counter deserve to be noted in extenso in this connection :

> "6. I state that handloom cloth is manufactured by over 15 lakh poor weavers in the State, with the Government and on a small scale basis. The Corporation has the twin objective of providing jobs to the maximum number or rural poor since the manufacture of handloom clothes is a labour- oriented process and also to make cheap cloth available to the poor consumers. To this end the Corporation has extended loans to the weavers to the tune of Rs 80 lakhs and also supplied Yarn of the value of approx, Rs. 12 crores annually to them. The Corporation purchases the finished product to the tune of Rs. 30 crore annually which is sold through selling-cum- display shops and through exhibitions.
>
> 7, That it was only after examining the pressing necessity for a Handloom Showroom an being satisfied that it was an essential requirement for the community, the Respondent 1 and 2 requisi-tioned the disputed plot and handed it over to Respondent No. 3. I state that the Respondent 1 and 2 were acting within the scope of the power conferred under Sec. 23 of the Act and such a requisition falls squarely within objectives specified in that Sec-tion."

The learned counsel for the second respondent has broadly supported the aforesaid contention put forward on behalf of respondent no. 3.

In the light of the aforesaid stand of the contesting respondents it becomes clear that the impugned order saw the light of the day because the third respondent-Corporation wanted to have a showroom for exhibit-ing the wares manufactured by weavers with a view to giving a fillip to the sales of these articles so that weavers working in rural areas could get an assured market for their goods. Shri Sibal, learned senior counsel for the appellants fairly stated that the said purpose may be treated as a public purpose but the question is whether for such a purpose emergency powers under Section 23 of the Act could be exercised. So far as this question is concerned, in our view, the impugned order cannot be supported under Section 23. If requisition order is said to have been justifiably issued by the second respondent for maintaining supplies and services essential to the life of the community it must be shown that but for passing of such an order that community would be deprive of essential supplies and services and its very life would get adversely affected. Even if the third respondent-Cor-poration does not run any showroom for exhibiting handloom wares manufactured by rural weavers, all that may perhaps happen is that the weavers may not be able to get their goods

easily sold in the market or may not have a good deal of customers. But that would not mean that com- munity or any part of it would be deprived of essential supplies and services. It cannot be urged with any emphasis that if the goods manufac- tured by rural weavers are not property marketed the community as a whole would be deprived of essential supplies and services. Without the use of such goods manufactured by rural weavers the community can comfortably exist and survive or in any case its existence would not come in any jeopardy. Reliance was placed by Shri Altaf Ahmed, learned Addi-tional Solicitor General, on a decision of this Court in the case of Parvej Aktar and Others v. Union of India and Others, [1993] 2 SCC 221. But the said decision is also of no help to him for the simple reason that this Court in the said decision had to consider entirely a different question as to whether the reservation of articles for exclusive production by handloom industry under the provisions of Handlooms (Reservation of Articles for Production) Act, 1985 was violative of Article 14 of the Constitution of India. It was held that reservation of articles under the Act does not create any monopoly in favour of handloom industry. It was also observed that handloom industry is the biggest cottage industry in the country and is next only to agricultural sector in providing rural employment. The Act of 1985 was enacted for the protection of the interests of the handloom weavers, mostly concentrated in rural areas. They are pitted against a powerful sector, namely, the mills and the powerloom. As such, they face unequal competition. The protection has been given by the Government to handloom weavers because the livelihood of handloom weavers is threatened due to the production of all types of items and varieties by the powerloom industry. The handloom weavers are economically very poor and will have no alternative employment in the rural areas unless protected through reservation of varieties for them. The reservation or-ders are for the continued employment of the handloom industry and are in the larger public interest. The restrictions are not only reasonable but also fully justified. We fail to appreciate how the said decision can be pressed in service for supporting the impugned requisition order under Section 23 of the Act. Section 23 is not enacted for guaranteeing or providing any continuously lucrative market for the handloom wares manufactured by rural weavers. The impugned order has to be judged in the light of the express provisions of Section 23 and not dehors them. In the light of the stand taken by the respondents for justifying the impugned order, it has, therefore, to be held that however laudable the object may be, of seeing that the economic condition of rural weavers in handloom industry is improved, the said object for which a showroom has to be constructed on the lands in question would not justify the respondent-authority to invoke powers under Section 23 as the said object would fall short for the requirement envisaged by the said Section for exercise of such power. Provision for such showroom or its absence will have no impact on the maintenance of supplies and services essential to the life of the com- munity as such. It is difficult to appreciate the reasoning adopted by the Division Bench of the High Court in the impugned judgment that these shops and showrooms are intended to be used by the State obviously for extending help to a particular class of small and cottage industry of U.P. involving poor weavers by protecting them from exploitation by middle traders and by marketing their products directly to the public through these shops and showrooms and therefore, establishment of such shops and showrooms had a nexus with the maintenance of supplies and services essential to the life of the weaving community. Even assuming that weaving community is a part of the community as a whole in the absence of such showrooms the weaving community cannot be said to have been deprived of any essential supplies or services. Nothing was required to be supplied to them by having such a showroom. On the contrary the showroom was to enable the weaving community to supply their

goods more effectively and lucratively to their customers being other part of the community. It must, therefore, be held that such an object underlying the impugned requisition order had no nexus with the maintenance of supplies and services essential to the life of the community and was totally dehors the provisions of Section 23. Consequently the impugned requisition order must be held to be ultra vires of Section 23, unauthorised and incompetent.

One additional aspect for challenging the said order was pressed in service by Shri Sibal, learned senior counsel for the appellants. He sub-mitted that in any case the impugned requisition order was for a purpose which was of a permanent nature, namely, to have showrooms and shops for respondent no. 3 Corporation for being located on the land. That for such a permanent or quasi-permanent purpose even assuming it to be a public purpose, requisitioning of premises could not be resorted to and the said authorities if at all could have resorted to the power of acquisition of the premises. In short it was contended that requisition of premises could be done only for a temporary purpose for a temporary period and not for a permanent purpose requiring a prolonged existence of such an order. We shall now deal with the said additional contention.

It is no doubt true as laid down by a Constitution Bench of this Court in the case of Grahak Sanstha Manch and Others v. State of Maharashtra, [1994] 4 SCC 192 that the requisition of premises under Bombay Land Requisition Act, 1948 could be made even for a permanent public purpose. However the said decision was rendered in the light of the express provisions of Bombay Land Requisition Act, 1948 which death with requi-sitioningI of a premises for a public purpose while in the present case the requisition of premises is contemplated to be resorted to during the internal and external emergency which resulted in the enactment of the Act. Therefore, by the very nature of the parent Act under which this power is being exercised situations must be of such grave and urgent nature that they would compel exercise of such emergent powers. Consequently it could not be said that power to requisition under Section 23(1) of the Act for maintaining supplies and services essential to the life of the community could be resorted to for catering to any permanent public purpose con-templated by the said provision. Sub-section (3) of Section 23 also is a pointer in the same direction. It has clearly enjoined that period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in sub- section (1). Consequently it must be held that orders under Section 23(1) of the Act could be passed only for emergent purposes contemplated by the provision and they are by their very nature expected to be of limited duration. A perpetual emergency is not contemplated by that Act or the Presidential notification under which it got its birth. Section 30 of the Act is also relevant in this connection. It clearly lays down that even during emergency when such temporary requisition orders are passed if the requisitioning authority is shown to have spent large amounts on the requisitioned property under circumstances mentioned in the said Sec-tion the said property may be acquired by the Government. It must, therefore, be held that in the scheme of Section 23 of the Act the orders of requisition of immovable properties must necessarily be not of a permanent nature but must be of limited duration commensurate with the continuance of the emergent situations and the needs which requires such orders to be passed and continued for the requisite period of such emergent need for which such orders are passed. As the impugned order of requisition is as old as of 1976 and the respondents have persisted with the said order for all these years spread by now, over more than two decades it has to be held that such indefinite requisition of premises is contrary to the very

scheme of Section 23 and even on that ground the order would fall foul on the touchstone of Section 23 itself. Before parting with this discussion we may refer to a decision of a Division Bench of the Patna High Court in the case of M/s. Speedcrafts Pvt. Ltd. v. The Dist. Magistrate and Others, AIR (1976) Patna 129. Inter-preting these very provisions of the Act it was held by the Division Bench in the said case that if the public purpose for which a property is acquired is not of a temporary character resort cannot be had to the provision of the Section

23. In the context and the settings of the relevant provisions of the Act the aforesaid view of the Patna High Court is well sustained. We have perused the departmental file and find that the Collector had agreed with the opinion that the property could be acquired for the purpose of constructing the showroom and not requisitioned, as the purpose is "outside the ambit of Section 23". Why then did the department still proceed to "requisition" and not take recourse to "acquisition" proceedings is not intelligible. The first point is answered in the negative by holding that the impugned order of requisition was not validly made under section 23 of the Act.

So far as this point is concerned we have to keep in view the fact that the original Lease Deeds gave absolute option to the lessee to get the leases renewed for a further period of 30 years each time till the maximum ceiling of 90 years of the duration of the original lease was reached. As noted earlier both the leases had come into force from 1920 and 1932 respective- ly. Therefore, both these leases could validly be extended at the absolute option of the lessee up to 2010 and 2022 A.D. respectively. There is nothing on the record to show that extension of leases was ever refused by the respondents or the leased premises were resumed, being Nazul lands. On the contrary there is evidence on the record to show that the Nazul rent was being demanded and recovered from the appellants by the Municipal authorities of Kanpur from time to time. In any case the date on which the impugned requisition order was passed, that is, on 29th October 1976, both the leases were current. The efficacy of the impugned order has to be examined in the light of the fact situation that obtained on the date of the impugned order. By that time the original lessee had sufficient interest in the leases which could be validly transferred to the present appellants and that is exactly what has been done by the original lessee. It could not be said, therefore, that the appellants had no locus standiI to challenge the impugned order of requisition when they were having un- expired lease period with them entitling them to remain as lessees under validly subsist-ing leases of these two Nazul lands. Even though the lands were Nazul lands till the leases were legally terminated by the authorities, the leasehold interest of the original lessee and the appellants who are successor-in-in-terest of the original lessee remained in tact. Whether the respondents can validly terminate the leases during their extended periods or whether these Nazul lands which were subject- matter of leases cold be resumed by the authorities is a question with which we are not concerned and, therefore, we do not express any opinion one way or the other on this question. For the present purpose, it is sufficient to indicate that the appellants at the time when the impugned order of requisition was passed and even till have sufficient locus siandi to challenge the said order and to claim restoration of their leasehold rights in the said lands and the possession thereof. Point No. 2 is answered in the affirmative in favour of the appellants and against the respondents.

Point No, 3 So far this point is concerned it has to be noticed that the impugned order was passed during the currency of proclamation of emergency, both internal and external, and it sought its

efficacy through the parent Act which has since long expired. Shri Altaf Ahmed, learned Additional Solicitor General, however, vehemently submitted that as laid down by Section 1 sub-Section (3) of the Act despite the expiry of the Act after six months from the cessation of the operation of proclamation of emergency and which event has taken place since long, the previous operation of the Act which was holding the field at the relevant time was not affected. The said provision reads as under :

> "1. (3) It shall come into force at once and shall remain in force during the period of operation of the Proclamation of Emergency and for a period of Six months thereafter, but its expiry under the operation of this sub- section shall not affect -
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> (a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or
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> (b) any right, privilege, obligation or liability acquired, ac-crued or incurred under this Act or any rule made there-under or any order made under any such rule, or
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> (c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, or
>
> (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, for feiture or punishment as aforesaid.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired."

It is difficult to appreciate how this contention can be of any avail to the contesting respondents. All that this provision shows is that if a valid order has been passed under Section 23 at the time when the Act along with the said Section was operative, merely because the parent Act expired by efflux of time the efficacy of such a valid order would not get whittled down only on that score. But that does not mean that the validity of the said order could not be examined on its own with a view to finding out whether the said requisition order under Section 23 was validity passed or was a still-born one and whether in any case such an order can be permitted to continue indefinitely and is to be treated as almost immortal. It is this question which is on the anvil of scrutiny before us and it cannot be effectively answered by the respondents in the light of the aforesaid saving clause.

We, therefore, will have to examine the efficacy of the impugned order from the point of view of its prolonged duration uptill now which as seen earlier had been spread over more than two decades from the date on which it got its birth on 29th October 1976. For deciding this question we will assume with the respondents, for the sake of argument, that on the day on which it was passed it was validly passed under the provisions of Section

23. Even then the moot question still remains whether such an emergency order of requisition which might be justified in those days when it was passed could now be permitted to continue indefinitely. For answering this question we may usefully refer to the decision of the Constitution Bench of this Court in the case of Grahak Sanstha Manch (supra). The Constitution Bench has in terms laid down that even though a requisition order can be issued for a permanent public purpose under the provisions of Bombay Land Requisition Act, 1948 it cannot be continued indefinitely. "We may usefully refer to the relevant observations made in this connection by Bharucha, J. Speaking for the majority of the Constitution Bench, in paragraphs 16 and 17 of the Report :

> We find ourselves in agreement with the view taken in the cases of Collector of Akola and Jiwani Kumar Paraid that the purpose of requisition order may be permanent. But that is not to say that an order of requisitioning can be continued indefinitely or for a period of time longer than that which is, in the facts and circumstances of the particular case, reasonable. We note and approve in this regard, as did this Court in jiwani Kumar Paraid case, the obser-vations of the Nagpur High Court in the case of Mangilal Karwa v. State of M.P., which have been reproduced above. That the concept of requisitioning is temporary is also indicated by the Law Commission in its Tenth Report and, as pointed out earlier, by the terms of the said Act itself, as it originally stood and as amended from time to time. There is no contradiction in concluding that while a requisition order can be issued for a permanent public purpose, it cannot be continued indefinitely. Requisitioning might have to be resorted to for a permanent public purpose to give an example, to tide over the period of time required for making permanent premises available for it. The concepts of acquisition and requisition are altogether different as are the consequences that flow therefrom. A landlord cannot, in effect and substance, be deprived of his rights and title to property without being paid due compensation, and this is the effect of prolonged requisi-tioningI. Requisitioning may be continued only for a reasonable period; what that period should be would depend upon the facts and circumstances of each case and it would ordinarily, be for the Government to decide.
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> For the aforesaid reasons, we hold that the decision in H.D. Vora case does not require reconsideration. We, however, do not approve the observations therein that requisition orders under the said Act cannot be made for a permanent purpose. We make it clear that the said decision does not lay down, as has been argued, a period 30 years as the outer limit for which a requisition order may continue, The period of 30 years was mentioned in the decision only in context of the date of the requisition order there concerned. An order of requisition can continue for a reasonable period of time and it was held, as we hold, that the continuance of an order of requisition for as long as 30 years was unreasonable."
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> We have already shown that in the context of the emergency provision of the Act in question the powers which could be exercised for requisitioning properties under Section 23 by their very nature could not be utilised for requisitioning immovable properties for an indefinite period. Such requisition virtually amounts to acquisition.

In the facts and circumstances of this case it must be held that when years back the parent Act had ceased to operate and the internal and external emergency declarations had stood withdrawn, now obviously there is no rhyme or reason why such a requisition order, which by efflux of time has become stale and its very purpose has become obsolete, should be permitted to be continued any further and the appellants' properties should be still permitted to remain requisitioned and in possession of the respondents. In the facts and circumstances of the case, therefore, it must be held that continued requi- sition of the appellants' leasehold premises by now at least must be treated to have become unreasonable and it would necessarily indicate abuse of power and a colourable exercise thereof. It must be held that the impugned requisition order even assuming that it was valid and kicking and was not still-born when it was passed in 1976, by now it has lost its efficacy and has become a dead letter, in the prese , set of circumstances obtaining today. Even on this ground the continuance of the impugned requisition order cannot be sustained and has to be put an end to. The third point is also, therefore, answered in the affirmative in favour of the appellants and against the respondents.

In this connection we may also note that it is not the case of the respondents that now they require to acquisition the requisitioned premises on a permanent basis for the purpose for which they were initially requi- sitioned, by exercise of powers under Section 30 of the Act. In fact the said provision could have been pressed in service by respondent no. 3, if at all, during the currency of the Act which provision is obviously not available to them now. Non-exercise of powers under Section 30 for acquiring these requisitioned properties during the time the Act was in force itself shows [that even according to the respondents the Government did not require the said requisitioned land to be acquired for its purposes or that it was felt that the cost of restoration of the requisitioned property by the Govern-ment would be excessive. During the pendency of these proceedings this Court had earlier directed by order dated 21st September 1984 that status quo will remain so far as the construction in any part of the open space is concerned. That status quo was continued by an order of 29th October 1984. However by a latter order dated 9th February 1987 while granting special leave this Court had refused to grant stay but had made it clear that the respondents will not be entitled to claim the benefit of Section 30 of the Defence and Internal Security of India Act, 1971 in the event of the appeal being allowed. Any further construction effected by the respondents will not be pleaded as defence during the hearing of the appeal. Under these circumstances, therefore, there cannot remain any valid defence for the respondents against the restoration of possession of the requisitioned premises to the appellants once the impugned order of requisition is found to be invalid in view of our findings on the aforesaid points for determina-tion.

In the result the appeal is allowed. The judgment and order of the High Court are set aside. The writ petition filed by the appellants before the High Court is allowed. The impugned order of requisition of the premises in question dated 29th October 1976 is

quashed and set aside. The respondents are directed to restore the possession of these requisitioned properties forthwith to the appellants by clearing off whatever construction may be existing on spot and making available the requisitioned properties in their original form and shape to the appellants. The respon-dents are directed to comply with this order within eight weeks from the date of receipt of copy of this order at their end. In the facts and circumstances of the case there will be no order as to costs,