HIGH COURT OF GUJARAT *(D.B.)*

JAYANTILAL PARSHOTTAMDAS KAPALI
V/S
STATE OF GUJARAT

Date of Decision: 06 March 1969

Citation: 1969 LawSuit(Guj) 16

Hon'ble Judges: P N Bhagwati, N K Vakil

Eq. Citations: 1970 GLR 403

Case Type: Special Civil Application; Special Civil Application

Case No: 1392 of 1968; 1366, 1394, 1436 and 1393 of 1968

Subject: Constitution

Head Note:

Constitution of India, 1950 - Arts. 19(1)(f), 31(2) and 31(2A) - Statute dealing with acquisition falling within Article 31(2A) - Not subject to Article 19(1)(f).Bombay Land Requisition Act (XXIII of 1948) - Secs. 5(1), 16 - Constitution of India, 1950 - Art. 14 - Power to requisition land for public purpose - No safeguard in form of appeal laid down - Necessary safeguards have been provided in sec. 5(1) - State Government must before requisitioning any land take into consideration the factors of necessity or expediency - Sufficient check of any arbitrary exercise of power - Sec. 5(1) not violative of Art. 14.Interpretation of Statute - Severability of section - If one part of the Statute turns out void it does not affect validity of the rest.Bombay Land Requisition Act (XXIII of 1948) - Secs. 5(1), 16, 19(2)(iv) - Constitution of India, 1950 - Art. 14 - Sec. 5(1) of the Requisition Act not depending on validity of sec. 16 read with sec. 19 - Even if sec. 16 held violative of Art. 14, sec. 5(1) can stand apart - Purpose of Land Requisition Act was to relieve

pressure of accommodation in urban areas - State has power to make classification on a basis of rational distinction - Such provision not violative of Art. 14. WORD AND PHRASES : Necessary and Expedient explained.

Statutes dealing with acquisition and requisition fall within the purview of Article 31(2) read with Art. 31 (2A) of the Constitution. Article 31(2) read (2A) provides a self-contained code and is not subject to Article 19(1)(f). (Para 10) Mangalbhai v. State Ishwarlal v. State Shah & Co. v. State of Maharashtra referred to. Bombay Land Requisition Act (XXIII of 1948)-Secs. 5(1) 16 Constitution of India 1950-Art. 14-Power to requisition land for public purpose-No safeguard in form of appeal laid down-Necessary safeguards have been provided in sec. 5(1)-State Government must before requisitioning any land take into consideration the factors of necessity or expediency-Sufficient check of any arbitrary exercise of power-Sec. 5(1) not violative of Art. 14. Having regard to the vastness of the problem and the infinite variety of facts and circumstances in respect whereof the power will have to be exercised it was left to the wide discretion of the executive by the Legislature and rested satisfied by laying down the broad policy and principle in sec. 5 of the Bombay Land Requisition Act. That principle or policy being that the authority will always in any case decide as a condition precedent whether the purpose is a public purpose and whether it is either necessary or expedient to requisition particular land having regard to the nature of the requirement of the public purpose and the suitability of the land acquired. There is therefore no discrimination involved in the conferment of this power. (Para 21) The power has been vested in the State Government or its delegate to meet special situation created by the acute shortage of accommodation and the pressing necessity to secure suitable accommodation for a public purpose. Under the circumstances the Legislature justifiably though fit not to provide any corrective machinery by way of appeal or otherwise against the exercise of the power to requisition. So long as the State Government exercises the power as laid down in sec. 5(1) it would not be necessary to provide any further safeguard in the form of an appeal or other corrective machinery. The necessary safeguards have been provided in the section itself that the State Government must before requisitioning any land take into consideration the factors of necessity or expediency for a given public purpose. This provides sufficient check on any arbitrary exercise of power. (Para 23). Sec. 5(1) of the Bombay Land Requisition Act does not give unfettered power to requisition land and is therefore not violative of Article 14 of the Constitution (Para 25) In re. Cravens Estate Lloyds Bank Limited v. Cockburn (No. 3) Rex v. Comptroller General of Patents State of

Andhra Pradesh v. Raja Reddy N.M.C.S. & W. Mills v. Ahmedabad Municipality Jalan Trading co. v. Mill Mazdoor Sabha referred. Interpretation of Statute-Severability of section-If one part of the statute turns out void it does not affect validity of the rest. The basic factor in determining the question of severability is the presumed intention of the Legislature that if a part of a Statute turns out to be void that should not affect the validity of the rest of it and that intention is to be ascertained from the terms of the statute. (Para 30) Bombay Land Requisition Act (XXIII of 1948)-Secs. 5(1) 16 19 (iv)- Constitution of India 1950 14 5 of the Requisition Act not depending on validity of sec. 16 read with sec. 19-Even if sec. 16 held violative of Art. 14 sec. 5(1) can stand apart-Purpose of Land Requisition Act was to relieve pressure of accommodation in urban areas-State has power to make classification on a basis of rational distinction-Such provision not violative of Art. 14. It is clear that the Legislature has not intended to make the existence of sec. 5(1) of the Bombay Land Requisition Act as a valid operative provision dependent on the existence of sec. 16 as a valid and operative provisions of the Act and the two are distinctly severable. If sec. 16 read with sec. 19(2)(iv) is taken out of the Act operation of the rest of the Act will not be affected. The only effect will be that Government will not have the power to exempt any land from being requisitioned by framing rules. (Para 29) As sec. 5(1) of the Bombay Land Requisition Act can stand apart from sec. 16 on the doctrine of severability the contention that sec. 16 read with sec. 19(2)(iv) is violative of Article 14 of the Constitution need not be considered. Even if sec. 16 read with sec. 19(2)(iv) is found to be invalid and unenforceable that finding cannot justify in striking down sec. 5(1) which is otherwise found to be valid on the doctrine of severability. (Para 32) The purpose of the Bombay Land Requisition Act was to relieve pressure of accommodation in urban areas by regulating the distribution of vacant premises and requisitioning land for a public purpose. If certain provisions of law construed in one way would make them consistent with the Constitution and another interpretation would render them unconstitutional the Court would lean in favour of the former construction The State has power to make classification on a basis of rational distinction relevant to the particular subject it is called upon to deal within the common interest of public. Therefore the contention that there is discrimination inherent in sec. 5 itself viz. in respect of open land which has been put to actual use by way of cultivation no immunity from requisition is conferred as in the case of buildings which have been resided in for a period of six months is violative of Article 14 of the Constitution cannot be accepted. (Para 32) WORDS

AND PHRASES: (Necessary and Expedient explained. The term Necessary means what is indispensable needful or essential. The term has a precise meaning and connotation and there is nothing vague or nebulous about it. The term Expedient has no doubt a wider ambit and gives larger scope to the exercise of power. But this expression has also a recognised connotation in the eye of law. The dictionary meaning of the term expedient that would in the context in which it is used and which is most fitting is useful for affecting a desired result; fit or suitable for the purpose. If the word is read in isolation it is possible that it introduces such variety of shades and considerations that it would be difficult to say with any definiteness as to whether a particular thing or act could be said to be expedient or not. But the word has not to be read in isolation. It has to be read in context of the other parts of the provision of law in which it appears. In the present case the word has to be read in context of the word necessary which precedes it and particularly in the context of the expression for a public purpose The word expedient when read in context with the expression for a public purpose though it may leave a larger scope to the executive authority in exercise of power it does provide a principle or criteria to guide the authority. Whether a particular requisitioning is expedient for a particular public purpose or not may require many factors and shades of considerations to be taken into account but it does canalise the exercise of power or the discretion to be used by the executive authority. (Paras 15 and 20) R. H. D. Chambarbaugwalla v. The Union of India K. T. Moopil Nair v. State of Kerala referred to.

Acts Referred:

Constitution Of India Art 31(2), Art 31(2A), Art 19(1)(f), Art 14

Bombay Land Requisition Act, 1948 Sec 16, Sec 19(2)(iv), Sec 5(1)

Final Decision: Petition dismissed

Advocates: Soli J Sorabjee, I M Nanavati, P D Desai, K S Nanavati, D D Vyas, K J Shethna, J M Thakore, J R Nanavati, M G Doshit

Reference Cases:

Cases Cited in (+): **2**

Cases Referred in (+): **9**

Judgement Text:-

Vakil, J

[1] Special Civil Applications Nos. 1392 of 1968, 1366 of 1968, 1394 of 1968 and 1393 of 1968 and Spl. C. A. No. 1436 of 1968 raise some common questions of law and facts and they can be conveniently disposed of by one judgment. We may however mention that some of the questions of facts are not common and we shall deal with them separately at the appropriate place. These writ petitions are directed against the orders made by the Collector of Surat-respondent No. 2 in all the petitions whereby lands bearing certain survey numbers situated in the village of Althan in the District of Surat have been requisitioned under sec. 5(1) of the Bombay Land Requisition Act 1948 hereafter referred to as 'the Act'. They also Seck to have the consequential notices -for possession and in some cases of auctioning crops, quashed. We shall prefer to deal with Special Civil Application No. 1392 of 1968 as the main petition or representative petition in which we propose to deal with all the questions of law which are common and also first deal with the questions of facts that arise in the said petition.

[2] The petitioners in Special Civil Application No. 1392 of 1968 are the Managing Trustees of the public Trust known as "Shri Surat Panjrapole, Surat" hereafter referred to as 'the Trust'. It was founded about 150 years ago, the object whereof is protection of infirm cattle. The Trust is also registered under the Bombay Public Trusts Act, 1950. For the fulfilment of the object of the said Trust, the trust looks after and maintains nearly 1750 infirm cattle. The petitioners as Managing Trustees of the said Trust, hold agricultural lands in the District of Surat. Parts of them are used as grazing land for the infirm cattle and the rest are used for growing crops to realise income to carry out the object of the Trust. The said Trust also runs and manages a dairy and its income is also utilised for the fulfilment of the object of the trust. The agricultural lands held by the petitioners therefore are very important from the point of view of enabling the Trustees to fulfil the object of the Trust. The said Trust is exempted from the application of the provisions of the Bombay Tenancy and Agricultural Lands Act 1948 under sec. 88B of the said Act and it is also exempted from the operation of the Gujarat Agricultural Lands Ceiling Act, 1960.

[3] Amongst the lands held in various villages, the trustees also hold lands at village Althan, Taluka Choryashi, District Surat of the following description.

Survey No. Area. Assessment. A. G. Rs. Ps. 17 2-31 15-81 18 0-36 5-56 19 5-34 30-87

These lands are situated in a compact block on one side of the Udhna Magdalla road and are situated near an irrigational canal. Part of these lands is used as pasture land for mulch and dry cattle maintained by the Trust. According to the petitioners on the date of the petition, there was standing crop of Juwar valued at approximately Rs. 4500/-.

[4] In the month of August 1968, the river Tapti was in spate and the flood waters inundated vast areas of Surat District. Several villages were totally washed out. Water had also entered the city of Surat and nearly 3/4th of the area was affected. Extensive loss of life and property was cause in the aforesaid villages.

[5] Villages of Althan, Bhatar and Bhalthan (which are contiguous) were comparatively less affected by the flood. The level of the flood waters in these villages had reached about four feet and water had receded within 24 to 48 hours. Damage to properties in the said villages was comparatively less and there was no loss of life. Survey Nos. 17, 18 and 19 of village Althan held by the petitioners as the Managing Trustees were also under water the level being four feet for nearly 48 hours during the floods. The State Government undertook a scheme of shifting and rehabilitating the residence of low lying areas along the bank of river Tapti to areas situated on a higher level with a view to minimise loss of life and property in the event of recurrence of floods. It appears that about 85 families of the village Bhatar, Taluka Choryasi, District Surat, had made representation to the President of the Surat District Panchayat requesting that they may be shifted from the low-lying area of village Bhatar to a suitable place higher in level under the said Scheme. Their request was sympathetically considered and the District Panchayat selected certain areas in village Althan for the purpose. The petitioners having come to know that amongst the land so selected, the aforesaid survey Nos. 17, 18 and 19 were also included, addressed a letter on the 3rd October 1968 jointly to the President of the Surat District Panchayat, the Collector of Surat, Rehabilitation Officer of Surat and the Mamlatdar of Choryasi bringing to their notice that S. Nos. 17, 18 and 19 and part of S. No. 25 of village Althan which were reported to have been selected for migration and rehabilitation of 85 families of village Bhatar, were not suitable for the purpose because during the floods the said lands were also under 4 to 5 feet of water and the object will not be fulfilled. It was pointed out that not only the object of rehabilitation would fail but it would also deprive the public trust of its valuable property without the real purpose being served. Despite this letter, a letter dated 25th of October 1968 was received from the Mamlatdar, Choryasi inquiring whether the petitioners were

willing to sell S. No. 19 admeasuring 5 acres 34 gunthas at the prevalent market price for the purpose of rehabilitating flood affected persons of village Althan and Bhatar. The letter also directed that the petitioners should attend the office of the third respondent on the 28th of October 1968 at 12 noon to give necessary statement in that behalf. It was also stated therein that in the event of petitioners failing to attend the office as directed, it would be assumed that the petitioners were not willing to sell the land for the aforesaid purpose and the authorities would take proceedings for acquisition of the said lands. The petitioners replied to the said communication on the 28th October 1968 pointing out inter alia the unsuitability of the lands in question for shifting and rehabilitating the flood affected families. They also expressed their unwillingness to sell the land as they were required for the purposes of the trust. It was also stated therein that some interested persons in order to serve their self-interest and save their own high level land, appeared to have persuaded the authorities in having the said lands selected for the aforesaid purpose. Copies of the said reply were forwarded to the President of the District Panchayat, Collector of Surat and the Rehabilitation Officer. As required, Ranchhodbhai Jinabhai, the constituted attorney of the petitioners attended the office of the third respondent on the 28th of October 1968. His statement was recorded. In the said statement also the unsuitability of the land was pointed out. It was also pointed out how the land was necessary for the purpose of the Trust and also that it was not possible to sell the land as desired by the authorities.

[6] On the 2nd November 1968, the Collector of Surat made the impugned order requisitioning the lands described in the schedule annexed thereto for public purpose of rehabilitating the flood affected persons. In the schedule amongst the lands described were also lands of the following description belonging to the Trust.

Village Taluka S. No. Total Area A. G. Area requisitioned A. G. Althan Choryasi 17 2-51 2-31
18 Part 0-36 0-20 19 Part 5-34 4-31

> The second respondent had made the above order purporting to act in exercise of the powers conferred upon him by sec. 5(1) of the Act read with Government Resolution, Public Works Department No. GHJ. 154/ Gl. G. M. 67 dated 29th August 1967. A copy of the said impugned order is annexed as Annexure 'E' to the petition. On November 4, 1968, the third respondent issued a notice directing the petitioners to remain present on the site at 9-0 A. M. on the 5th of November 1968 to handover possession of the said lands. The notice also intimated that if the petitioners failed to remain present, possession of the lands shall be taken in presence of the Panchas.

A copy of this notice is annexed to the petition- Annexure 'F'-. As the petitioners were not desirous of participating in any of the proceedings relating to the requisition of the said lands, did not remain present as required. The petitioners believe that the possession of the lands was taken by the third respondent in the absence of the petitioners. On the 6th November 1968, the Taluka Development Officer respondent No. 4, issued a public notice intimating that a public auction of the Juwar crops, trees, grass, etc. standing on the aforementioned requisitioned lands will be held at 4-0 p. m. on the 15th of November 1968. Copy of the said notice is annexure 'G' to the petition.

[7] The petitioners contend that the aforesaid order of requisition and the consequent notices are illegal, ultra vires, mala fide, null and void and without and/or in excess of jurisdiction. Broadly speaking they have contended that sec. 5 of the Act under the provisions whereof the said order of requisition is made, violates the fundamental rights under Article 19(1)(f) as well as Article 14 of the Constitution. It is also contended that sec. 16 read with sec. 19(2)(iv) of the Act contravenes the provisions of Article 14. The action of the respondents as reflected in the order of requisition and the consequential notice is violative of the fundamental rights to property guaranteed under Article 31. The purpose for which these lands have been requisitioned is not a public purpose. Neither judicial procedure nor principles of natural justice have been followed though the necessity to follow them flows from the nature of the declaration required to be made and the action following upon it under the impugned provisions. The petition is also based on the contention that the requisition in the present case could not have been validly made under sec. 5(1) as only parts of S. Nos. 18 and 19 have been requisitioned without specifying which part of those survey numbers were requisitioned and therefore it suffers from the vice of vagueness and uncertainty. It is also contended that it is not open to the State Government to break up the unity of any land. The subjective satisfaction as regards the existence of public purpose and the necessity or expediency of requisitioning the petitioners' lands for the said public purpose is not arrived at bona fide or reasonably but arbitrarily and perversely and is a colourable satisfaction. The lands in question are already being used for a public purpose and the powers under sec. 5(1) of the Act could not have been validly invoked for issuing the impugned order of requisition. It was also contended that the lands in question have been requisitioned for a purpose permanent in nature which is colourable exercise of power and fraud on the statute having regard to the fact that the statute itself is essentially of a temporary

nature.

[8] The respondents in the petition are the State Government (Respon dent No. 1), the Collector of Surat (respondent No. 2), the Mamlatdar, Choryasi Taluka (respondent No. 3) and the Taluka Development Officer (respondent No. 4). On behalf of the respondents, respondent No. 2 has filed two affidavits in reply and they oppose the petition, generally speak ing, on the ground that the Government was called upon to meet an unprecedented situation of damage to and destruction of crops, properties and cattle caused by the floods of the river Tapti in August 1968 and it was called upon to set up measures for dealing with such emergency. One of the measures taken was for resettlement of the flood affected people at safe sites. The enormity of the damage and the task to be faced by the Government have been stated in great details in these affidavits. Respondents have denied that on neither of the grounds made out by the petitioners the impugned order of requisition and the consequential notices can be held to be invalid. It is asserted that they do not violate any of the provisions of Article 14 or 31(2) as alleged. They have also denied any colourable exercise of power or fraud on the statute. We do not think it necessary at this stage to state in details the defence raised but we will refer to the relevant contentions raised by the respondents when we discuss the respective submissions made on behalf of the petitioners.

[9] Mr. Sorabji, the learned advocate appearing for the petitioners formulated the following submissions for our consideration: -

I. The Bombay Land Requisition Act, 1948 is violative of the provisions of Article 19(1)(f) of the Constitution of India.

II. (a) Sec. 5(1) of the Act gives unfettered power to requisition land in one case and not to exercise the power in another ease and therefore it violates Article 14,

(b) Sec. 16 of the Act read with sec. 19(2)(iv) invests the Government with unfettered power with regard to exemption of any kind from the provi sions of sec. 5 or 6, is therefore violative of Article 14; therefore assum ing that sec. 5(1) standing by itself is valid, the said section read with sec. 16 violates Article 14.

III. Discrimination is inherent in sec. 5 itself viz. in respect of open land which has been put to actual use by way of cultivation, no immunity from requisition is conferred as in the case of buildings which have"; been resided in for a period of six months. The safeguard of an inquiry and the requirement of a declaration are dispensed with in the case of land that, are required in the case of buildings.

IV. In view of the law declared by the Supreme Court that the order of requisition entails civil consequences, an opportunity to be heard should be given prior to its making. Even if it is assumed that it is an administrative order, principle of fair play requires that the party must have an opportunity to be heard before the order is made. No such opportunity was given and therefore the order of requisition is null and void.

V. Under the Act the order of requisition can be made for a purpose which is of a temporary nature having regard to the very temporary nature of the Act. That the requisition made under the impugned order being for a purpose of a permanent nature, the order is invalid.

VI. On a true construction of sec. 5, a requisition order cannot be passed so as to break up the unity of any land if it is a composite piece of land and cause sub-divisions.

VII. The order is vague and uncertain inasmuch as it does not specify which particular portion of S. Nos. 18 and 19 have been requisitioned.

VIII. In the facts and circumstances of this case, the requisition is not for a public purpose because (i) the land is not required for rehabilitating persons who are in fact rendered houseless, (ii) Having regard to the location and situation and particularly the level of the requisitioned land, the purported public purpose is not subserved at all. (iii) It cannot be a public purpose to requisition the property of one flood-affected person or institution for the benefit of another flood-affected persons. (iv) Activities of the petitioners are also an element which has to be taken into account and taking all the

circumstances in respect of their activities into account, the order of requisition militates against the purpose of the Act viz. to subserve a public purpose. (v) Lands tried to be requisitioned are clearly in excess of the requirement for the public purpose. (vi) The order of requisition is mala fide and in colourable exercise of power. We will deal with the submissions in the order in which they are placed before us.

[10] As regards the challenge based on the ground of violation of the provisions of Article 19(1)(f), the submission is that sec. 5 of the Act which authorises the State Government to requisition any land for any public purpose by an order made in writing if in the opinion of the State Government it is necessary and expedient so to do, is violative of the fundamental right to acquire, hold and dispose of property guaranteed under Article 19(1)(f) and the restrictions imposed by sec. 5 are neither reasonable nor in the interest of general public. The decision of the State Government or its delegate is made final and conclusive and the citizens aggrieved by it has no right to approach any civil Court or other authority by reason of Sec. 17 of the Act. Besides no provision is made for holding any inquiry for giving any opportunity to the persons concerned to be heard before the order is made under sec. 5(1). This contention, however, is not now open to the petitioners and has to be rejected in view of the settled law that statutes dealing with acquisition and requisition fall within the purview of Article 31(2) read with (2A). Article 31(2) read with 2(A) provides a self contained code and is not subject to Article 19(1)(f). These statutes therefore are not required to meet the challenge of Article 19(1)(f) Vide Mangalbhai v. State V Guj. L. R. 329, Ishwarlal v. State VIII Guj. L. R. 729 and Shah & Co. v. State of Maharashtra A. I. R. 1967 S. C. 1877.

[11] The constitutional challenge on the basis of Article 14 contained in the second submission is in two parts, the first of which is on the ground that sub-sec. (1) of sec. 5 of the Act gives unfettered power to requisition land in one case and not to exercise the power in another case therefore it violates the provisions of the said Article. It will be convenient at this stage to reproduce sec. 5

"5(1) If in the opinion of the State Government it is necessary or expedient so to do, the State Government may by order in writing requisition any land for any public purpose:

Provided that no building or part thereof wherein the owner, the landlord or

the tenant, as the case may be, has actually resided for a continuous period of six months immediately preceding the date of the order shall be requisitioned under this section.

(2) Where any building or part thereof is to be requisitioned under sub-sec. (1), the State Government shall make such enquiry as it deems fit and make a declaration in the order of requisition that the owner, the landlord or the tenant, as the case may be, has not actually resided therein for a continuous period of six months immediately preceding the date of the order and such declaration shall be conclusive evidence that the owner, landlord or tenant has not so resided. "

[12] The principle is well-settled that any provision of law which vests in the executive authority untrammelled and arbitrary powers without providing any principle or policy enabling the authority to exercise the power at its sweet will to the detriment of any fundamental right of the citizen is invalid. Question is whether sec. 5(1) confers such uncanalised arbitrary power without laying down any policy or principle to guide the exercise thereof by the Government or its delegate. We are unable to answer the query in the affirmative for reasons we will immediately proceed to state.

[13] The Bombay Land Requisition Act, 1948 was preceded by the Bombay Land Requisition Ordinance, 1947 which was promulgated on 4th December 1947. In the statement annexed to the ordinance, it was stated that there was great pressure on accommodation available in urban areas and as the powers of requisitioning, which the Government had under the Defence of India Rules, have lapsed, it had become necessary to regulate the distribution of vacant premises and therefore it was felt essential to have powers of requisitioning. Clause (2) of this Ordinance defines various expressions, "land", "premises", "to requisition", etc. Clause 3 provides that the Provincial Government, if it was of the opinion that it was necessary or expedient to do so, may pass an order in writing, requisitioning any land for any public purpose. This ordinance was followed by the Requisition Act, which came into force on April 11, 1948. The preamble to this Act states that it is an Act to provide for the requisition of land, for the continuance of requisition of land, and for certain other purposes. Sec. 4 is the definition clause, and gives the definitions of the term referred to hereabove. Sec. 5 enables the State Government to requisition any land for any public purpose as stated hereabove. Sec. 6 deals with requisition of vacant premises. Sec. 7 deals with the

continuance of requisition, sec. 8 deals with payment of compensation, sec. 9 provides for release from requisition, sec. 10 deals with power of inquiry for the purpose of holding an inquiry under sec. 9, sec. 11 deals with the power to take possession, sec. 15 deals with the delegation of function by the State Government, sec. 16 deals with the power of the Government to exempt any land by making rules from the provisions of Secs 5 and 6 or both and sec. 19 deals with the power of the State Government to make rules to carry into effect the purposes of the Act. These are the relevant provisions of the Act with which we are concerned.

[14] The history of this legislation shows that the Ordinance and the Act were enacted to requisition 'land' in areas where there was an acute scarcity of accommodation and though the Ordinance and the Act were intended to be of a fixed duration, the very conditions that had led to the enactment thereof continued in an even more aggravated form and therefore it was found necessary that "lands" already requisitioned must continue under the requisition and the Government must also continue to have the power to requisition land for a public purpose if it were necessary or expendient so to do. "Land" under the inclusive definition covers all classes of land and buildings and things attached to land and buildings. The power to requisition is vested in the State Government or its delegate if so empowered by the State Government under sec. 15. Sec. 2 provides that the Act will not operate all over the State but will only apply in the first instance 10 the areas mentioned in the Schedule. The Schedule shows that it mentioned only two districts viz. Ahmedabad and Surat (so far as the territory now forming the State of Gujarat is concerned). But sub-sec. (2) naturally gives power to the State Government to extend any or all of the provisions of the Act to any other areas also. By 1959 however, it appears, the situation having become acute all over the State, by the Bombay Land Requisition (Extension and Amendment) Act, 1959, the Act was applied by the Legislature itself to the then whole State of Bombay. It also then vested the State Government with the authority to discontinue the application in any particular area. We have referred to these facts only with a view to show the nature and purpose of this legislation and the necessity of leaving to the State Government even the discretion to apply or not to apply all or any of the provisions of the Act. It also is to be noticed that though under the inclusive definition of "land" all categories of land and buildings would be included in "land", as regards buildings actually occupied for residential purposes for a particular period have been treated on a different basis. The scheme of the Act further reveals that even in the class of buildings, those which fall within the definition of "premises" have to be dealt with on a different basis. We are at this stage concerned only with sec. 5(1) of the Act.

[15] There is no doubt that sec. 5(1) is a provision of wide amplitude in the scheme of the Act. It provides for requisition of land by an order in writing for a public purpose if in the opinion of the Government or its delegate it is necessary or expedient so to do. It vests in the executive authority a wide discretion to exercise or not to exercise the power vested under the section. But the inquiry with which we are concerned is, does it vest an arbitrary power without providing any guidance by way of policy or principle. The first thing noticable is that the power can be exercised only for a public purpose. There is now no difficulty in ascertaining the concept of "public purpose". It is therefore a policy or principle laid down that except for a public purpose, the power shall not be exercised. It is a policy prescribed by the Legislature because whenever the power is to be exercised, the nature of the public purpose for which it is tried to be exercised has to be a decisive factor. But the argument of the learned counsel for the petitioners was that by itself the requirement that the requisition shall be for a public purpose, is not any factor that provides any guidance or lays down a principle. It is at best a fetter on the power. Assuming for the sake of argument but not admitting that it is so, what is to be Secn is whether there is no criteria laid down even within those legal confines to guide the exercise of power by the executive authority. The Legislature has laid down that not only the power shall be exercised for a public purpose but it shall be so exercised only if it is "necessary" or "expedient" so to do, by an order in writing.

[16] It was however urged on behalf of the petitioners that even if the factors of necessity or expediency can be said to be intended to lay down any principle or criteria to provide guidance, in fact they do not provide any guidance whatever. Under sec. 5(1), the entire exercise of power to requisition is left to the sole subjective satisfaction of the State Government or its delegate (vide. sec. 15), as to the necessity or expediency of any public purpose. The authority to form a subjective opinion as regards necessity and expediency, gives unguided and unlimited power to the State Government and its delegate and makes the subjective satisfaction of the executive authority conclusive. The concept of the terms "necessity" and "expedient" and particularly the latter is extremely vague and nebulous in character. The word "expedient" particularly introduces an element of complete vagueness and uncertainty and does not furnish any definite indication. Infinite variety of factors and shades of facts can be made to fall within the ambit of the word. It may justifiably permit different connotations to be made out by different persons exercising the power and one can never be able to challenge the act as falling beyond the pale of the expression "expedient". It would be well nigh impossible to contend that the authority has not applied its mind to the requirement of

expediency for the public purpose, which is condition precedent to the exercise of the power, for the word "expedient" has no defined connotation and therefore fails to provide any definite guideline to prevent the executive act from impinging upon the provisions of Article 14.

[17] We are unable to agree with the learned counsel. So far as the term "necessary" is concerned, it is difficult to Sec how it could be said to be a word which has no definite connotation or is vague and nebulous. "Necessary" means what is indispensable, needful or essential. The term in our view has a precise meaning and connotation and there is nothing vague or nebulous about it. It is true that it cannot be said that the word "expedient" has so defined and precise a connotation. It has no doubt a wider ambit and gives larger scope to the exercise of power. But this expression has also a recognised connotation in the eye of law. The dictionary meaning that would in the context in which it is used and which is most fitting is "useful for affecting a desired result; fit or suitable for the purpose. " If the word is read in isolation, it is possible that it introduces such variety of shades and considerations that it would be difficult to say with any definiteness as to whether a particular thing or act could be said to be expedient or not. But the word has not to be read in isolation. It has to be read in context of the other parts of the provision of law in which it appears. In the present case the word has to be read in context of the word "necessity" which precedes it and particularly in the context of the expression "for a public purpose. " This word "expedient" is no stranger to the statute law and consequently to the Courts. In many a statute in England and in this country, the expression has been used. In the Defence of India Act, 1962, sec. 3 which gives power to make Rules provided that:

> "3. Power to make rules. -(1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community. (2) xxx xxx xxx xxx xxx xxx"
>
> Sec. 3 of the Essential Commodities Act, 1955 reads as follows: -
>
> (1) If the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential

commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) xxx xxx xxx xxx xxx xxx"

Sec. 3 of the Essential Supplies (Temporary Powers) Act XXIV of 1946 is as follows: -

"(1) The Central Government, so far as it appears to it to be necessary or expedient for maintaining and increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

Rule 4 of the Enemy Property (Custody and Registration) Order, 1962, made under the Defence of India Rules, 1962 reads as follows: -

"(1) Whenever by order made under sub-rule (1) of Rule 133-V of the Defence of India Rules, 1962, the property of an enemy is vested in the Custodian, the Custodian may take, or authorise the taking of such measures as he considers necessary or expedient for preserving the property, and, where the property belongs to an individual enemy subject, may incur such expenditure out of the property as he considers necessary or expedient for the maintenance of that individual or of his family in India. "

It is obvious that in all these provisions the authority in which the power was vested had to decide as a condition precedent whether it was necessary or expedient to exercise the power in relation to the purpose to be attained. In these provisions also the Legislature having regard to the nature of the power and the purpose to be attained had thought it advisable to leave flexibility in the basis on which the power shall be exercised and advisedly used the term "necessary or expedient".

[18] Our attention was drawn by the learned Advocate General to two English authorities and we may with advantage refer to them here. In re Craven 's Estate Lloyds Bank Limited v. Cockburn (No. 2) Chancery Division 1937, p. 431 (Vol. I), the Court was concerned with the provisions of the Trustee Act, 1925, sec. 57. Sec. 57, sub-sec. (1) of the Trustee Act 1925 provides: "Where in the management or administration of any property vested in trustees, any sale lease, mortgage, surrender, release or other disposition or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the Court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee by the trust instrument, if any, or by law, the Court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms and subject to such provisions and conditions, if any, as the Court may think fit... -" The question to be determined was whether the Trustees could under a power of advancement in the will of the testatrix, make an advance for the benefit of the son to enable him to become a member of Lloyd's or, if they have no power to do that, whether under sec. 57 of the Trustee Act, 1925, the Court will permit that to be done. In order to do this the Court had to interpret sec. 57 and it held that for the Court to exercise its power under the sub-section, the proposed transaction must be, in the opinion of the Court, expedient, not for the benefit of the beneficiary only, but for the benefit of the whole trust. The above underlining is ours. Dealing with sec. 57, the Court observed that sec. 57 was undoubtedly framed in very wide terms. It was intended to apply to cases where the powers expressly given by the instrument creating the trust were insufficient to enable that to be done which it was expedient to do in the interest of the beneficiaries under the trust which the trustees had to administer, but which without this power could not be done at all. Then as regards the word "expedient" used in sec. 57 the Court observed: "The word "expedient" there quite clearly must mean expedient for the trust as a whole. It cannot mean that however expedient it may be for one beneficiary if it is inexpedient from the point of view of the other beneficiaries concerned the Court ought to sanction the transaction. In order that the matter may be one which is in the opinion of the Court expedient, it must be expedient for the trust as a whole". The word 'expedient' was thus interpreted in the context of the other parts of the provision in which it was set.

[19] In 1941 2 King's Bench Division p. 306 (Rex v. Comptroller General of Patents) sec. 1, sub-sec. 1 of the Emergency Powers (Defence) Act, 1939 came before the Court for construction. It read as follows:

"Subject to the provisions of this section. His Majesty may by "Order in

Council make such regulations (in this Act referred to as 'Defence Regulations') as appear to him to be necessary or expedient for securing the public safety, the defence of the realm, the maintenance of public order and the efficient prosecution of any war in which His Majesty may be engaged, and for maintaining supplies and services essential to the life of the community. '

It was held that sub-sec. 1 gave to His Majesty in Council complete discretion to make such regulations as appear to him to be necessary or expedient to effect the purposes named in the sub-section. If a regulation is expressed to have been made because it appeared to His Majesty in Council to be necessary or expedient to secure those purposes, or that fact is to be implied, the Court has no jurisdiction to investigate the reasons which moved His Majesty to come to the conclusion that it was necessary or expedient to make the regulation or to inquire whether the making of the regulation was in fact necessary or expedient to effect any of the specified purposes. In the said case it had become necessary to construe the words "necessary" and "expedient" and it was observed that the effect of the words "as appear to him to be necessary or expedient" is to give to His Majesty in Council a complete discretion to decide what regulations were necessary for the purposes named in the sub-section. We need not enter into the details either of the facts or discussion in the said case. Suffice it to say that this phraseology is to be found in many statutes and the Courts have been called upon to interpret the ambit thereof in the context in which they are placed. It is obvious therefore that the word "Expedient" has a connotation which can reasonably be said to be definite and indicative when read in context with the other parts of the provision in which it is to be found.

[20] In the present case, in our view, the word "expedient" when read in context with the expression "for a public purpose" though it may leave a larger scope to the executive authority in exercise of power, it does provide a principle or criteria to guide the authority. Whether a particular requisitioning is expedient for a particular public purpose or not may require many factors and shades of considerations to be taken into account but it does canalise the exercise of power or the discretion to be used by the executive authority.

[21] What the law requires is that having regard to the nature of the power to be exercised the Legislature should provide a policy or principle to guide the exercise of power. That policy or principle must appear with reasonable definiteness either expressly or by necessary implication from the provisions of the Statute itself. It is true that the question whether it is expedient to requisition land for a given public purpose is a complex proposition in which many factors and diverse considerations may have to be taken into account in determining the question and their appreciation may also vary from person to person. But that cannot justify a conclusion that no principle or guideline is provided. It was however urged on behalf of the petitioners that in such cases it would not be sufficient to merely provide some policy or criterian for it would still leave it open to the executive to exercise the power arbitrarily. In such cases the principle or policy must be sufficiently definite and certain. According to the petitioners' learned counsel, in the present case the word "expedient" does not provide any definite or certain guideline. We have already Secn that the word "expedient" is not devoid of providing a guideline when taken in context of the other provisions of the section. But apart from that, we do not find any force in this submission either. One has to appreciate the fact that the Legislature while laying down the policy or principle is bound to keep in mind the nature of the problem that has to be tackled by the State Government. Variety of facts and circumstances would arise for consideration in deciding whether a particular land should or should not be acquired for a particular public purpose. Factors germane to the particular public purpose and facts relating to the property to be requisitioned may vary from instance to instance and place to place. The Legislature then rightly appears to have decided that it would not serve the purpose of the Act if they were to define or describe all the relevant factors which shall have to be taken into account while requisitioning any land under sec. 5(1). It appears to us that having regard to the vastness of the problem and the infinite variety of facts and circumstances in respect whereof the power will have to be exercised it was left to the wide discretion of the executive by the Legislature and rested satisfied by laying down the broad policy and principle in sec. 5 itself. That principle or policy being that the authority will always in any case decide as a condition precedent whether the purpose is a public purpose and whether it is either necessary or expedient to requisition a particular land having regard to the nature of the requirement of the public purpose and the suitability of the land to be acquired. We are therefore definitely of the view that there is no discrimination involved in the conferment of this power. If ever in any particular case the State Government or its delegate in the exercise of this power, abuses or transgresses the limits laid in the said provision, or disregards the guidance given, the citizen will not be without any remedy or left to the mercy of any such arbitrary executive act and the Court in such

cases can always come to his help and strike down such abuse of power without any impediment as we are proposing to do for reasons we shall state at the proper place.

[22] It was further argued on behalf of the petitioners that there is no provision even made for any judicial control or review nor any corrective machinery has been provided. That being so the provision permits uncontrolled and arbitrary power to the executive. On this aspect of his submission, our attention has been drawn to the following decisions of the Supreme Court State of Andhra Pradesh v. Raja Reddy A. I. R. 1967 S. C. 1458, N. M. C. S. &W. Mills v. Ahmedabad Municipality, A. I. R. 1967 S. C. 1801, and Jalan Trading Co. v. Mill Mazdoor Sabha, A. I. R. 1967 S. C. 691.

[23] In our view, this submission can have no force in the light of our conclusion that sec. 5(1) lays down the principle and the criterian which provides a sufficient guide-line in the exercise of the power. Question of want of corrective machinery or judicial review may arise only where the Court finds that a definite guide-line is not provided in the impugned provision. Besides, we have to keep in mind the nature of the power to be exercised. It would not be far wrong to say that the power of requisitioning is a specie of the power of eminent domain which can be exercised without the consent of the person adversely affected. As we have already pointed out, the power has been vested in the State Government or its delegate to meet special situation created by the acute shortage of accommodation and the pressing necessity to secure suitable accommodation for a public purpose. Under the circumstances, the Legislature justifiably thought fit not to provide any corrective machinery by way of appeal or otherwise, against the exercise of the power to requisition. So long as the State Government exercises the power as laid down in sec. 5(1), it would not be necessary to provide any further safeguard in the form of an appeal or other corrective machinery. The necessary safeguards have been provided in the section itself that the State Government must before requisitioning any land take into consideration the factors of necessity or expediency for a given public purpose. This, in our view provides sufficient check on any arbitrary exercise of power. We may mention that Mr. Sorabji the learned counsel for the petitioners fairly conceded that he had urged this submission only as a facet of his main submission that the expression "necessary or expedient" were not definite or sufficient to provide any real guidance for the exercise of the power.

[24] We may also mention that Mr. Sorabji, in order to emphasise the fact how unguided and untrammelled power is vested in sec. 5(1), took us through the provisions of sec. 6 urging that in the said section some definite criteria or guiding principles are provided.

Under the said section the objective fact of the premises being 'vacant' is made the condition precedent and again it must be "premises". Both these are objective facts which have definite connotation. The word "vacancy" has a denned and well-recognised connotation in contrast to the word "expedient". Suffice it to say that it may be true that the word "vacant" as it appears in sec. 6 may be said to have a more definite connotation and a narrower ambit than the word "expedient" but that does not mean necessarily that the word "expedient" is so vague or nebulous as cannot serve the purpose of providing sufficient guideline and we have already fully dealt with this aspect,

[25] Under the circumstances, the contention that sec. 5(1) of the Act gives unfettered power to requisition land and is therefore violative of Article 14 is rejected.

[26] That brings us to the consideration of the second part of the second submission on behalf of the petitioners viz., assuming that sec. 5(1) on its own is not violative of Article 14, whether it requires to be struck down when read with sec. 16. This submission is based on two-fold attack firstly that sec. 16 read with sec. 19(2)(iv) violates the fundamental right of equality before the law or equal protection of the law, secondly that assuming that sec. 5(1) not being severable from sec. 16 read with sec. 19(2)(iv), sec. 5(1) cannot survive and it must also be struck down.

[27] Before we proceed to consider the submission we may have a look at sec. 16 and sec. 19(2)(iv). They read as under: -

> "16. The State Government may by rules exempt any land from the provisions of Secs. 5 and 6 or both on such terms and conditions as may be specified in the said rules. "
>
> 19(1) The State Government may by notification in the Official Gazette make rules to carry into effect the purposes of this Act.
>
> (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-
>
> (i) xxx xxx xxx xxx xxx xxx xxx
>
> (ii) xxx xxx xxx xxx xxx xxx xxx

(iii) xxx xxx xxx xxx xxx xxx xxx

(iv) exemption of any land from the provisions of sec. 5 or 6 or both and the terms and conditions on which the land shall be exempted; (v) xxx xxx xxx xxx xxx xxx xxx"

[28] The important question that arises for consideration is whether if it is found that sec. 16 read with sec. 19(2)(iv) is invalid, sec. 5(1) has also to be struck down, assuming that sec. 5(1) is valid otherwise or whether the two are severable so that even if sec. 16 read with sec. 19(2)(vi) is struck down, sec. 5(1) shall still survive. If we come to the conclusion that sec. 5(1) would survive then we do not propose to determine the question whether sec. 16 read with sec. 19(2)(iv) is invalid or not because the challenge is not directed against sec. 16 on its own and the submission as regards the invalidity of sec. 16 is made only for the purpose of urging that sec. 5(1) is invalid in any case on the ground that as sec. 16 is invalid, sec. 5(1) must also be struck down as the two are not severable. We, therefore, proceed to examine the question of severability on the assumption that sec. 16 read with sec. 19(2)(iv) is invalid and sec. 5(1) is otherwise valid.

[29] The submission on behalf of the petitioners was that the Legislature would not have enacted sec. 5(1) without providing the exemption clause as it was essential to provide an exemption clause having regard to the wide definition of "land". The definition of "land" in the Act is an inclusive definition and it states that land includes benefits to arise out of land and buildings and all things attached to the earth or permanently fastened to the buildings or things attached to the earth. This definition, therefore, takes into its sweep all kinds of open land put to any use as open land and buildings and structures and all things attached to the earth. Under the circumstances, the unrestricted operation of the Act without the provision regarding exemption in certain cases would make the Act unworkable and in fact would not carry out the object of the Act. The object of the Act is to deal with the situation of acute scarcity of accommodation and to make accommodation available for a public purpose without in the least affecting the very measures or activity which would tend to relieve or solve the problem of want of accommodation. To achieve that object non-requisition of certain lands on some definite basis is necessary. The Legislature itself did contemplate that in view of the wide powers given in sec. 5(1), exemption will have to be provided and, therefore, it did make

a provision for exemption by enacting sec. 16 but committed the error of not providing the guide line for the exercise or non-exercise of the power under that exemption clause. All the same the intention to provide an exemption clause is to be found in the Statute. It was further urged that the present case would fall in Rules Nos. 3 and 5 of the Rules enumerated by the Supreme Court in R. H. D. Chambarbaugwalla v. The Union of India, A. I. R. 1957 S. C. 628. They are as follows: -

> "3. Even the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole.
>
> "5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections: it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein. "
>
> Reliance was also placed on the decision in K. T. Moopil Nair v. State of Kerala, A. I. R. 1961 S. C. 552 in support of the twin submission that sec. 16 read with sec. 19 is violative of the provisions of Article 14 and also that they cannot be severed from sec. 5(1) of the Act and, therefore, sec. 5(1) must also be struck down.

[30] The basic factor, as observed by the Supreme Court in A. I. R. 1957 S. C. 628 (supra), in determining the question of severability is the presumed intention of the Legislature that if a part of a statute turns out to be void, that should not affect the validity of the rest of it and that intention is to be ascertained from the terms of the statute. The test when applied to the present case would be to determine whether the Legislature would have enacted the valid part viz. sec. 5(1) if it had known that sec. 16 read with sec. 19(2)(iv) was invalid. In our view, sec. 5(1) withstands this test. It has to be noticed that the Legislature itself has not provided any exemptions in sec. 16, which if done would have curtailed the ambit of the operation of sec. 5(1) by the legislative act itself. It would have been a clog on the exercise of power given under sec. 5(1). In that case, on a plain construction of the statute, it would necessarily mean that the

Legislature while providing for the power under sec. 5(1) intended that so far as the exempted categories of land were concerned, that power should not be exercised or that it should not be subjected to that power of requisition. The- legislative intent then would be written large on the face of the statute that sec. 5(1) was not intended to give a blanket power to the executive and that power was intended to be circumscribed to the extent sec. 16 would have provided the exemption. Had this been the case it might have been possible to argue that the Legislature had not intended to make sec. 5(1) enforceable irrespective of what may happen to sec. 16. In that case the two provisions might be said to be so inextricably mixed up that one could not be separated from the other. It would then have been possible to urge that it is patent on the face of the statute that the Legislature never intended to give unrestricted power divorced from the exemptions provided in sec. 16. Having regard to the nature of the power contained in sec. 5(1) and the nature of the controlling effect that sec. 16 would have provided, it might have led the Court to hold that the two were intended to co-exist on the statute book and in the absence of the latter, the former was not intended to remain in force. But that is not the case here. Reading the two provisions as they stand on the statute book, one fact that becomes very apparent is that the Legislature did not itself want to provide any fetter on the power of the executive authority if in its subjective opinion it was necessary or expedient to requisition any land whatever for a public purpose. It did not itself intend to carve out any exceptions to the exercise of that power. Instead, what it did was only to authorise Government to provide such exemptions as it may think proper by framing rules having regard to the exigencies of the situation. So the legislative intent is to give blanket power under sec. 5(1) and not to provide any exceptions but only empower the executive authority if it so thought fit to exempt any land by framing rules. The Legislature could not have failed to contemplate that the executive might not exempt any land under sec. 16 read with sec. 19(2)(iv) and yet chose to give blanket power under sec. 5(1). Therefore either by dint of invalidity of sec. 16 or by reason of the executive authority not exercising the power to frame rules, or the rules regarding exemption do not come into existence or cease to exist, sec. 5(1) would not be rendered invalid or inoperative, as even otherwise the Legislature was content to give powers under sec. 5(1) without itself creating any exceptions to the exercise of that power. Legislature has intended that sec. 5(1) will hold the whole field as provided therein, but the executive authority if it so chooses may create exemptions. If they do not, still sec. 5(1) is intended to be operative. It is therefore clear that Legislature has not intended to make the existence of sec. 5(1) as a valid operative provision, dependent on the existence of sec. 16 as a valid and operative provision of the Act and the two are distinctly severable. If sec. 16 read with sec. 19(2)(iv) is taken out of the Act,

operation of the rest of the Act will not be affected. The only effect will be that Government will not have the power to exempt any land from being requisitioned by framing rules.

[31] But that does not mean that Government would not be able to exempt any land or class of land at all and the very object of this legislation would be frustrated as was argued by Mr. Sorabji. The Government can as a matter of policy or principle prescribe to itself the restraint on the exercise of the power under sec. 5(1) by laying down as a matter of policy or principle that it will not be expedient to requisition certain types or classes of land. It is important to note that it is the very authority empowered under sec. 5(1) that is also authorised to make the rules, to exempt any land at its discretion from the effect of the exercise of that power under sec. 5(1). In the absence of the rule making power of exemptions, the authority can in its discretion as a matter of policy laid down, achieve the same object. True it is that it would be only a matter of policy and not of statutory provision and will depend to an extent upon the Government adopting a policy at its discretion. But the fact remains as pointed out that the Legislature has rest content to leave it to the sole discretion of the Government to make or not to make the rules of exemption. Under the circumstances, we do not find any justification to hold that the Legislature could not have presumably intended to give such power as is vested under sec. 5(1) without providing the exemption clause or that without the exemption clause the very object of the Act would be frustrated. It would always be open to the Government "as a matter of expediency" to follow a policy not to requisition lands which if requisitioned was likely to lead to frustration of the very purpose which the Act is intended to attain. It cannot be said on a proper construction of the relevant provisions of the Act that the Legislature never intended to leave the matter of exemption to be decided merely on the ground of expediency as a matter of policy and intended that exemptions be provided by framing rules. As pointed out, on the other hand Legislature made the very authority that has to exercise the power under sec. 5(1), the sole judge to grant or not to grant exemption by framing rules in that behalf.

[32] There is yet another angle from which the presumed intention of the Legislature on the point can be tested and that is from the history of the legislation. By sec. 20 of the Act, the Bombay Land Requisition Ordinance, 1947 was repealed. As already pointed out, sec. 3 of the said Ordinance was as follows: -

> "3. Requisition of land. -If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in

writing requisition any land for any public purpose;

Provided that no land used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section. "

It can be Secn that the main part of sec. 3 of the Ordinance was the same as the main part of sec. 5(1) of the Act. Under the proviso to sec. 3 of the Ordinance, land used for the public religious worship was specifically exempted but when the Act was enacted, the Legislature itself did not provide for such exemption in the body of the Act and left the question of exempting any land from the operation or effect of sec. 5(1) entirely to the discretion of the Government. This indeed is a significant indication of the legislative intent to circumscribe the power under sec. 5(1). True it is that it did provide that Government may by rules exempt any land but what is important to note is that to make or not to make such rules is left to the discretion of the Government and there is nothing whatever to indicate that the Legislature intended that if such rules are not made, the power under sec. 5(1) shall not be exercised.

[33] The decision in A. I. R. 1961 S. C. 552 (supra) relied upon by Mr. Sorabji, in our view, does not help the petitioners on the ground of severability. In the said case the validity of Secs. 4, 5A and 7 of the Travancore-Cochin Land Tax Act came for consideration before the Supreme Court. Sec. 4 was the charging section which laid down that:

"Subject to the provisions of this Act, there shall be charged and levied in respect of all lands in the State, of whatever description and held under whatever tenure, a uniform rate of tax to be called the basic tax. "

Sec. 5A provided for provisional assessment of basic tax in the case of unsur-veyed lands. Basic tax was denned as "the tax imposed under the provisions of this Act". Sec. 7 read as follows: -

"This Act is not applicable to lands held or ceased (sic) by the Government

or any land or class of lands which the Government may, by notification in the Gazette, either wholly or partially exempt from the provisions of this Act. "

Secs. 4 and 7 were challenged on the ground of being violative of Article 14. These two sections and sec. 5A were also attacked on the ground that they contravene the provisions of Article 19(1)(f). Considering the relevant sections of the Act, the Supreme Court came to the conclusion that both Secs. 4 and 7 are discriminatory and violate the provisions of Article 14. Reliance was placed on the following observations of the Supreme Court by the learned Counsel for the petitioners: -

"There is no question of severability arising in this case, because both the charging sections, sec. 4 and sec. 7, authorising the Government to grant exemptions from the provisions of the Act, are the main provisions of the Statute, which has to be declared unconstitutional. "

These observations when read in their proper perspective and in context of the facts discussed and decided in the said case, only mean that as both Secs. 4 and 7 were struck down and as one was charging section and the other the exempting section between the two it took away from the Act the very life of it and left nothing in the Act to be enforced. It is obvious that in that case sec. 4 was not struck down on the ground of sec. 7 being invalid, and the two sections being not severable. Sec 4 was independently on its own found to be violative of Article 14 as well as Article 19(1)(f). Therefore the said decision is no authority on the point with which we are concerned. As we have come to the conclusion that sec. 5(1) can stand apart from sec. 16 on the doctrine of severability we do not find ourselves called upon to consider the contention that sec. 16 read with sec. 19(2)(iv) is violative of Article 14. Having considered the question from all its angles, we are satisfied that even if sec. 16 read with sec. 19(2)(iv) is found to be invalid and unenforceable that finding cannot justify us in striking down sec. 5(1) which we have otherwise found to be valid, on the doctrine of severability. We, therefore, reject the second part of the second submission also.

[34] That brings us to the consideration of the third contention. It was urged on behalf of the petitioners that discrimination is inherent in the provisions of sec. 5 inasmuch as, the proviso to sub-sec. (1) of sec. 5 saves from being requisitioned building or a part of a building which has been actually resided in for a continuous period of six months immediately preceding the date of the order, while no such protection or exemption is provided in the case of land which is actually occupied and put to use for more than six months preceding the date of the order. It was argued that under the inclusive definition of "land, " a building is covered and is liable to be requisitioned under sec. 5(1) and still this discriminatory protection is given to buildings resided in for more than six months. That is not all. Sub-sec. (2) provides that where any building or part of a building is to be requisitioned under sub-sec. (1), an inquiry shall be made by the State Government as it may deem fit and only if satisfied that it was not resided in for a period of more than six months that it will be requisitioned. No such provision of inquiry is provided in the case of land other than building though it may actually have been occupied and put to use for a long number of years. There is thus discrimination between owners, landlords or tenants of lands including agricultural land and those of buildings though they are similarly situated for the purposes of the Act. Therefore, there is no rational or intelligible basis for the classification and in any case the classification made has no reasonable nexus with the purpose of the Act and therefore sec. 5(1) violates Article 14.

[35] It is true that the proviso to sub-sec. (1) and sub-sec. (2) of sec. 5 make certain concessions in favour of a building and its owners, landlords or tenant in the sense that they enjoy an immunity from their building being requisitioned if it is continuously resided in for more than six months immediately prior to the date of the order while the owner, landlord or tenant of any land though the land may be put to use for agriculture, manufacturing or industrial purposes for more than six months do not have such immunity. Even amongst buildings, only (hose used for residential purposes are favourably treated and buildings used for manufacturing, industries, business and even schools and hospitals do not enjoy such immunity. If this classification made has no rational basis or if it has no reasonable nexus with the purpose of the Act, it may be difficult to hold that the section does not violate the fundamental right of equal protection of law. But in our judgment the impugned section cannot be struck down even on this contention.

[36] Sub-sec. (2) of sec. 5 need not be considered on any independent basis because the provision only flows as a corrollary from the proviso itself. Therefore we have to concentrate on the proviso itself. It is obvious that the classification is based on the

purpose for which the building or part thereof sought to be requisitioned, is utilised and only those used for residence for more than six months prior to the date of the order are differently treated. The Legislature having regard to the great difficulty in obtaining residential accommodation in urban areas and tremendous influx of persons in cities and towns, appears to have decided not to throw out residents who have continuously resided in buildings for more than six months from the date of the passing of the order, The Legislature intends that such residents should not be uprooted from their residence and rendered homeless. It is universally acknowledged that the requirement of a home is a basic need of every human being. Roof over the head has for ages been considered to be the primary need of human beings and if any Legislature dealing with requisitioning of properties for a public purpose differentiates between the properties used for a long period for residential purpose from other properties, cannot in our view be said to be not based on an intelligible differentia.

[37] It was argued that need of properties for agricultural use or for carrying on business are equally basic needs of human beings and therefore the basis of the' purpose for which property is used is not reasonable or intelligible differentia. Differentia to justify a classification must be a substantial differentia. It is true that to justify the differentia, it must be clearly discernible. In our view, the owners, landlords and tenants who occupy residential buildings for more than six months form a well-defined class and they are all equally dealt with. It is true that need of property for the purpose of agricultural operations or carrying on business may also be essential for human beings and yet the distinction between need for residence and need for agriculture or business is real and substantive. The difference may be even in degree but it is not negligible or undiscernible so as not to form a basis of a rational differentia. Therefore, when the Legislature in its wisdom has protected residential properties occupied over long periods from being requisitioned even for a public purpose, it cannot be said that the classification is not based on an intelligible differentia. We are also satisfied that the basis of the differential has a reasonable nexus with the purpose of the Act. As observed above, when the ordinance and the Act were brought into force, there was great dearth of residential premises and object of the Act was not to requisition land for a public purpose by causing added hardship to those who were already experiencing great difficulty. The purpose of the Act was to relieve pressure of accommodation in urban areas by regulating the distribution of vacant premises and requisitioning land for a public purpose. As has been often observed by the Supreme Court if certain provisions of law construed in one way would make then consistent with the Constitution and another interpretation would render unconstitutional, the Court would lean in favour

of the former construction. The State has a power to make classification on a basis of rational distinction relevant to the particular subject it is called upon to deal with in the common interest of the public. We therefore do not Sec any force in this third submission made on behalf of the petitioners and it is also rejected.

[38] The result is that none of the grounds on which the validity of sec. 5(1) was challenged survives.

[The rest of the judgment is rot material for the reports.]

Petitions dismissed: Leave to appeal granted.