Shah & Co. Bombay

Vs

The State of Maharashtra & Anr.

Writ Petition No. 229 of 1966

(CJI K. Subha Rao, M. Hidayatullah, R. S. Bachawat, J. M. Shelat, C. A. Vaidialingam JJ)

06.04.1967

JUDGEMENT

VAIDIALINGAM J.

In this writ petition, under Art. 32, the petitioner seeks to have quashed, the proceedings taken by the respondents by way of requisitioning the premises, in question, and also to have the requisition order, dated September 24, 1966, cancelled.

The circumstances, under which this writ petition has been filed, may be briefly noted. The petitioner is a partnership firm, carrying on business of importers and dealers in wines and provisions and drugs and medicines, in Bombay. One Mrs. Dorethea Kumpig Leo, who was a tenant of shop No. 1, on the ground floor of a building known as Sitaram Building in C-Block, Dadabhoy Naoroji Road, Fort, Bombay, was carrying on business of boot and shoe makers, in the name and style of messrs. Lee & Co. She was also a tenant of Flat No. G-8/9, situate in the first floor of the same building and also of godown No. H/5, in the same building. The said flat, as well as the godown, were occupied by Mrs. Dorethea, as tenant, in connection with and for the purposes of her shoe business.

By an assignment deed, dated August 18, 1964, Mrs. Dorethea Kumpig Leo, is stated to have assigned, in favour of the petitioners, the whole of her business, as a going concern, together with the name and goodwill, as also the assets, furniture, fixtures, articles and stock-in-trade, belonging to the said shoe business, together with the full benefit of the tenancy and occupancy rights in the premises viz., the shop, the flat and the godown, for a sum of Rs. 15,000/-. The recital in the document is that the parties have agreed that out of the purchase price of Rs. 15,000/-Rs. 1,000/-is the price of the furniture, fittings, articles and things and stock-in-trade which have been already delivered over to the assignees, the petitioners. The future recital is that the assignors assigns and transfers to the assignees, all her beneficial interest and goodwill in the business carried on by her, in the name and style of M/s. Lee & Co., and, as incidental to such assignment, the assignors transfers her entire interest in the tenancy of Shop No. C-1, on the ground floor flat No. G/8/9, on the first floor and the godown No. H/5, in the premises, known as Sitaram Building in Dadabhoy Naoroji Road, Bombay. There is also a recital to the effect that no cash consideration has been paid by the petitioners, as assignees, to their assignors, for the transfer, in their favour, of the tenancy rights, but, on the other hand, those rights are being transferred to them, as incidental, to the sale of the business, as a going concern.

The petitioners claim that, after the date of this assignment, in their favour, they have been carrying on, in the said premises, their business as importers of foreign liquor, wines, provisions, drugs and

medicines. While so, on or about April 7, 1966, an Inspector, of the Office of the Second Respondent, called at the shop of the petitioners and took a statement from one of the partners of the firm. According to the petitioners, a copy of the assignment deed, dated August 18, 1964, was also given to him; and the various rent bills and other documents, evidencing their right to be in use and occupation of the shop, are also stated to have been given to the Inspector. But, on August 8, 1966, the second respondent issued a notice to the petitioners stating that the Government have made inquiries and are considering the question of requisitioning the premises, viz., Shop No. 1, Ground Floor, Sitaram Building, C-Block, D. N. Road, Bombay. The petitioners were required to appear before the Officer, with the necessary materials to show cause as to why the requisitioning of the premises should not be made. The petitioners' legal advisers sent a reply, on August 12, 1966, stating that one of the chief partners is absent from Bombay, due to the illness of his father, and requested for postponing the hearing of the matter. A request was also made to the Officer, to indicate as to what was the nature of the inquiry that is stated to have been made by the Government and, on what basis the premises is sought to be requisitioned, especially as there is no vacancy in respect of the same.

The second respondent sent a further communication, on August 25, 1966, agreeing to the postponement of the case and fixing another date for appearance in response to the original notice. On August 30, 1966, the partner who was stated to be away from Bombay, sent a reply to the second respondent, from Chandigarh, stating that in view of his father's illness, he is not able to appear before the Officer and requesting for further adjournment.

On the next day, viz., September 1, 1966, there was a further communication, by the lawyers of the petitioners, to the second respondent, reiterating the right of the petitioners to be in occupation of the premises, under the assignment, dated August 18, 1964. As there was no vacancy, a request was made in this letter, to the second respondent, to withdraw the notice, dated August 8, 1966.

On September 19, 1966, the second respondent informed, by letter the petitioners that, on the basis of the evidence produced before him, in respect of the premises, in question, he has come to the conclusion that this was a case of suppressed vacancy and therefore liable to be requisitioned, under s. 6(4) (a) of the Bombay Land Requisition Act, 1948 (Bom. Act XXXIIII of 1948) (hereinafter referred to as the Requisition Act). On September 24, 1966, the second respondent passed an order that the Government of Maharashtra is pleased to declare that the premises, in question has become vacant after December 4, 1947 and to requisition the said premises for a public purpose, viz., for housing the Maharashtra State Government Office. It is also stated that on enquiry it has been found that the premises has become vacant in August 1964 and that the requisitioning is made under s. 6(4) (a) of the Requisition Act.

The petitioner's counsel sent a further communication, on September 27, 1966, to the second respondent, expressing surprise at the orders of requisition passed, in respect of the premises, in question. After detailing the circumstances under which they are in possession of the property, and adverting to the various correspondence referred to above, a request, on behalf of the petitioners, is made to withdraw the order of requisition passed by the second respondent.

The second respondent sent a final reply, dated October 3, 1966, stating that the Government did not set any reason to revise the decision for requisitioning the property, in question, as already decided by it, and directing the petitioners to hand over vacant peaceful possession immediately.

The petitioners, in this writ petition, challenge all the proceedings, taken by the respondents, and in

particular, the orders dated September 19, 1966 and September 24, 1966. In the affidavit filed in support of this writ petition, it is stated that assignments similar to the one in favour of the petitioners, on the basis of which the petitioner is in possession of the properties, are permissible, in view of the Notification, dated September 24, 1948, issued by the Bombay Government, under the proviso to s. 15(1), of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. Act LVII of 1947) (hereinafter called the Rent Act). In particular, it is the case of the petitioners that the assignment, of August 18, 1964, in their favour, is protected by clause (2) of the said Notification. In this case, there is no vacancy, so as to give jurisdiction to the authorities concerned to requisition the building under s. 6(4) (a) of the Requisition Act. Explanation (a), building under s. 6(4) (a) of the Requisition Act, it is stated, when it deals with a premises deeming to be vacant on assignment or transfer, can be considered to refer only to assignments or transfer which are not permitted under the Rent Act. Inasmuch as transfer or assignment of the entire interest of the transferor or assignors, in a leasehold premises, as incidental to the sale of a business, as a going concern, together with the stock-in-trade and goodwill, is permissible, under cl. (2) of the Notification issued by the Bombay Government which protects the assignment in favour of the petitioners, there is no vacancy of the premises, much less a vacancy which may be deemed to exist by virtue of the Explanation to s. 6 of the Requisition Act. It is also stated that the provisions of the Requisition Act infringe the petitioners' fundamental right, guaranteed to them under Arts. 19(1), (f) & (g). As to how these points are developed, will be indicated later.

On behalf of the respondents, it is stated that the assignment, in favour of the petitioners, was in effect and substance, a transfer, not of the business of the assignors, but only of the tenancy rights of the assignors in the said premises. it is pointed out that the assignment is stated to be of the business of boot and shoe makers, whereas the petitioners are carrying on, in the said premises the business of importers and dealers in wines, provisions drugs and medicines. It is further pointed out that such transactions are not protected by cl. (2) of the Notification relied on by the petitioners. It is further stated that, on the basis of the enquiries made by the Department, it was clear that the premise, in question, had become vacant, by the original lessees having ceased to carry on business, and no intimation was given about the vacancy or required by law. The Government required the premises for accommodating one of their departments, viz., the Directorate of Ayurveda and, therefore, issued the notice regarding their proposal to requisition the said property. It was, after the petitioners were given an opportunity, that the order was passed.

The respondents further averred that the provisions of the Rent Act cannot be read into the Requisition Act, and, under the provisions of the Requisition Act, it was clear that there had been a vacancy, when the assignor of the petitioners ceased to carry on business, and that gave jurisdiction to the authorities to requisition the property, in question. It is further pointed out that as the order of requisition has been passed for a public purpose, the petitioners are not entitled to rely on Art. 19(1) (f) of the Constitution. They also further state that the order does not, in any manner, restrict the right of the petitioners to carry on their trade, occupation or business and, therefore, the Requisition Act cannot be considered to be violative of Art. 19(1) (f) of the Constitution.

This will be a convenient stage to refer to the material provisions of the statuettes, as well as the Notification, issued by the Bombay Government.

The Rent Act was an Act passed to amend and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions. It came into force on February 13, 1948. In the statement of Objects and Reasons, it is stated that control over rents and other accommodation was being exercised in varying degrees in several parts of Province

of Bombay, under two Acts, of 1939 and 1944, mentioned therein. It is further stated that the 1939 Act was intended to prevent an increase in rents of premises with a rental not exceeding Rs. 80/-per mensem, and the 1944 Act was intended to check an inflationary rise in rents and hotel and lodging house rates in areas where there was an acute scarcity in accommodation. It is further stated that both Acts will expire very soon, but the conditions themselves, which led to the enactment of those measures, still continued in an even more aggravated from and therefore it was found essential that effective control should be continued. Hence it has been decided to introduce a revised and self-contained Act, covering control over rents of residential and other premises, as well as over hotel and lodging house rates.

Section 3(2) provides for the Rent Act remaining in force upto and inclusive of March 31, 1068. Section 5 defines the various expressions. Section 5(11) defines the expression 'tenant' and, under sub-cl. (aa), a 'tenant' means 'any person to whom interest in premises has been transferred under the proviso to sub-section (1) of section 15'. Section 10C enables a landlord to claim an increased rent in respect of the premises, referred to therein, and to the extent indicated in the said section. One of the premises, in respect of which a landlord can ask for an increase, is dealt with under cl. (5) of s. 10C(1), which is, as follows :

> "Premises interest in which is transferred under the proviso to sub-section (1) of section 15, on or after the date of the coming into force off the Bombay Rents, Hotel and Lodging House Rates Control (Second Amendment) Act, 1953, as incidental to the sale of a business together with the stock-in-trade and goodwill thereof."

Section 13 deals with the circumstances, under which a landlord may recover possession, and one of the circumstances dealt with, under cl. (e) of sub-s. (?), is when

> "the tenant has, since the coming into operation of this Act, unlawfully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein".

Section 15(1), with the proviso, which is material for the present purpose, is as follows :

> "15. (1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein :
>
> Provided that the State Government may, by mortification in the Official Gazette, permit in may area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification."

Under this proviso, the Government of Bombay, have issued a Notification, dated September 24, 1948. That Notification is numbered as 5975/33 and it says that the Government is pleased to permit, in all areas to which Part II of the Rent Act extends, all transfers and assignments by lessees, of their interest in leasehold premises as and to the extent specified in the Schedule. Clause (2) of the Schedule, relevant for the case, on hand, is as follows :

> "Transfer or assignment incidental to the sale of a business as a going concern together with the stock-in-trade and the goodwill thereof, provided that the transfer or assignment is off the entire interest of the transferor or assignor in such leasehold

premises together with the business and the stock-in-trade and goodwill thereof."

At this stage, it may be stated that it is by virtue of this clause that the petitioners urge that the assignment, taken by them, from M/S Lee & Co., on August 18, 1964, is valid and that, as they are entitled to be in possession, on the basis of that assignment, there is no vacancy of the premises, so as to give jurisdiction to the authorities to pass an order of requisition.

On December 4, 1947, the Government of Bombay promulgated the Bombay Land Requisition Ordinance, 1947 (Ordinance No. V of 1947). In the statement, annexed to this Ordinance, it is stated that there is great pressure on accommodation available in urban areas and, as the powers of requisitioning, which the Government had, under the Defence of India Rule, have lapsed, it has 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 the various expressions like 'land', 'premises', 'to requisition' etc. Clause 3 provides for the Provincial Government, if it is of the opinion that it is necessary or expedient to do so, to pass an order in writing, requisitioning any land for any public purpose. Clause 4, again, provides for requisitioning premises which are vacant, on the date of the Notification, and whenever any premises became vacant, either by the landlord ceasing to occupy the premises, or by the termination of tenancy or by vacation of a tenant, etc.

This Ordinance was followed by the Requisition Act, which came into force on April 11, 1948. In the preamble to this Act it is stated that it is an Act to provide for the requisition of land, for the continuance of requisition of land, and for certain other purposes. Section 4 defines the various expressions, including 'land', 'premises' and 'to requisition'. Section 5 enables the State Government to therein. Sub-s. (2) of s. 5 provides for the State Government making an enquiry when action is taken under sub-s. (1) and to make a declaration in the order of requisition, and it also provides for such declaration being conclusive evidence that the owner, landlord or tenant, has not so resided. Section 6 dales with requisition of vacant premises. Its sub-s. (1) provides for the landlord of the premises given intimation, to the authority concerned, wherever any such premises, referred to therein, are vacant or become vacant by reason of the landlord, the tenant or the sub-tenant, as the case may be, ceasing to occupy the premises, or by its becoming vacant because of the other circumstances, referred to therein. Sub-s. (2) provides for the manner in which and the period, within which, the intimation is to be given. Sub-s. (3) prohibits a landlord, without the permission of the State Government, from letting out or occupying or permitting the occupation of the premises, for the period mentioned herein. Sub-s (4) of s. 6 is, as follows :

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

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

. . . . .

Provided that where an order is to be made under clause (a) requisitioning the premises in respect of which no intimation is given by the landlord, the State Government shall make such inquiry as it deems fit and make a declaration in the order that type premises were vacant or had become vacant, on or after the date referred to in sub-section (1) and such declaration shall be conclusive evidence that the premises were or had so become vacant."

Sub-s. (5) provides for the punishment to be awarded to a landlord for violation of sub-ss. (22) and (3) of s. 6. There is an Explanation to s. 6, of which cl. (a), which is material, for our purpose, is as follows :

> "Explanation.-For the purpose of this section-(a) premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be, deemed to be or become vacant when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises or otherwise, not withstanding any instrument or occupation by any other person prior to the date when such landlord tenant or sub-tenant so ceases to be in occupation."

It has already been minuend that the notice, dated September 19, 1966, as well as the consequential order, dated September 24, 1966, which are under challenge in this writ petition, were issued under s. 6(4) (a) of the Requisition Act.

Mr. Sorabji, learned counsel for the petitioners, urged, in the main, two contentions regarding the validity of the proceedings taken by the respondents, viz., (i) that a proper construction of the relevant provisions in the Requisition Act, which are to be read harmoniously with the provision of the Rent Act, would make it clear that there is no question of any vacancy having arisen, in this case, so as to give jurisdiction to the respondents to requisition the premises; and (ii) if it held that the respondents have got jurisdiction to requisition the premises under the Requisition Act, the provisions of that Act must be held to be unconstitutional, asmuch as they affect the fundamental rights guaranteed to the petitioners under Arts. 19(1), (f) and (g), and the Act is not saved by Art. 19 (5) or 19 (6) of the Constitution. On the other hand, Mr. Bindra, learned counsel for the respondents, has urged that the assignment, on which the petitioners relied, is nothing but a colourable device for obtaining a transfer of the tenancy rights, which is acquired any rights, to be in possession of the property, in the face of the statute, and hence they cannot claim that there has been any infringement of their fundamental rights. According to Mr. Bindra, even assuming that the petitioners have got any right, the provisions of the Rent Act cannot be read into the Requisition Act, inasmuch as the subject matter off the two enactments, and the field on which each operates, are entirely distinct and different. Learned counsel also points out that there is no question of any infringement of the fundamental rights, guaranteed to the petitioners, either under Art. 19 (1) (f) or under Art. 19(1) (g). In fact, according to counsel, Art. 19 (1) (g) does not, in any way, affect the right of the petitioners, to carry on their trade or business. In any event, according to him, the restrictions must be considered to be saved by Arts. 19(5) and 19(6).

We shall assume, for the present purpose, that the assignment, relied on by the petitioners, is not a colourable device, for obtaining a transfer of tenancy rights, and discuss the first contention, urged for the petitioners. According to them, both the Rent Act, as well as the Requisition Act, deal with the same problem and were necessitated, because of the existence off the same or identical circumstances, viz., scarcity of accommodation and, therefore, both the statutes pertain to the same matter. In other words, both the statutes are in pari materia. On the date of coming into force of the Rent Act, it is clear that the Legislature itself contemplates, by virtue of the powers conferred on the State Government under the proviso to s. 15 (1), that by virtue of the Notification, transfer of lease fold interest in particular types of leases, under particular circumstances, will be permitted. By virtue of cl. (2) of the Notification, issued by the State Government on September 1948, transactions, like the assignment, under which the petitioners claim, have full validity and legal effect. When such a permissible assignment of a leasehold interest has taken place, there cannot be

any vacancy, either in fact or in law. Therefore, when the Legislature, in Explanation (a) to s. 6, of the Requisition Act, refers to a vacancy 'deeming to occur' on an assignment or transfer of a tenancy interest, the assignment or transfer dealt with therein must be one, which does not come under the permissible assignment or transfer, by virtue of the notification issued under the proviso to s. 15 of the Rent Act. That is, the assignment or transfer of a tenancy interest referred to in the Explanation to s. 6 of the Requisition Act, can relate, or must be considered to relate, only to prohibited assignments under s. 15 of the Rent Act. If that is so, according to the petitioners, in this case there is no vacancy when an assignment of the tenancy rights, in the manner prescribed under cl. (2) of the Notification, was taken by the petitioners. Therefore, inasmuch as there is no vacancy, the State Government has no right or jurisdiction to requisition the premises, under s. 6 of the Requisition Act.

We have been referred to certain passages in certain text books, as well as in certain decisions, to show, under what circumstances, statutes can be considered to be in pari materia, and the nature of the construction to be placed on such statutes. Sutherland, in 'Statutory Constriction', 3rd Edition, Vol. 2, at p. 535, states :

> "Statutes are considered to be in pari materia - to pertain to the same subject matter- when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object."

The learned author, further states, at p. 537 :

> "To be in pari materia, statutes need not have been enacted simultaneously or refer to one another."

Again, at p. 544, it is stated :

> "When the legislature enacts a provision, it has before it all the other provisions relating to the same sub-ject matter which it enacts at that time, whether in the same statute or in a separate act. It is evident that it has in mind the provisions of a prior act to which it refers, whether it phrases the later act act as an amendment or an independent act. Experience indicates that a legislature does not deliberately enact inconsistent provisions when it is cognizant of them both, without expressly recognizing the inconsistency."

The canon of construction, under these circumstances, is stated by the author, at p. 531 :

> "Prior statutes relating to the same subject matter are to be compared with the new provision; and if possible by reasonable construction, both are to be so construed that effect is given to every provision of each. Statutes in pari materia although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other."

In Craies, on 'Statute Law', 6th Edition, at p. 133, it is stated :

> "Where Acts of Parliament are in pari materia, that is to say, are so far related a to from a system or code, of legislation, the rule as laid down by the twelve judges in Plamer's Case [(1785) 1 Leach C. C. 4th ed.. 355], is that such Acts 'are to be taken together as forming one system, and as interpreting and enforcing each others. In the

> American case of United Society v. Eagle Bank [(1829) 7 Conn. 475,470], Hosmer J. said : 'Statutes are in pari materia which relate to the same person or thing or to the same class of persons or things....."

In Maxwell on 'The Interpretation of Statutes', 11th Edition, p. 153, the principle is stated thus :

> "An author must be supposed to be consistent with himself, and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the legislature is treated in the same manner as that of any other author, and the language of every enactment must be construed as far as possible in accordance with the terms off every other statue which it does not in express terms modify or repeal.... It cannot be assumed that Parliament has given with one hand what it has taken away with the other."

Mr. Sorabji, learned counsel, further pointed out that another principal, that has to be borne in mind, in interpreting statutes, is 'to place such a construction as will save the statute from constitutional challenged. The observations of Frankfurter J. in United States v. Rumely have been quoted before us, in this connection :

> "Accordingly, the phrase 'lobbying activities' in the resolution must be given the meaning that may fairly be attributed to it, having special regard for the principle of constitutional adjudication which makes it decisive in the choice of fair alternatives that one construction may raise serious constitutional questions avoided by another. In a long series of decisions we have acted on this principle. In the words of Mr. Chief Justice Taft, 'it is our duty in the interpretation of federal statutes to reach a conclusion which will avoid serious doubt of their constitutionality."

This Court also has held, in Kadar Nath Singh v. State of Bihar :

> "It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and not her interpretation would render them unconstitutional, the Court would lean in favour of the former construction."

We may straight away say that the principals enunciated in the above decisions and in the text-books, are well-settled. But the question now is as to whether the Rent Act and the Requisition Act can be considered to be in pari material. Can it be stated that these tow statutes are in pari maeria, in the sense that they relate to the same person or thing or to the same class of persons or things? For this purpose, it is necessary to examine the scope and ambit of the two enactments, concerned.

We have already referred to the fact that the Rent Act was enacted for the purpose of amending and consolidating the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions. A perusal of the various provisions will clearly show that the rent Act deals, substantially, with the relationship of landlord and tenant, in the matter of eviction, payment of rent, increase of rent under certain circumstances and the circumstances under which the landlord can take possession of the property. There are provisions relating to residential and other premises and other premises and hotels and lodging houses. It is, in that context, that s. 15 occurs, which prohibits a tenant to sub-let or transfer his rights, in the absence of a contract to the contrary. But certain types of assignment or transfer of tenancy rights can be permitted, under

certain circumstances, by virtue of a notification issued by the State Government, under the proviso to s. 15 (1) of the Rent Act. But, if a transfer or assignment of a tenancy right does not come within the purview of assignments or transfers permitted by the notification issued by the State Government, a transfer or an assignment of a tenancy right will be illegal and unlawful, under s. 15(1). Therefore, the fact that, in this case, the assignment claimed by the petitioner may come under cl. (2) of the Notification, will only enable the petitioner to be in occupation of the premises under the Rent Act and the assignment of tenancy rights in his favour will not become illegal or unlawful, as it otherwise would, under s. 15(1) of the Rent Act.

Now, coming to the Requisition Act, here again, we have already referred to the fact that it was passed to provide for the requisition of land, for the continuance of requisition of land and for certain other purpose. The various provisions, in this Act, relate to the circumstances under which requisition of land can be made, for a public purpose, and the procedure to be adopted for the same, as well as the payment of compensation. It will therefore be seen that this Act deals with a matter, so totally different from that dealt with by the Rent Act. There is absolutely no similarity between the two enactments; and we cannot hold that the Requisition Act relates to the same person or thing, or to the same class of persons or thing as the Rent Act. Hence the two Acts cannot be considered to be in pari materia.

Section 6 of the Requisition Act gives power to the State Government to requisition vacant premises and, it is, in that context, that Explanation (a) to this section, has to be understood. Under that Explanation, there will be deemed to be a vacancy if a tenant assigns or transfers, in any, manner, his interest in the premises. Section 15 of the Rent Act, cannot be reads into any part of the Requisition Act, much less with s. 6 of the latter Act. Under s. 6 of the Requisition Act, notwithstanding the fact that an assignment of tenancy rights may have been made, which is permissible under the Rent Act, such an assignment can be deemed to create a vacancy of the premises, so as to give jurisdiction to the State Government to requisition the same. There is no question of the Legislature, having given something to the petitioner, under the Rent Act, by permitting an assignment, under s. 15, and taking it away by requisitioning the premises, under s. 6 of the Requisition Act. T therefore, the contention of the learned counsel for the petitioner, that the transfer or assignment of tenancy rights, contemplated under Explanation (a) to s. 6 of the Requisition Act, must be under stood in a limited manner, in the sense that they deal with prohibited assignments, under the Rent Act, cannot be accepted. The first contention, of the learned counsel, for the petitioner, will have, therefore, to be rejected.

Then, the second question as to whether the Requisition Act is constitutionally invalid, as affecting the rights of the petitioners, under Art. 19(1) (f) or (g), will have to be considered. This involves consideration from two points of view, viz, as to whether the bases upon Art. 19(1) (g). So far as this is concerned, after a perusal of the entire provisions of the Requisition Act, we are satisfied business. We have already dealt with the main features of the Requisition Act and it will be clearly seen that it deals only with property. Therefore, the Requisition Act, does not deal with trade, or business, as such, and hence, the constitutionality of that Act, having regard to Art. 19(1) (g), does not arise for consideration. But, it may be that an order of requisition passed by the respondents, may interfere with the right of a party to do business. That is an aspect, which will be considered later, after dealing with the contention of the petitioner that the Requisition Act contravenes Art. 19(1) (f) and is not saved by Art. 19(5).

According to the petitioners, the Act, considered both from the point of view of procedural and substantive aspects, affects the petitioners' rights under Art. 19(1) (f). From the procedural aspect, it

is pointed out that the determination of jurisdictional fact of the existence of a vacancy, is left to the decision of an executive authority, and that decision is made conclusive and placed beyond the pale of judicial review under the proviso to s. 6(4); there is no machinery provided in the Act for redress or for correcting any errors, in respect of adverse orders passed by the authority; there is no legal obligation, on the part of the authorities, to provide an opportunity to parties who may be affected by the orders of requisition, and there is no obligation on the authorities to give reasons for passing a particular order. From the substantive aspect, it is stressed that, as a fact, co vacancy of the premises has arisen and the vice lies in introducing a fiction in Explanation (a) to s. 6. In fact, it has also been pointed out that a decision may be taken by the authorities that there is a vacancy, even when there is no assignment as a fact and, such a decision is conclusive and not amenable to correction, by judicial review.

In this connection, we have also been referred to certain decisions of this Court, where it has been held that there will be an infringement of fundamental rights when the executive Government is given a free hand to decide, both legally and factually, and judicial review is excluded. But we do not think it necessary to refer to those decisions, in view of the opinion that is being expressed, by us, on the nature of the transaction, relied on by the petitioners.

Counsel for the respondents, Mr. Bindra, contested the claim of the petitioners, of violation of Art. 19(1) (f) of the Constitution, on two grounds viz., (a) that the assignment relied on, by the petitioners, is only a colourable device for really obtaining a transfer of tenancy rights, which is prohibited by s. 15(1) of the Rent Act, and hence it is not saved by clause 2 of the Notification; and (b) inasmuch a the Requisition Act is governed by Art. 31(2) of the Constitution, in view of the decision of this Court in Sitabati Devi v. State of West Bengal, the Act cannot be tested by reference to Art. 19(1) (f) of the Constitution. But Mr. Sorabji, learned counsel for the petitioners, urged that the transaction satisfies the requirements of clause 2 of the Notification and the said decision in Sitabati Devi's case does not apply; in case that decision applies, counsel urged for a reconsideration of that decision.

From the various averments, contained in the counter-affidavit of the respondents, and in view of some of the admissions made in the petition itself, by the petitioners, and, having regard to the object underlying clause 2 of the Notification, dated September 24, 1948, we are of the view that the assignment, claimed by the petitioners, must be regarded only as a colourable device, for really obtaining a transfer of tenancy rights, which is otherwise prohibited by s. 15(1) of the Rent Act. We are further of the view that the transaction, in question, is not saved by clause 2 of the Notification. As the petitioners, in our opinion, cannot claim any rights on the basis of the assignment deed, either in respect of tenancy rights, or to carry on any business there, it follows that they cannot complain that any fundamental rights, under Art. 19(1), (f) or (g), of the Constitution, have been infringed. On this ground, this petition must fail.

In the view expressed above, it becomes unnecessary, in this case, to consider either the scope of the decision in Sitabati Devi's case, or as to whether that decision requires reconsideration.

In the result, the writ petition is dismissed with costs of the respondents, one set. Y. P. Petition dismissed.

</html