(1958) 09 BOM CK 0003

Bombay High Court

Case No: O.C.J. Appeal No. 45 of 1958 and Miscellaneous Application No. 168 of 1957

The State of Bombay		APPELLANT
	Vs	
Morarji Cooverji		RESPONDENT

Date of Decision: Sept. 9, 1958

Acts Referred:

- Bombay Land Requisition Act, 1948 - Section 6(2)

Citation: (1959) 61 BOMLR 318

Hon'ble Judges: M.C. Chagla, C.J; S.T. Desai, J

Bench: Division Bench

Final Decision: Allowed

Judgement

K.T. Desai J.

1. [His Lordship after stating the facts as above, proceeded:] The vacancy referred to in the order of requisition, dated May 11, 1957, is the vacancy which occurred on January 20, 1954, when the bailiff of the Court of Small Causes completed giving possession of the whole of the said flat No. 5 to the petitioner. The said order proceeds on the footing as if no intimation of vacancy had been given. It is urged on behalf of the petitioner that the vacancy which occurred on that day was the vacancy in respect whereof due intimation had been given by the petitioner, that after the expiration of a, period of one month from the date of the receipt of such intimation the petitioner was, entitled to occupy the said premises and that he had in fact lawfully occupied the same on March 3, 1954, after the expiration of the said period of one month. It is further urged that the said vacancy having ceased, the Government could not thereafter requisition the said premises as it had purported to do.

2. The learned Counsel for the petitioner relies upon the decision in Dwarkadas Jivraj v. State of Bombay'' (1945) 56 Bom. L.R. 968. In that case Mr. Justice Tendolkar at page 969 observes as under:-

...Where in the exercise of the rights conferred upon him by Sub-section (3) a landlord proceeds to exercise his rights as a landlord after waiting for a period of one month from the date on which intimation is received and either goes into occupation or lets the premises to a tenant, it appears to me that by that act which is lawful and expressly permitted by the Bombay Land Requisition Act, the vacancy of which intimation was given comes to an end and therefore the right of Government to requisition the premises comes to an end with the termination of the vacancy, as it has been repeatedly laid down that the existence of a vacancy is a condition precedent to the exercise of the power to requisition. Therefore, in a case in which the landlord has so exercised his right, it appears to me that as there is no vacancy the power of Government to requisition comes to an end from the date when the landlord has exercised his rights.

3. It is urged on behalf of the respondent that the intimation given in this case on January 27, 1954, is not an intimation in due compliance with the provisions of Section 6(2) of the Bombay Land Requisition Act, 1948, inasmuch as the said intimation was not given by registered post as required by that section. Strong reliance was placed on behalf of the respondent on an unreported judgment delivered by Mr. Justice Tendolkar in Sayed Abdul Hamid v. The State of Bombay (1951) O.C.J. Miscellaneous Petition No. 324 of 1950, decided by Tendolkar J., on November 29, 1951 (Unrep.). In that case the learned Judge held that no proper notice was given by registered post of the vacancy that had arisen and that any letting of premises without giving such notice did not prevent the State from making inquiries and making the requisite declaration of vacancy and requisitioning the premises. Section 6(2) in terms now provides that "the intimation shall be given by registered post". It is not disputed that the intimation given on January 27, 1954, was not given by registered post. In view of the aforesaid decision I must hold that the giving of the said notice did not preclude the State from making the requisite declaration after due inquiry and requisitioning the premises even though the premises had been occupied one month after the receipt of the aforesaid notice, dated January 27, 1954.

4. It is, however, urged on behalf of the petitioner that an intimation by registered post was in fact given on November 3, 1954, that the said intimation was received by an officer authorised in that behalf by the respondent on November 8, 1954, that after the expiry of one month from the date of the receipt of such intimation the petitioner continued to occupy the said premises and that even though the occupation of the said premises by the petitioner prior thereto may not be authorised, the occupation subsequent to the expiration of the period of one month from the date of receipt of the intimation given by registered post became authorised and that from the date of such occupation'' the vacancy ceased and the Government ceased to have any right thereafter to requisition the premises in respect of the vacancy which had thus lawfully ceased.

5. It is contended on the other hand on behalf of the respondent that under Sub-section (2) of Section 6, the intimation is not merely required to be given by registered post, but it is required to be given in the case like the one before me "within seven days of the premises becoming vacant or becoming available for occupation". It is urged that as the intimation which was given by registered post was an intimation given more than seven days after the premises became vacant or became available for occupation, it was not a proper intimation as contemplated by Sub-section (2) of Section 6 and that the petitioner was not authorised under the provisions of Sub-section (3) to occupy the said premises so as to terminate the vacancy which had arisen.

6. It is necessary in order to appreciate the rival contentions to set out the provisions of Sub-section (3) of Section 6. It runs as follows:-

A landlord shall not, without the permission of the State Government let, occupy, or permit to be occupied such premises before giving the intimation and for a period of one month from the date on which the intimation is received.

It is urged on behalf of the respondent that the words "before giving the intimation" in that sub-section mean "before giving the Intimation by registered post within the time specified in Sub-section (2) of Section 6." On the other hand, it is urged on behalf of the petitioner that there is no warrant for adding in that section the words "within the time mentioned in Sub-section (2) of Section 6." It is further urged that if the words "before giving the intimation" are held to mean "before giving the intimation within the time mentioned in Sub-section (2) of Section 6", a result would be produced which could never have been contemplated by the Legislature and it would be contrary to the very object and spirit of the Act. Under the provisions of Sub-section (5) of Section 6 it is provided that any landlord who lets, occupies or permits to be occupied the premises in contravention of the provisions of Sub-section (3), shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall also be punished with fine. If the contention of the respondent is accepted, then if seven days once expire after the premises become vacant or become available for occupation without the requisite intimation being given, then thereafter the premises could not be let out or occupied or permitted to be occupied by the landlord without incurring the penalty of imprisonment and fine provided by Sub-section (5), as any notice that may thereafter be given by him would not be an intimation within the period specified in Sub-section (2) of Section 6. The State Government, though it has the power to requisition such premises, is under no obligation to requisition the same. If the contention of the State is accepted, the result would be that a landlord who does not wish to court imprisonment and incur the liability for a fine would have to allow the premises to remain vacant and unoccupied during the subsistence of the Bombay Land Requisition Act, unless in the meantime the Government chose to requisition the premises.

7. The Bombay Land Requisition Act, 1948, was enacted in view of the housing shortage prevailing in the city of Bombay. It was never intended that any premises should remain vacant indefinitely. An obligation has been cast upon the landlord to give intimation of the vacancy and not to let, occupy or permit to be occupied the premises for a period of one month after an intimation of such vacancy was received without the permission of the State Government in order to enable the Government to requisition the premises, if it so desired. If the Government did not requisition the premises within the said period of one month then the landlord is at liberty to let, occupy or permit to be occupied the said premises. It could never have been the intention of the Legislature that if on account of sickness, insanity of mind, minority, absence from Bombay, want of knowledge or any other cause, the intimation is not given within a period of seven days after the premises became vacant or became available for occupation, they should be kept vacant or unoccupied during the subsistence of the Act by a law-abiding landlord. Where the Legislature intended to refer to the period within which the intimation is required to be given, it has expressly stated so. The language used in Sub-section (3) of Section 6 may well be contrasted with the language used in Sub-section (5) of Section 6. In Sub-section (5) the words used are as follows:-
Any landlord who fails to give such intimation within the period specified in Sub-section (2) shall on conviction be punishable with imprisonment for a term which may extend to three months or with fine or with both.

If the Legislature intended by Sub-section (3) to refer also to the time of giving the intimation, it would equally have used the words "before giving the intimation within the period specified in Sub-section (2)," instead of the words "before giving the intimation". The contravention of the provisions of Sub-section (2) is constituted a distinct offence punishable separately. The only reasonable construction that could be placed upon the words in Sub-section (2) which would safeguard the rights of the Government to requisition the premises and which would carry out the object and spirit of the Act is that no landlord is entitled, without the permission of the State Government, to let, occupy or permit to be occupied any premises, which have become vacant or become available for occupation, without giving an intimation in the prescribed form by registered post and without waiting for a period of one month from the date on which such intimation is received.

8. In Maxwell on the Interpretation of Statutes, 10th edn., p. 229, it is observed as follows:-

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.

In the present case, it is not necessary to modify the meaning of any words or the structure of any sentence to give the meaning to Sub-section (3) of Section 6 which I hold it bears. The meaning which I have given to the words used is the plain, ordinary meaning which the words bear. The construction suggested by the State is one which would lead to inconvenience, absurdity and injustice not intended or contemplated by the Act.

9. In the present case, the petitioner did give the intimation by registered post on November 3, 1954, and the same was received on November 8, 1954. After the expiry of one month from the date of the receipt of such intimation it would have been lawful for the petitioner to occupy the said premises without incurring the liability provided for by Sub-section (5) if he had not occupied the premises earlier. His continuing in occupation after the said period must be regarded as authorised occupation of the premises with the result that the vacancy which occurred on January 20, 1954, must on such authorised occupation be considered to have ceased to exist and the power of the respondent to requisition the premises on account of such vacancy must equally be regarded as having ceased. In my view, the State Government was not entitled in law to issue the order of requisition, dated May 11, 1957, in respect of the vacancy which arose on January 20, 1954, and to pass the order, dated May 30, 1957, for taking possession of the said premises.

10. It was urged before me on behalf of the petitioner that under Sub-section (2) of Section 6 a provision has been made for giving the intimation to the Government by registered post for the benefit of the Government, that it is open to the Government to waive that condition and that in the present case the Government has in fact waived that condition. On the other hand, it has been strongly urged on behalf of the respondent that this is a statutory condition the non-observancs of which is visited by the Legislature with the penalty of imprisonment and fine and that such a condition is incapable of being waived and has in fact not been waived. It is not necessary for the purpose of the present ease to decide these points.

11. The petitioner has challenged the order of requisition, dated May 11, 1957, also on the ground that by the said order a declaration has been made to the effect that the premises had become vacant after December 4, 1947, and that such a declaration is bad as it refers to a vacancy which may have arisen prior to the coming into force of the Bombay Land Requisition Act, 1948, i.e. prior to April 11, 1948. It is further urged that as the said declaration is bad in law, the requisition order itself is bad in law. The order itself recites that the premises had become vacant on January 20, 1954, a date subsequent to the date of the coming into operation of the Bombay Land Requisition Act. I have held in a decision given by me in Kulsumbai J.G. Padamsey v. The State of Bombay (1958) 61 Bom. L.R. 263, that such a declaration is a valid declaration and that the order is not liable to be challenged by reason thereof. For the reasons given by me in that judgment, I hold that the order is not invalid on the aforesaid ground.

12. There is no substance in the plea that the order was passed mala fide or that the order indicates a non-application of the mind on the part of the respondent.

13. It was urged on behalf of the State that the petitioner has not shown abundant good faith, which he is bound to show in proceedings for the issue of a writ, and that he has thereby disentitled himself from claiming any relief. The statements complained of are statements in relation to the occupation of the premises by persons other than the petitioner in the year 1956. The statements made in that connection are totally immaterial for the purpose of the present petition. Even if there was any substance in the complaint of the respondent, the petitioner is not disentitled to relief by reason thereof.

14. In my view, the order of requisition, dated May 11, 1957, and the order for taking possession, dated May 30, 1957, are bad and are liable to be set aside. The petitioner is entitled to succeed and I direct the issue of a writ of mandamus in terms of prayer (a) of the petition. In view of the fact that the petitioner succeeds only on a ground taken after the case was heard for a considerable length of time, the fair order to make as regards costs is that there should be no order as to costs.

15. At this stage, without prejudice to their rights and contentions, the parties are agreed that the Government will be at liberty not to deliver up possession of the premises upto June 10, 1958.

16. The State of Bombay appealed.

Chagla. C.J.

17. Although this appeal is capable of being disposed of on a very narrow ground, viz., that the petitioner has disentitled himself for any relief from this Court on the ground of misconduct and on the ground that justice is not on his side, as the matter is of considerable importance and has been argued at some length, it is necessary to dispose of the various questions that were argued at the Bar.

18. The appeal arises out of a petition filed challenging an order of requisition passed by Government on May 11, 1957, and what was requisitioned was flat No. 5 in Hirji Mansions, Darabshah Road, off Nepean Sea Road, It appears that this flat was let by the landlord to one Ashraf Dharamsey, and the landlord. who is the respondent before us, filed an ejectment suit on June 21, 1953, and obtained a decree on September 23, 1953, from the Small Causes Court. By this decree possession was to be given to the landlord within one month. On January 13, 1954, the respondent obtained a warrant of possession. On January 18, 1954., possession was taken of the premises except for the kitchen and the possession of the Kitchen was taken on January 20, 1954. Therefore, the landlord took possession of the vacant premises on January 20, 1954. On January 11, 1954, a notification was issued declaring the tenancy rights in this flat to be evacuee property. On January 27, 1954, the landlord gave intimation to the Controller of Accommodation of this vacancy.

The letter was sent by ordinary post, and it is common ground that it was received by the Controller on February 1, 1954. On February 2, 1954, the advocate of the respondent informed the Controller of Accommodation of the proceedings under the Evacuee Property Act. On February 12, 1954, the Controller wrote to the respondent that "since the property is already declared as an evacuee property and vesta in the Deputy Custodian of Evacuee Property, you may report the vacancy to Government if and when you succeed in the appeal and the property is declared as no Evacuee Property." On November 8, 1954, the landlord wrote to the Controller stating that the premises still continued to be notified as evacuee property. He asked the Controller to confirm if the intimation sent by him was in regular form and did comply with all the requirements of law. But he pointed out in this letter that as the intimation of vacancy had to be given by registered post and as that had not been done, by way of abundant caution he was sending an intimation in the prescribed form by registered post, and such intimation was sent by registered post. On November 12, 1954, the Custodian of Evacuee Property allowed the appeal of the respondent and remanded the matter to the Deputy Custodian. On November 25, 1954, the Custodian of Evacuee Property wrote to the Controller that the tenancy rights in respect of the premises prima facie appear to vest in the Custodian and the matter was pending, and he requested the Controller not to take any action in the matter pending the disposal of the matter. The ultimate result of the proceedings taken by the respondent was that the tenancy rights were de-notified by the Custodian on February 1, 1956. On July 14, 1956, an inquiry was held by the Inspector of Accommodation with regard to the vacancy in this flat and statements of the respondent and one Kalyanji Dhanji were recorded. It appears that by this time Kalyanji Dhanji was in occupation of the flat. On May 11, 1957, after the inquiry was held the impugned requisition order was passed. This requisition order relies on the vacancy having taken place on January 20, 1954, and the premises are requisitioned under the powers conferred by Clause (a) of Sub-section (4) of Section 6 of the Bombay Land liequisition Act. The order of enforcement was issued on May 30, 1957, and the possession was taken on June 7, 1957. The learned trial Judge, after consideration of the law and of the facts and circumstances of the case, came to the conclusion that the requisition order was invalid and gave the necessary relief to the respondent, and the State of Bombay has come in appeal.

19. The first question that arises is whether the intimation given by the landlord on January 27, 1954, is the intimation required by the law. Turning to the section, Section 6(1) imposes upon the landlord of vacant premises a duty to give intimation in the prescribed form to an officer authorised in this behalf by the State Government. It is not disputed by the State that the intimation was given by the landlord in the prescribed form to an officer authorised in that behalf by the State Government and that intimation was given on January 27, 1954, and was received by the Controller of Accommodation on February 1, 1954. But the difficulty is caused by Sub-section (2) of Section 6. That sub-section provides that intimation shall be given

by registered post within one month of the date of the notification in the case of premises which are vacant on such date and in other cases within seven days of the premises becoming vacant or becoming available for occupation. Now, the intimation referred to in Sub-section (2) is undoubtedly the intimation to which reference has been made in Sub-section (1) of Section 6. The law, after imposing the obligation upon the landlord to give an intimation, as prescribed by Section 6(2), proceeds u/s 6(2) to lay, down the mode by which the intimation is to be given and the time within which it is to be given, The mode prescribed is registered post and the time, prescribed in this particular ease, is within seven days of the premises becoming vacant or becoming available for accommodation. With regard to time, the intimation in this particular case would be in time if it was given on January 27, 1954. There is some controversy about it with which we shall deal later. Admittedly in this case the intimation was not given by registered post and the question that arises for our consideration is whether the failure on the part of the landlord to give intimation by registered post as required by Section 6(2) renders that intimation of no effect. Turning to Sub-section (3) of Section 6 it provides:

A landlord shall not, without the permission of the State Government let, occupy, or permit to be occupied such premises before giving the intimation and for a period of one month from the date on which the intimation is received.

Therefore, this places an impediment in the way of the landlord from making such use as he wants of his premises which have become vacant. He can only make use of these premises after the lapse of one month from the date on which the intimation is received. In other words, during this period Government is given the power to requisition the premises. If they exercise that power within the period prescribed, the premises become requisitioned premises and the premises would be given to such allottee as the Government may nominate. If the Government do not exercise their power, the right of the landlord to make use of his premises arises and on the lapse of that period he may let, occupy or permit to be occupied the premises in any manner he likes. But it will be noticed that if he does not give the intimation he has no right to deal with the premises, and therefore what we have to consider in this case is-what is the proper effect to give to the expression "the intimation" used in Sub-section (3)? The rival contentions are that the intimation referred to in Section 6(3) is the intimation referred to in Section 6(1), and the other contention is that the expression "the intimation" in Section 6(3) is the intimation with all its requirements set out not only in Section 6(1) but also in Section 6(2). In other words, it is only that intimation which is in the prescribed form which is given to an officer authorised in that behalf, which is given by registered pos-t, and which is given within seven days of the premises becoming vacant that constitutes the intimation required to be given by the landlord u/s 6(3), and if any of these requirements is absent a landlord cannot be deemed to have given the intimation required by law. It is, therefore, pointed out that admittedly in this case the intimation of January 27, 1954, was not by registered post and therefore the

landlord never gave the intimation, and not having given the intimation the right of the Government to requisition the premises continued and any use that the landlord might make of his premises would be an unauthorised use and any person occupying the premises would be an unauthorised occupant. It is also urged on behalf of the State that the only intimation that a landlord can give is the intimation within seven days of the premises becoming vacant. If that period elapses and an intimation is not given, a landlord can never give the intimation required in Section 6(3). In other words, if the landlord fails to give the intimation with all its requisites as contained in Section 6(1) and 6(2), even though the premises may not be required by the State and even though the premises may not be requisitioned at any time, the landlord has no right at all to let or occupy those premises. In other words, those premises must continue to remain untenanted during the whole period that the Bombay Land Requisition Act is in force. That, indeed, is a startling conclusion to come to, and unless justified by the clear language of the law, the Court would be reluctant to accept such a construction being put upon a law which although intended for social good is also intended to restrict and control the proprietary rights of a landlord.

20. It is said that the Court must give effect to the mandatory words used by the Legislature in Section 6(2). The Legislature has used the words of obligation when it provides that the intimation shall be given by registered post and with-"in the time mentioned in Sub-section (2). Now, the expression "shall" normally connotes undoubtedly a mandate on the part of the Legislature and also connotes an obligation upon the person or authority to whom the mandate is issued. In order to place a proper construction on that expression the Court must look to the scheme of the Act in order to determine what are the consequences which the law has laid down as a result of non-compliance with that mandatory direction, The consequence may be penal, the consequence may be that a particular order passed is invalidated, the consequence may be that a particular right is not acquired or a particular obligation is imposed, or the consequence may be not stated in the law at all. When no consequence is apparent in the law it is possible for the Court to take the view that although the Legislature has used the expression "shall" it must be construed as being directory or procedural rather than mandatory in the strict sense of the term. The Legislature may be anxious that a particular procedure may be followed. The Legislature may require that procedure to be followed in the interest of the party for whose benefit the direction is laid down. But it does not follow that because the party does not follow that particular procedure or give effect to that particular direction, the result would be so serious or so calamitous as for the party losing his rights to deal with and use his own property. It is clear, in our opinion, that the mode prescribed by Section 6(2) that the intimation shall be given by registered post is directory. It is clearly in the interest of the landlord himself that he should leave no possibility of any dispute about his having given an intimation at the proper time, and therefore the Legislature as a safeguard in his interest has

provided that he should give intimation by registered post. But it is too much to suggest that even though in fact intimation has been given and although the intimation is admitted by the State, merely because the landlord has failed to follow the mode prescribed in Section 6(2) he should be totally deprived of the right to make use of his property although the Government may at no time requisition it.

21. Now, an indication and a very clear and emphatic indication as to what the Legislature thought of this particular provision in Section 6(2) is to be found in Section 6(5) of the Act. That is the penal section and that section provides that:-

Any landlord who fails to give such intimation within the period specified in Sub-section (Z) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both and any landlord who lets, occupies or permits to be occupied the premises in contravention of the provisions of Sub-section (3), shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall also be punished with fine.

Therefore, the first part of Sub-section (5) creates an offence with a certain punishment and the offence consists in failing to give such intimation within the period specified in Sub-section (2). It is clear that "such intimation" refers to the intimation set out in Section 6(2). If the intimation referred to here was the intimation with all its requirements as set out in Sub-sections (1) and (2), then the Legislature would not have proceeded to mention in this part of Sub-section (5) only one requirement of Sub-section (2) because what is made penal is failure to give intimation within the time specified in Sub-section (2). It will be noticed that failure to give intimation by registered post is not made penal. Therefore, the two ingredients to which the Legislature attached the greatest importance were the ingredients with regard to failure to give intimation required by Sub-section (1) and file failure to give the intimation within the time specified in Sub-section (2). The Legislature itself thought that the mode of giving the intimation, viz., by registered post, was not a matter of substance, it was a matter of procedure, it was a matter of detail, the failure to follow which would not and should not result in penal consequences. The second part of Sub-section (5) constitutes an offence with a higher punishment and that offence is constituted by the landlord using the premises in contravention of the provisions of Sub-section (3). Coming back to the provisions of Sub-section (3), it is difficult to take the view that the intimation referred to in this sub-section is not the intimation referred to in., Sub-section (1), but the intimation referred to in Sub-section (1) with the additional requirements set out in Sub-section (2). It is undoubtedly true that it is possible to take the one or the other view of the expression "the intimation" in Sub-section (3), but we should rather take the view which will lead to the least inconvenience'' and which will serve the purpose of the Act without causing unnecessary hardship to the landlord.

22. Now, if we were to take the view that the intimation refers to an intimation with all its details and requirements as contained not only in Section 6(1) but also in

Section 6(2), the result would be that if an intimation is not given by registered post and within seven days, the landlord thereafter could never give an intimation. As already pointed out, he would be perpetually, or at least for the duration of the Act, deprived of his right to deal with the premises although the State may not choose to requisition it. On the other hand, if we place upon the expression "the intimation" the narrower construction, especially in view of what we have already stated with regard to Section 6(5) that the intimation referred to in Section 6(3) is only the substance of the intimation as set out in Section 6(1), then no serious consequences ensue either to the landlord or to the State because the position will be this. So long as an intimation is not given, the State will have the full right to requisition the premises, The Advocate General says that this would give the right to the landlord at any time he thinks proper to give an intimation. Assuming that is so, the only consequence of a landlord giving such intimation would be not to deprive the Government of the right to requisition, but on the contrary it will draw the attention of the Government to a vacancy and will permit the Government to requisition the premises within the time specified in Section 6(3). It is only after the lapse of that time that the right of the landlord to use the premises would arise. If there is a vacancy u/s 6(1) the landlord would not be in a position to make use of those premises. As already pointed out, any use that he might make would be an unauthorised use and any person he might put in occupation would be an unauthorised person. Therefore, it would be in the interest of the landlord himself, if he wants to make use of the premises, to give the intimation, because not only would the landlord be making an unauthorised use of the premises, but he would be liable to penal consequences u/s 6(5). Therefore, it is difficult to understand what possible good the landlord can achieve by not giving the intimation required by Section 6(3).

23. The Advocate General said that assuming the time mentioned in Section 6(2) has passed, there is no intimation, and Government starts making the inquiry which it has a right to do under the proviso to Section 6(4)(a) to which we shall presently come, and if the landlord gives the intimation subsequently, the inquiry would be rendered futile and serious inconvenience might be caused. Now, the inquiry contemplated by the proviso to Section 6(4)(a) is in cases where no intimation is given. It is a case of what is popularly known as a suppressed vacancy. The landlord having suppressed the vacancy, someone having informed the Controller of such a vacancy, the State launches upon an inquiry as provided in the proviso to Section 6(4)(a). But if the landlord himself comes forward and says that there is a vacancy and gives intimation, we should have thought that the purpose of the Government would be better achieved than by holding an inquiry under the proviso. But the answer of the Advocate General to this contention is that the destination-and this is his expression-of the requisitioned premises in the case of a vacancy declared by the landlord is different from the destination of the vacancy which is found as a suppressed vacancy, and the Advocate General wanted to draw our attention to the

policy of Government that when there is a suppressed vacancy, the vacancy should go to the first informant and when intimation was given by the landlord it should be used for a public purpose and given to a Government servant or used for some other similar purpose. Now, in construing the Act we are not concerned with the policy of Government. It is sufficient for us to note that even when an inquiry is being held by Government with regard to a suppressed vacancy and the landlord gives intimation, the premises would become available for being requisitioned for a public purpose. For what particular public purpose the Government may use that vacancy we are not concerned. There is nothing in the law which compels the Government not to give a vacancy declared by the landlord to a homeless person, nor is there anything in the law which compels the Government to give a suppressed vacancy to the first informant and not to a Government servant. Policy of Government cannot possibly influence us in construing provisions of a law in a particular manner.

24. Now, Sub-section (4) of Section 6 also throws some light on the construction we should place upon the expression "the intimation" used in Section 6(3). Sub-section (4) provides:

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-

and then follows the power to requisition. Therefore, here the Legislature gives the power to the State to requisition, whether an intimation is given or is not given. Where an intimation is given, the power to requisition is as laid down in Section 6(3), Where intimation is not given, it is dealt with by the proviso to Section 6(4)(a). But the relevant fact to be noticed is that in referring to the intimation in Sub-section (4), the reference is only to Sub-section (1) and not to Sub-section (2). This again shows that what the Legislature was emphasising was the substance and the important ingredients of the intimation which are contained in Sub-section (1) and not in Sub-section (2). Turning to the proviso to Sub-section (4)(a), the proviso deals with a case where no intimation is given and makes an inquiry by Government obligatory and permits the Government to make a declaration with regard to a vacancy which is conclusive.

25. Therefore, looking at the whole scheme of the Act, it seems to us that the Legislature itself in various parts of Section 6 has made a distinction between the intimation referred to in Sub-section (1) and the other requirements of the intimation referred to in Sub-section (2). It is equally clear that the Legislature has emphasised the giving of intimation in the prescribed form and to an officer authorised in that behalf by the State Government; and that the Legislature has attached less importance to the question of time except to the extent that failure to give this intimation has been made penal; and for the obvious reason that it was the policy of the law that the landlord should report vacancies as soon as possible. But because the policy of the law was to put compulsion upon the landlord to report a

vacancy, it does not follow that if the vacancy was not reported in time and if the landlord made himself liable to penal consequences, the landlord was deprived for all time from giving an intimation subsequently; and it is equally clear that the Legislature has laid the least emphasis on one particular aspect of this intimation, which is the mode of giving the intimation, viz., by registered post.

26. Reliance was also placed at the Bar on a judgment of Mr. Justice Kania in Nurshedrai B. Dave v. The Asian Assurance Co, Ltd. (1941) O.C.J. Suit No. 809 of 1941, decided by Kania J., on September 11, 1941 (Unrep.). There the learned Judge construed a provision in a rule, which required notice to be given by registered post, as mandatory. In that case the learned Judge was dealing with the right of policy holders to elect a director and he was considering the Election Rules, and it is well known that when you construe Election Rules you have to construe them technically and have to take the view that every requirement of the Election Rules is intended to be given effect to. Therefore, the judgment of Mr. Justice Kania is not in pari materia with the question we have to consider under the Land Requisition Act.

27. Mr. Gupte also referred to another judgment of Mr. Justice Tendolkar in Jethanand Moorjmal Metha v. N.S. Varma (1956) O.C.J. Miscellaneous Petition No. 216 of 1956, decided by Tendolkar J., on October 10, 1956 (Unrep.), where he seems to have taken a view contrary to the view he took in Sayed Abdul Hamid v. The State of Bombay (1951) O.C.J. Miscellaneous Petition No. 324 of 1950, decided by Tendolkar J., on November 29, 1951 (Unrep.). There the learned Judge was construing Rule 117 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, and Sub-rule (1) of that rule provided that every order made under the Act or the Rules shall b.e served by registered post, and the learned Judge was at pains to repel the contention at the Bar that "shall" was a word of obligation and no order made under the Act or the Rules could take effect until it was served in the manner provided, and the learned Judge says:

There is no doubt that the rule requires that an order shall be served by registered post qbut it does not necessarily follow therefrom that if it is not served, it does not take effect. The word ''shall'' is undoubtedly a word of compulsion or obligation, but from that alone it does not follow that the rule is mandatory and not procedural only. That a rule has to be observed does not necessarily make it mandatory, because even procedural rules ought to be observed, and whether or not the requirement of Rule 117 is mandatory or whether it is merely procedural must be determined having regard to what it provides and the purpose for which the provision is made. Obviously, the particular mode of service, viz., registered post, is merely a convenient method of service and it seems to me difficult to hold that if the order is in fact known to the person who is affected by the order, there yet has to be service by registered post, because the object of service is to acquaint the person affected with the contents of the order so that he can, if he so chooses, seek to challenge it by any method open to him.

With respect, we subscribe to the view taken by the learned Judge in this judgment and differ from the view taken by the learned Judge in the earlier judgment which is relied upon by the Advocate General,

28. In passing, a reference might be made to the recent decision of the Supreme Court in State of U.P. Vs. Manbodhan Lal Srivastava, , where the Supreme Court, differing from this Court, took the view that the expression "shall" used in Article 320(3)(c) was not mandatory and there was no obligation upon the State Government to consult the Public Service Commission in the cases set out in that article, and the observation in the judgment to which reference might be made is at p. 917:

This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid.

29. On this view of the law, let us turn to the facts before us and see what is the consequence, We have here an intimation given by the landlord on January 27, 1954, If it was sent on that day, it is sent within seven days. It is in the prescribed form and it is sent to the authorised officer. Admittedly, it is not sent by registered post. Therefore, in the view that we take, it would be an intimation contemplated by Section 6(3), and if that is so, the landlord was within his rights in occupying these premises after the lapse of one month and it was not open to the State Government to requisition these premises on May 11, 1957, unless there was a fresh vacancy. But some difficulty is caused in this case by the fact that there is no clear evidence on the record that the intimation was in fact sent by the landlord on January 27, 1954. All that the record shows is that the particular letter bears the date January 27, 1954, but there is no averment in any affidavit or any oral evidence that the letter-was posted on that day. It may be that in most cases when a letter bears a particular date it is posted on that date or it is put by post in transmission. But it is not necessarily so. A letter may be written on a particular day, it may be laid aside, it may be posted on the next day or even a day later; and here we have a fact that the letter was only received by the Controller on February 1, 1954, although the letter was sent from Bombay by post and received in Bombay by post. It may be that there was delay in the post office, it may equally be that the letter was posted after January 27, 1954, but we agree with the Advocate General that it is difficult to take the view on the record as it stands that the intimation was given within the time prescribed by a, 6(2), But even so it would be an intimation within the meaning of Section 6(3), because it is an intimation in the prescribed form and it is given to an officer authorised in that behalf, and as it was admittedly received on February 1, 1954, the landlord was debarred from making use of his property for one month from February 1, 1954.

30. Now, the learned Judge came to the conclusion that this was not an intimation within the meaning of Section 6(3) by reason of an unreported judgment of Mr, Justice Tendolkar in Sayed Abdul Hamid v. The State of Bombay. With great respect to the learned Judge, the view that he took was, having called to his assistance the provisions of the General Clauses Act, that the provision in the Act before it was amended by Act V of 1952 which required the intimation to be given by post, that post must be read as registered post and that it was obligatory upon the landlord to give intimation by registered post, and he refused to permit evidence being led to prove as a fact that intimation had been received by Government. His view was that if the intimation was not sent by registered post, the intimation was not the intimation required by law. As this was a judgment of a co-ordinate authority, Mr. Justice K. T, Desai felt bound to follow it and, therefore, he came to the conclusion that in this case the intimation of January 27, 1954, was not the intimation required by Section 6(3). Now, we have had a look at the judgment. In our opinion, again with respect, the construction placed by the learned Judge on Section 28 of the Bombay General Clauses Act is not warranted by the language used by that Act. But that is a question that does not arise in this appeal. But we are unable to agree with the learned Judge that the failure to comply with any of the requisites contained in Section 6(2) with regard to the intimation makes that intimation one which does not fall u/s 6(3). In other words, the view taken by the learned Judge was that the intimation referred to in Section 6(3) is not only the intimation referred to in Section 6(1) but with all the requisites set out in Section 6(2). In view of what we have stated, that view does not commend itself to us. The Advocate General has strongly emphasised the fact that after this judgment of Mr. Justice Tendolkar, the Legislature altered the law and substituted "registered post" for "post". From that he wants us to draw the inference that the Legislature adopted the view of Mr. Justice Tendolkar, and instead of leaving the matter to the General Clauses Act, the Legislature incorporated in the Act itself the provision that the intimation should be by registered post. Now, in the first place, the judgment of Mr. Justice Tendolkar was an unreported judgment, and there is nothing before us to show that it was the result of that judgment which led to this legislative amendment. But assuming that was so, all that it means is that the Legislature thought in the interest of the landlord that he should send the intimation by registered post rather than by ordinary post. Even so, the requirement with regard to registered post still remains directive and not mandatory in the sense in which we have explained the expression.

31. The view of the learned Judge below was that even assuming this intimation was not a proper intimation, the landlord was entitled to rely on the subsequent intimation of November 3, 1954, which was admittedly by registered post, in the prescribed form, and sent to the requisite authority. Of course, the objection taken by the Advocate General to this intimation is that it was not sent within the period prescribed by Section 6(2). But as we have already pointed out, the failure on the

part of the landlord to give the intimation required by Section 6(2) did not debar him from giving a subsequent intimation. It only prevented him from making use of the premises because he could not make use of his premises in a authorised manner till he had given the intimation and till the period mentioned in Section 6(3) had elapsed.

32. Therefore, whichever way one looks at it, the requisition order passed by Government on May 11, 1957, is not justified by law. It was passed after the lapse of the period mentioned in Section 6(3), whether the period commenced from February 1, 1954, when the intimation of January 27, 1954, was received, or it commenced from November 3, 1954, when the second intimation was received by the Controller.

33. But it is not sufficient that a party should come to this Court and make out a ease that a particular requisition order is not valid. In order to get that relief from the Court on a writ petition, not only must he come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith, but he must also satisfy the Court that the making of the order will do justice and that justice lies on his -side. The Advocate General has drawn our attention to the rather curious attitude taken up by the petitioner with regard to this intimation of January 27, 1954. In his petition as originally presented he relied on a vacancy of October 23, 1953, and he relied on an intimation of November 27, 1953, and he actually denied any knowledge about the intimation of January 27, 1954. Now, this was partly due to the confusion created by the letter written by the Controller himself by which he erroneously referred to the intimation of January 27, 1954, as of November 27, 1953, having been received on February 1, 1954. But this particular fact would not have induced us to refuse relief to the petitioner. This is not a case where the intimation of January 27, 1954, is being challenged as a fabricated document, in which case we would certainly consider the averments of the petitioner with regard to this document. It is an admitted document and whatever the petitioner might have said about this document, the undisputed fact remains that he did send it to the Controller and the Controller received it.

34. But the position is different with regard to what happened after the intimation was sent by the landlord and the use that he made of the premises and the statements that he made with regard to that use. It appears from the record that for about a year preceding the requisition order, one Kalyanji Dhanji was occupying this particular flat, the landlord and his family were occupying the adjoining flat, and the curious case put forward by the landlord on the affidavits was that this Kalyanji was a relation of his, that he was staying as a guest, that he had his own kitchen and cooked his own food, and that technically the premises were still in his occupation. Now, we have before us the statement of this Kalyanji himself and he admits that for one year he had been staying in this flat with the members of his family, that he was cooking independently in this flat and making payments to the cook and servant. He

said that he was not paying any rent to the landlord who was his relative. But he had furniture in this flat-cupboards, tables, chairs, etc., although some furniture belonged to the landlord, and that he had his visiting card where he showed his business office as in this flat. Now, the traditions of Indian hospitality are very great, but the manner in which Kalyanji stayed in this flat is not quite in conformity with those traditions. "We have a person who is described as a guest, who does his own cooking, who pays his own servants, who carries on business, and who prints on his card the business address of this flat. But whatever that may be-and Mr. Gupte is right that it is a disputed fact on the record, whether Kalyanji was a mere guest as the landlord alleges, or was a licensee, or an invitee, or even a tenant of the landlord as suggested by the State, the important fact that emerges is that the landlord was not actually in occupation of this flat for a year before it was requisitioned and it was in the occupation of this Kalyanji. At the date of the petition Kalyanji had left, the premises were requisitioned, a Government officer was put in possession, and the result of setting aside this requisition order would be to throw this Government servant out and restore possession to the landlord when in fact the landlord was not staying there. There is also force in the Advocate General''s contention that on the record it would be open to the Government to requisition these premises afresh on the ground of vacancy constituted by Kalyanji Dhanji leaving these premises, and that the Court will not make an order which could be, in substance, set aside by the Government issuing a fresh requisition order. This is not a case where a landlord has been deprived of his possession. This is not a case where a tenant in occupation has been thrown out. This is, on the contrary, a case where the premises requisitioned for a public purpose are occupied by a Government servant and are sought to be taken possession of by the landlord by asking the Court to throw the Government servant out and restore possession to the landlord when that landlord has never shown his need of those premises by occupying them himself. Therefore, this is clearly a case where justice is not on the side of the petitioner, it is on the side of the State, and we see no reason why we should grant any relief to the petitioner.

35. We would not have interfered if the learned Judge had exercised his discretion in favour of the petitioner. But as appears clearly from the judgment, this is not a case where the learned Judge has exercised his discretion. On this aspect of the matter the learned Judge says:

It was urged on behalf of the State that the petitioner has not shown abundant good faith, which he is bound to show in proceedings for the issue of a writ, and that he has thereby disentitled himself from claiming any relief. The statements complained of are statements in relation to the occupation of the premises by persons other than the petitioner in the year 1956. The statements made in that connection are totally immaterial for the purpose of the present petition. Even if there was any substance in the complaint of the respondent, the petitioner is not disentitled to relief by reason thereof.

With respect to the learned Judge, the matter is much more serious than merely the question of this particular vacancy of 1956 not being relevant to the vacancy which is the subject-matter of the requisition order. On a writ petition, as we have already said, the petitioner has not merely to show good faith, but he has not to suppress any facts and has also to show that justice lies on his side. If the learned Judge had taken these circumstances into consideration and then had come to the conclusion that the discretion should be exercised in favour of the landlord, then undoubtedly we would not have interfered with the order passed by the learned Judge.

36. The result, therefore, is that the appeal will be allowed, the order of the trial Judge will be set aside, and the petition will be dismissed. There will be no order as to costs of the petition and no order as to costs of the appeal.

37. Liberty to the appellant''s attorneys to withdraw the sum of Rs. 500 deposited in Court.