Mangal Sain Marwah
v.
The State of Punjab and the Municipal Committee Ambala

cious remedy. In the present case a suit could not have done so.

For the reasons given above the petition fails and is dismissed. The petitioner will pay the costs of Government and of the Municipal Committee.

Soni J.

MISCELLANEOUS CIVIL

Before E. Weston, C.J., and Falshaw, J.

PT SHYAM KRISHEN,—*Petitioner,*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

1951

July 17th

Civil Miscellaneous No. 270 of 1950

Constitution of India, Articles 225 and 226—Scope of—Whether High Courts have jurisdiction to issue writs and similar orders under Article 226—Articles 225 and 226—Jurisdiction and Power, meaning of—Punjab Requisitioning of Immovable Property (Temporary Powers) Act, XVII of 1947, and East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, XXXVIII of 1948—Whether ultra vires *of the Legislature—Whether property can be requisitioned for purposes other than a public purpose.*

Held, that Article 225 does not control Article 226 and Article 226 is not to be read with, and subject to, Article 225 as they deal with entirely separate matters. Under Article 226 High Courts have jurisdiction to issue writs and similar orders. Power and jurisdiction with regard to a court are not two quite separate matters but are merely different matters of the same thing.

Held further, that the Punjab Requisitioning of Immovable Property Act of 1947 and 1948 are *ultra vires* of the Provincial Legislature. Under these Acts there is no restriction on the Provincial Government to acquire or requisition property for purposes other than a public purpose. Under the Government of India Act, 1935, and the Constitution of India, the power of the Provincial Government

(1) 1949 A. I. R. (Bom.) 229.

or the State Government only extends to the acquisition or requisition of property for a public purpose.

Held also, that the Punjab Requisitioning of Immovable Property Acts of 1947 and 1948 are not *ultra vires* because :—

(1) Wide powers of delegation have been conferred on the Provincial Government, when it has not been shown that those powers have been used by the Government in an unreasonable manner by delegating its functions to manifestly and wholly unsuitable officers.

(ii) No provision is made for payment of compensation to tenants as distinct from owners. In fact these Acts do not exclude the payment of compensation to tenants who are evicted on requisition in case they are shown to be entitled to such compensation.

(iii) There is no provision in the Government of India Act, 1935, to requisition property as distinct from its acquisition. This makes no difference as requisition is synonymous with temporary acquisition of property. The phrase "Requisitioning of Property" was not used in the Government of India Act, 1935, as by then it had not come into use as a legal term, having originated after the start of the second world war.

Petition under Article 226, Constitution of India, read with Articles 14, 19 and 31, Constitution of India praying that a writ in the nature of mandamus *be issued to respondents 1—3 directing them not to dispossess the petitioner and his family members from the house No. K/A/838, situate in Sadar Bazar Karnal, which house belongs to the petitioner and which they are occupying under the law of the land, etc.*

H. L. SARIN, TEK CHAND, H. R. SODHI, H. S. DOABIA and K. C. PANDIT, for Petitioner.

S. M. SIKRI, Advocate-General, A. N. GROVER, N. L. SALOOJA and H. S. GUJRAL, for Respondents.

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

ORDER

FALSHAW, J. This judgment will deal with Civil Writs Nos. 270 of 1950, 640 of 1950, 1 of 1951, 7 of 1951, 16 of 1951, 91 and 103 of 1951, and 758 and 772 of 1950, in all of which similar points of law of great importance have arisen. One of them Civil Miscellaneous No. 270 of 1950 relates to an order passed in December 1947, by the Deputy Commissioner, Karnal, under section 2 of the Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1947, and the other cases relate to orders passed under the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, which superseded and repealed the Act of 1947 in November 1948. All of the applications are filed under Article 226 of the Constitution for the issue of one or other of the writs mentioned in that Article.

At the outset a point raised by the learned Advocate-General, which arises in all the cases regarding the jurisdiction of this Court to entertain petitions for the writs mentioned in Article 226, requires to be dealt with. The objection of the learned Advocate-General is an ingenious one and, as will be seen, has found some support in a decided case, but in spite of this it appears to me to be without any force, and to be quite opposed to what appears to be the quite clear and unambiguous wording of Article 226, clause (1) of which reads:

> "Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within these territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for the

enforcement of any of the rights conferred by Part III and for any other purpose."

Article 32 reads :

(PART III—FUNDAMENTAL RIGHTS)

"(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this Article shall not be suspended except as otherwise provided for by this Constitution."

The argument of the learned Advocate-General was based on the supposition that with regard to the High Court, or any other Courts, there exists a rigid line of distinction between "power" and "jurisdiction", and that in fact the two are in separate watertight compartments, and in order to reinforce his argument he relied on the provisions of Article 225, which, according to the marginal insertion, relates to the jurisdiction of existing High Courts. This Article reads :

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

"Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution."

The Article also contains a proviso removing certain restrictions with which we are not concerned in the present argument. It was contended that although Article 226 gives all the High Courts the power to issue directions, orders and writs, no High Court has jurisdiction to do so unless it is also given the necessary jurisdiction by legislation either under clause (3) of Article 32 or otherwise. It is argued that Articles 225 and 226 are to be read together and that under Article 225 the jurisdiction of existing High Courts is confined to the jurisdiction enjoyed by them before the Constitution came into force, except as laid down in the proviso. This jurisdiction did not include the issue of writs, which therefore has to be otherwise provided. There is no doubt that contentions similar to those advanced by the learned Advocate-General were accepted by a majority of three Judges of the Madhya Bharat High Court in the case of *Anant Bhaskar Lagu* v. *State* (1). In that case it was held by Kaul, C. J., and Shinde, J., who accepted the existence of a rigid distinction between power and jurisdiction, that, unlike Article 32 of the Constitution, Article 226 does not provide for any remedy

(1) 1950 A. I. R. (M. B.) 60.

which apart from the existing law could be available to a person for the enforcement of any of the rights dealt with in Part III of the Constitution, and that Article 226 must be read subject to Article 32(3), and Article 226 only mentions some of the powers which, if law made by Parliament or other appropriate Legislature so provides, may be exercised by the High Courts under circumstances and conditions prescribed by such law, but, so long as this is not done, the powers conferred by Article 226 must remain ineffective except in so far as they can be exercised under the existing law. I am glad to say, however, that Mehta, J., dissented from this view and held that Article 226 is self-contained, providing for the extent of jurisdiction to be exercised by High Courts, and also indicating the relief which can be granted by the issue of appropriate writs.

In repelling the contention of the learned Advocate-General the first point I would make is that in my opinion there is no warrant whatsoever for the argument that Article 226 is to be read with, and subject to, Article 225. This Article of the Constitution, Chapter V of Part VI, deals with the High Court in the States and deals with many miscellaneous matters in connection therewith. The subject-matter of most of these Articles is clearly quite self-contained, as can be seen from the subjects dealt with in the Articles immediately preceding Nos. 225 and 226. Article 220 deals with the prohibition of practising in Courts or before any authority by Judges. Article 221 deals with salaries, etc., of Judges. Article 222 deals with the transfer of a Judge from one High Court to another. Article 223 deals with appointment of acting Chief Justices. Article 224 deals with the attendance of retired Judges at sittings of High Courts. As I have already mentioned, the subject of Article 225 is jurisdiction of existing High Courts, and that of Article 226 powers of High Courts to issue certain writs. One indication that two entirely separate matters are dealt with in these Articles is that Article 225 relates

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

only to existing High Courts, whereas the most important words in Article 226 are "Notwithstanding anything in Article 32 every High Court shall have power". These words alone are quite conclusive on the point that the power of High Courts to issue writs is not in any way governed by the provisions of Article 32(3), which, in any case, does not even refer specifically to High Court, but seems to indicate that Parliament may give powers to issue writs, orders and directions even to subordinate Courts. When this fact was pointed out to learned Advocate-General and he was asked to say under which of the law-making powers contained in Second Schedule Parliament could give jurisdiction to High Courts to deal with writs and kindred matters under Article 226, all he was able to do was to refer to Item No. 95 in the Union List which reads :

> "Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List."

He was not, however, able to point out in the rest of the List any item in which writs and such matters were included. It would in fact appear that on the face of it the power to issue writs and orders of a like nature was vested in the Supreme Court and all the High Courts by the Constitution itself, and it was only left to Parliament to extend any of these powers to subordinate Courts if considered desirable.

In any case there appears to me no reasonable basis for the postulate on which the whole argument was based, namely, that power and jurisdiction are two quite separate matters and not merely different aspects of the same thing. In fact in the definition of jurisdiction given in any legal Dictionary or Law Lexicon the word 'power' is freely used, and although in certain contexts it may be possible to draw a distinction between the two terms, in general it is not possible to separate them. In the Criminal Procedure

Code jurisdiction is used generally in the sense of local jurisdiction, and at least in one place the word 'power' is used in a sense in which it would also seem to include jurisdiction. This is in section 30, which provides that in certain States the State Government may, notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death. Section 28 is the basic section which provides that subject to the other provisions of this Code any offence under the Indian Penal Code may be tried (a) by the High Court, or (b) by the Court of Session, or (c) by any other Court by which such offence is shown in the eighth column of the Second Schedule to be triable. Section 29 deals with offences under laws other than the Indian Penal Code. I would venture the opinion that where a particular Court is mentioned in the appropriate column of the second schedule of the Criminal Procedure Code, that Court is given 'jurisdiction' to try that particular offence. It can at least be said that either it is a question purely and simply of jurisdiction what offences may be tried by what Courts, or, if it could be called a question of power, it is clear that there is no recognizable distinction in this context between power and jurisdiction. Under section 30 only the power to try all offences not punishable with death is mentioned as being given to certain Magistrates, but clearly, if any question of jurisdiction is involved, such Magistrates are also in the same section given jurisdiction, since Magistrates empowered under this section can try offences mentioned in second schedule as exclusively triable by Sessions Courts. I am of the opinion that in section 30 a question of jurisdiction as well as power is involved, but the word "power" was used exclusively because in this context no distinction was drawn by the Legislature between power and jurisdiction. In the circumstances I am of the opinion that there is no force in the contention raised by the learned Advocate-General, and that in Article 226 the power given to the High Courts to issue writs and similar orders also includes jurisdiction.

Pt Shyam Krishen
v.
The State of Punjab and others
—
Falshaw J.

The other main question involved in these petitions is whether the Punjab Acts of 1947 and 1948, under which the various premises to which the petitions relate, have been requisitioned, are *ultra vires* of the Legislature. The validity of these Acts has been challenged on several grounds, namely, that neither under the Government of India Act of 1935 nor under the Constitution of 1950 was any power given to any Legislature to pass laws for "requisitioning" as distinct from the "acquisition" of property, that the Acts were bad because of the unconstitutional nature of the section relating to the delegation of powers, that they were bad because the sections relating to compensation made no provision for compensation to tenants as distinct from owners of requisitioned properties, and finally they were bad because they permitted the requisitioning of property for purposes other than a public purpose.

The second and third of these objections can in my opinion be easily disposed of. I shall first deal with the question of delegation. The relevant section is section 8 in both the Punjab Acts of 1947 and 1948, the wording of which is identical :

> "Any Provincial Government may by order direct that any power conferred or any duty imposed on it by this Act shall in such circumstances and under such conditions, if any, as may be specified in this direction be exercised or discharged by such officer as may be so specified."

Under both the Acts the power of the Provincial Government has in fact been delegated to all Deputy Commissioners in their own districts. The only objection against this section in the two Acts was that the powers of delegation were so wide as to be unreasonable, since the powers could be delegated by the Government to any officer however subordinate. I very much doubt whether any argument of this kind

would have even been put forward but for the fact that in the case of *Khagendra Nath De* v. *District Magistrate of West Dinajpur* (1), it was held by Harries, C. J. and Bannerjee, J., that a similar section relating to the delegation of powers, section 38 of the West Bengal Security Act of 1950, was *ultra vires*. The matter was considered quite briefly by Harries, C. J., who delivered the judgment, in the following passage :

> " In the Preventive Detention Act, 1950, the Central Legislature recognised the necessity of placing restrictions on the right of Government to delegate its powers. By that enactment delegation of the power to make an order of detention can be validly made out only to senior and responsible officers, namely, a District Magistrate, a Sub-Divisional Officer and a Commissioner of Police in what were known as the Presidency towns. There is no such restriction on the power to delegate in section 38 of the Act now under consideration. The power under that section is only limited to this extent that the power authorised to make orders must be an officer of Government whatever his rank, status, knowledge or experience may be.
>
> It appears to me that section 4 which entitles Government to delegate its powers to any officer subordinate to it irrespective of whether this officer is fit to make such orders is to my mind a procedure which is wholly unreasonable, and, that being so, this Court must hold that section 38 is *ultra vires* as being beyond the powers given to the State by clause (5) of Article 19 of the Constitution. "

---

(1) 1951 A. I. R. Cal. 3.

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

With due respect I cannot agree with this decision. Even in that case the order which was before the High Court was one which had been passed by a District Magistrate to whom powers had been delegated under the Act, and there does not appear to be any suggestion that in West Bengal the powers under the Act in question had in fact been delegated to any officers of lesser status than that of a District Magistrate, and I am not at all sure that Article 19, Clause (5), has any direct application to a Section of this kind. Article 19 deals with the fundamental rights of speech, assembly, etc., listed under the headings (a) to (g), and clause (5) provides that nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far it imposes, or prevents the State from making any law, imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any scheduled tribe. It seems to me that in determining the validity of any statute, or part of a statute, under Article 19(5) the primary matter to be taken into consideration is the reasonableness or otherwise of the restrictions sought to be imposed and I doubt whether the wideness of the power of delegation in section 38 could ever be called into question under Article 19(5) unless either the delegation section itself was patently unreasonable, or else it could be shown that the Government had been using it in altogether unreasonable manner by actually delegating its powers to some officer so subordinate that *prima facie* he was unfit to be entrusted with the powers. I should not feel at all inclined to interfere in the present case on this ground unless it could be shown that the Punjab Government had obviously been using its power of delegation under these Acts in an unreasonable manner by delegating its functions under the Act to manifestly and wholly unsuitable officers, which is not the case.

The next point to be dealt with is the absence of any specific provision in the Acts for compensation

to tenants as distinct from landlords of requisitioned property. Here again I can see no foundation for the objection, which I do not think would have been raised but for a decision of another High Court. This was the decision of the Nagpur High Court in *Manohar* v. *G. G. Desai* (1) in which it was held by a Division Bench that a tenant or a lessee of a property is the transferee of an interest therein inasmuch as he has the present right to occupy the demised premises, and Article 31(2) of the Constitution clearly contemplates payment of compensation to the person who has a present right to occupy the requisitioned premises. There being no provision in the C. P. and Berar Accommodation (Requisition) Act for payment of compensation to a tenant it was held that, in the absence of such provision, since the coming into force of the Constitution the C. P. and Berar Accommodation (Requisition) Act of 1948 was void in so far as it permitted requisitioning of property in the possession of tenants. The matter was only briefly dealt with in the judgment, being only one of many points considered, and unfortunately the judgment does not set out in full the terms of the relevant section of the Act. I shall quote the relevant portion from the judgment—

> " There is no provision in the Act for payment of compensation to a tenant. Section 4(1) clearly refers to the payment of compensation to the owner and to none else. No doubt subsection (3) of section 4 says that the Government or the arbitrator could pay the compensation to any person entitled to it. These words, however, must be interpreted as referring to persons of the same type as the one referred to in subsection (1) of section 4, that is, the owner. It would not, in our opinion, be in consonance with the principles of construction of statutes to give a wider meaning to the

(1) 1951 A. I. R. (Nag.) 33.

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

words 'any person' so as to include a tenant in the absence of anything either in section 4 or in any other provision of the Act which recognises the right of a tenant, or confers on a tenant the right to receive compensation."

Without the full text of the relevant section it is difficult to say whether this interpretation is correct or not, but even from the above passage I am not at all sure that I agree with the decision which, however, may be taken to be correct, if in fact the clear intention of the section was to preclude anyone but the owner from receiving compensation. The sections relating to compensation in both the Acts of 1947 and 1948 are similar and, if they do not specifically mention tenants, they also do not mention owners. The section begins—

> "Where any immovable property is requisitioned or acquired under this Act there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out."

Then follows a number of provisions the gist of which is that if possible, the amount of compensation is to be settled by agreement, but if no agreement can be reached, by arbitration, provision being made for the methods and principles on which such arbitration is to be carried out. Subsection (2) provides that the Government may make rules for the purpose of carrying out the provisions of this section and subsection (3) provides in particular what sort of rules can be made without prejudice to the general rule-making power. To my mind there is nothing in the provisions of this section which excludes the payment of compensation to a tenant in a case where a tenant who is evicted in consequence of an order of requisition can make out a case that he is entitled to such compensation. I, therefore, do not consider that this section is *ultra vires* on this account.

This brings us to the two final questions whether the Province or State had any power under the Government of India Act or the Constitution to legislate for the requisitioning, as distinct from the acquisition, of property, and whether, even if such power existed, requisitioning could be done otherwise than expressly for a public purpose. The relevant provisions of section 299 of the Government of India Act of 1935 and Article 31 of the Constitution are more or less parallel. Section 299 reads :

> " (1) No person shall be deprived of his property save by authority of law.
>
> (2) Neither the Dominion Legislature nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined. "

Clause (1) of Article 31 is exactly the same as subsection (1). Clause (2) of the Article reads :

> (2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

the principles on which, and the manner in which, the compensation is to be determined and given."

The only material difference is that in Article 31(2) 'taken possession of' is additionally included as something distinct from 'acquisition'. It would seem that when the Government of India Act was framed, the word 'requisition' had not come into use as a legal term, and in fact it seems that it made its first appearance in any law in this country in the Defence of India Act of 1939 and the Defence of India Rules framed under the Act. Among the emergency powers given to the Government in section 2 of the Defence of India Act at item (XXIV) there appears "the requisitioning of any property, movable or immovable including the taking possession thereof and the issue of any orders in respect thereof". In the Defence of India Rules at clause (11) of rule 2 "requisition" is defined as meaning, "in relation to any property, to take possession of the property or to require the property to be placed at the disposal of the requisitioning authority." Rule 75A deals with the requisitioning, clause (1) reading—

> "If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may, by order in writing, requisition any property, movable or immovable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning."

The rest of the rule contained provisions for converting requisitioning into acquisition in certain cases, and for determination of compensation, and also for enforcing

orders. The validity of the powers granted by this rule was considered by Bhagwati, J., in the case of *Tan Bug Taim, etc.*, v. *Collector of Bombay* (1) and he held that the enactment of section 2 (2) (xxiv) of the Defence of India Act and rule 75(A) of the Defence of India Rules, with reference to the requisition of immovable property, in the absence of a public notification by the Governor-General under section 104 of the Government of India Act, was *ultra vires* of the Central Legislature, as such requisition was comprised neither in Items 9 and 21 in List II of Schedule VII nor in any other items of the lists in Schedule VII. In other words, he held that requisitioning was something separate and distinct from acquisition and was *ultra vires*. In doing so he followed the reasoning in the judgment delivered by Latham, C. J., in the case of *Minister of State for Army* v. *Dalziel* (2), a case decided by the High Court of Australia and reported in Commonwealth Law Reports, Vol. 68, at page 261. There, in exercise of powers conferred by the National Security (General) Regulations of Australia, which have been the Australian equivalent of the Defence of India Rules, the military authorities had taken possession of a vacant site which the respondent in the appeal had taken on lease several years earlier and had been using for profit as a car-park. The word " requisition " was apparently not used in the Regulations, but the Supreme Court of New South Wales had held that taking possession of a land from a tenant in this manner was *intra vires* of the Legislature and came within the scope of the term acquisition of property as used in the Australian Constitution. This decision was in fact affirmed by four of the five judges who constituted the Court which decided the appeal in the High Court of Australia, and the view which Bhagwati, J., preferred to follow was that of the learned Chief Justice, who on this point was in a minority of one. In deciding the point whether requisitioning can be said to be covered by the term ' acquisition ' neither ordinary dictionaries nor legal lexicons

(1) 1946 A. I. R. (Bom.) 216.
(2) (1943-44) 68 Commonwealth L. R. 261.

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

are of much use since, as I have already said, it is only in quite recent years that the word "requisition" has begun to appear at all in statutes. The word seems to have originated as a military term, but it has always been used in the sense of the compulsory taking of property, whether temporarily or permanently. Whether requisitioned property was intended to be kept temporarily or permanently would seem to have depended largely on the nature of the requisitioned property. I do not think there is any doubt that the meaning of the word has now become well settled, at any rate when it is applied to immovable property and that now acquisition in case of immovable property means the permanent acquisition of the property and the passing of all title in the property acquired from the previous owner to the acquiring authority, while requisitioning means only the temporary taking possession of the property and the temporary use and enjoyment of the owner's rights by the requisitioning authority. In fact I would go so far as to say that with regard to immovable property requisitioning is synonymous with temporary acquisition. It might seems strange that the decision of Bhagwati, J., which was apparently delivered on the 9th of August 1945, and if allowed to stand, might have proved a serious hindrance to the Government, was in fact apparently taken no further and not made the subject of an appeal to the Federal Court, but it would seem that by the time this decision was published the war emergency was at an end and the Defence of India Rules ceased to have any force, and it may be that it was in consequence of this decision that in 1947 the Government of India did in fact issue a notification under section 104 of the Government of India Act of 1935 for the purpose of authorising legislation for the requisitioning of land. This notification, dated the 21st October 1947, reads:—

> "In exercise of the powers conferred by section 104 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, the Governor-

General hereby empowers all Provincial Legislatures to enact laws with respect to the requisitioning of land, being a matter not enumerated in any of the Lists in the Seventh Schedule to the said Act."

It is to be noted that in the Constitution provision is made regarding the requisitioning of property in the Seventh Schedule under Article 246. In List I, the Union List, Entry No. 33 reads :—

"Acquisition or requisitioning of property for the purposes of the Union."

Entry No. 36 of List II, the State List, reads :—

"Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III."

This latter entry reads :—

"42. Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given.

Moreover I do not think there can be any doubt that in Article 31 (2) the words ". . shall be taken possession of. . . ." coming before the words ". . . .or acquired . . " must be intended to cover requisitioning as distinct from acquisition.

One very interesting aspect of this matter is that even in such a long-standing Act as the Land Acquisition Act of 1894, which is the fundamental Act relating to the acquisition of immovable property, provision was made in Part VI for the requisitioning of

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

land although this term was unknown in those days as a legal term. This Part is headed "Temporary occupation of land." . Section 35 (1) reads :—

> "Subject to the provisions of Part VII of this Act, whenever it appears to the Provincial Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Provincial Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation."

Then follow provisions for compensation for land temporarily taken in this manner, and the provisions of Part VII of the Act make it quite clear that when land was to be taken either temporarily under section 35, or permanently acquired under other provisions of the Act, on behalf of a Company, this could only be done where the Company was serving some public purpose. It is thus clear that even before the Defence of India Act and Rules came into force such a thing as the requisitioning of land had for many years been in existence, though under a different name, and I am not aware that the validity of Part VI of the Land Acquisition Act has ever been challenged either under the Government of India Act, 1935, or under any of the other basic Acts framed for the Government of this country which preceded the Act of 1935. I am, therefore, of the opinion that neither the Punjab Act of 1947 nor the Act of 1948 was *ultra vires* or unconstitutional on the ground that the Legislature was not empowered to pass laws relating to the requisitioning of property.

This brings us to the major point whether these Acts are bad on account of the fact that they do not

explicitly state that property may be requisitioned for a public purpose. The question falls into two parts, firstly, whether requisitioning can only be for a public purpose, and secondly, whether in any Act relating to requisitioning it must be expressly stated that the requisitioning is to be for a public purpose. In spite of the fact that in both section 299 of the Government of India Act of 1935 and Article 31 of the Constitution all that is provided is that no legislation should be enacted for the acquisition of land, and no property taken possession of, for a public purpose without provision for compensation and for the manner in which the amount of compensation is to be fixed, and it is not expressly provided that there should be no acquisition or other taking possession of property except for a public purpose, I do not think there is any doubt that this latter implication is present in both section 299 and Article 31. To take any other view would lead to the *prima facie* absurd implication that not only can the Central or a State Government acquire or take possession of property for private purposes, but that when doing so it need not make any provisions for compensation. Even to suppose that a Government could deprive anybody of his property for a private purpose would seem to be attributing to Government a power outside the ordinary functions of Government, but the *reductio ad absurdum* of any argument on these lines would be the consequence that whereas Government when acquiring or taking possession of a property for a public purpose must compensate the owner or other persons interested, and yet, when acquiring a property for what would be an illegitimate purpose, need pay no compensation. The existence of a public purpose as a pre-requisite for any legislation regarding acquisition or requisitioning appears to me to be implicit in the terms of Entry 33 in List I of Seventh Schedule of the Constitution and also in Entry 36 in List II and Entry 42 in List III. In fact this point hardly appears to have ever been contested for the simple reason that no Government yet has ever ventured to pass any regulation for acquiring or requisitioning a property for private purposes. It may nevertheless be mentioned

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

that in *Dwarkadas Shriniwas* v. *The Sholapur Spg. & Wvg. Co., Ltd. & others* (1), Chagla, C. J., has observed that although Article 31(2) does not in terms state that acquisition or taking possession of can only be for public purposes, reading that clause as a whole it is clear that it is implicit in the power conferred upon the Legislature to legislate for the purposes of acquisition or taking possession of property. In the circumstances it seems to me that the first part of the question can be easily answered, and that the Government of India Act of 1935 and Article 31 of the Constitution as well as the Lists in the Seventh Schedule, only contemplate acquisition or requisitioning for public purposes. The further question which arises is whether the words used in the Punjab Acts of 1947 and 1948 mean, or necessarily imply, that requisitioning under the Acts is to be done only for a public purpose. The words in both Acts are " If in the opinion of the provincial Government it is necessary or expedient so to do ..... "

The first point which seems to arise from the use of these words is the query why the Punjab Government thought fit to use them instead of using the words " for a public purpose " in some form or other. In Rule 75A of the Defence of India Rules, which was apparently the first requisitioning legislation as such in this country, admittedly the phrase ' public purpose ' is not used, but a long catalogue of purposes for which property can be requisitioned is given, and all the purposes enumerated therein are quite clearly public purposes. In at least three State Acts dealing with requisitioning of property it has been thought fit to specify that requisitioning should be for a public purpose. One of these is the Delhi Premises (Requisition and Eviction) Act, 1947, section 3(1) of which starts with the words, " Whenever it appears to the competent authority that any premises is needed for any public purpose..... ". Similarly, in the Bihar Premises Requisition (Temporary Provisions) Act

(1) 1951 A. I. R. (Bom.) 86.

of 1949, section 3(1) begins, " Whenever it appears to the Provincial Government that any premises in any locality are needed or are likely to be needed for any public purpose.... ". Then there is the Bombay Land Requisition Ordinance, 1947, which in section 3(1) uses both the words used in the Punjab Acts as well as ' public purpose'. The operative part reads :—

> "If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in writing requisition any land for any public purpose."

It would seem that in Bombay this Ordinance has been superseded by an Act in which in the relevant section the words ' public purpose ' no longer appear and for this reason in a case recently decided by Tendolkar, J., but not so far reported except in the press, in which the decision has received on this very account. It was argued on behalf of the State that in fact the words used in the Punjab Acts did necessarily imply that any order of requisition passed under section 3 must be for a public purpose, and it must be conceded that it is not *prima facie* likely that any purpose for which the Provincial Government deem the requisitioning of any property to be necessary or expedient would be other than a public purpose. It seems to me, however, that even in the case of Punjab Acts the words ' necessary or expedient ' are not the same as for a public purpose, and are capable of wider application, and it is also to be borne in mind that in actual practice almost all orders passed under section 3 are passed by the Deputy Commissioners under the powers delegated to them under section 8, and it is unfortunately not difficult to conceive of individual Deputy Commissioners considering as necessary or expedient purposes which are far from being public purposes. It is in fact somewhat strange to find that in delegating powers to District Magistrates under a similar Ordinance relating to the requisitioning of movable property, the East Punjab Movable Property (Requisitioning) Ordinance, 1947, the Government thought fit

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

to impose certain restrictions, which are not included in the delegation of powers under section 8 of the Acts of 1947 and 1948. The delegation under the Ordinance of 1947 was by a notification, dated the 8th of September 1947, published in the Gazette of 10th of October 1947, reads :—

> "In exercise of the powers conferred by section 8 of the East Punjab Movable Property (Requisitioning) Ordinance, 1947, the Governor of the East Punjab is pleased to direct that the powers specified in section 2 of the said Ordinance and for purposes connected therewith the powers specified in sections 4, 5, 6 and 7 may be exercised by all District Magistrates in the province within their respective charges subject to the following conditions, namely :—
>
> (a) that no property shall be requisitioned except for the purposes of Government,
>
> (b) that immediate report of action taken shall be submitted to the Provincial Government, and
>
> (c) that the order requisitioning the property under section 2 shall be subject to confirmation by the Provincial Government."

The implications of this notification certainly appear to be that the Government apprehended the possibility of abuse by District Magistrates of the powers delegated to them under the Ordinance, and therefore severely restricted the purpose for which these delegated powers could be used, and also imposed rigid checks thereon. It is not at first sight easy to see why no necessity was felt for imposing similar checks on the powers delegated to Deputy Commissioners for the

requisitioning of immovable property, involving as it does in many cases, the eviction of persons from their residences.

In considering the matter as a whole and in particular in comparing the Punjab Legislation with that in other States, I find it difficult to avoid drawing the conclusion, although I am reluctant to draw it, that the choice of the words 'necessary or expedient' in the Acts of 1947 and 1948 was deliberate, and that the Government intended to take to itself, and to delegate to its officers under section 8 of the Acts, powers of requisitioning property wider than might be covered by the phrase 'for a public purpose.' In the circumstances I am of the opinion that the words used in section 3 of both the Acts are defective as they stand, and that after the words ".....necessary or expedient....," it should be necessary to insert either "for a public purpose" or "in the public interest", or some such phrase, before either the Act of 1947 could be held to be *intra vires* under the Government of India Act of 1935, or the Act of 1948 could be held to be *intra vires* under Article 31 of the Constitution. From the fact that the Acts under which all the requisitioning orders in the present petitions were passed were *ultra vires* of the Legislature it would follow that the requisitioning orders themselves were void and of no force.

There is, however, a separate point which arises in one of the present petitions, *Pt. Shyam Krishan* v. *The State of Punjab, Civil Miscellaneous No. 270 of 1950*. The particular point raised in this petition was that the requisitioning order was passed in December 1947, under the Act of 1947, which is now no longer in force, having been succeeded by the Act of 1948, and that therefore this particular requisitioning order could not now be challenged under Article 226 of the Constitution, which only came into force in January 1950. On this point reliance was placed on the decision of Soni and Harnam Singh, JJ., in Civil Miscellaneous No. 526 of 1950 decided on the

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

22nd March 1951, in which it was held that an order, passed in that case under the East Punjab Evacuees' (Administration of Property) Act, 1947, which had become final before the inauguration of the Republic and coming into force of the Constitution, could not be challenged by way of a writ under Article 226. In deciding whether this decision is applicable in the present case it is necessary to mention some of the relevant facts. It appears that a house belonging to *Pandit* Shyam Krishan was requisitioned in December 1947 for the accommodation of a Government servant who was already in occupation of the house as a tenant of the petitioner, who at that time was apparently residing with his father. Throughout the ensuing period the petitioner was making ceaseless efforts to get the requisitioning order cancelled on the ground that he wanted the house in question for his own use, and it appears that in March 1950 the petitioner somehow managed to get back into possession of the house after it had been vacated by the Government servant who had been occupying it, and before it was allotted to and occupied by another Government servant, and it was after he had thus got possession of the house in March 1950, that the Deputy Commissioner began to take eviction proceedings against him under the Act of 1948. It may be mentioned that the Act of 1948 was amended by Act XVI of 1949 which made the following amendment in section 10 of the Act, the repealing section :—

> "At the end of section 10 of the Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1947, the following words shall be added and shall be deemed to have been added when the aforesaid Act came into force, namely—
>
> 'but any notification issued or orders made under the repealed enactments and in force immediately before the commencement of this Act shall continue in force and be deemed to be issued or made under this Act.'"

Pt Shyam Krishen
v.
The State of Punjab and others

Falshaw J.

It is quite clear that if the petitioner, once having entered into possession of his house, had not been threatened with eviction by an order of the 15th June 1950, passed under the Act of 1948, under which the requisitioning order passed in 1947 continued to be in force, he would have had no occasion to come to this Court for a writ under Article 226. As matters stand I see no reason why he should not now come before us to challenge his threatened eviction even though it was based originally on an Act which had been repealed in 1948 since the amendment of the Act of 1948 virtually converted the order of requisitioning into one under the Act of 1948.

In the circumstances I would direct in the case of Pandit Shyam Krishan that the eviction proceedings started against him in June 1950 be discontinued, and in the other petitions, holding that the orders of requisitioning are void as the Act of 1948 under which they were passed is itself void, direct that the possession of the requisitioned property be restored to the petitioners when necessary.

E. Weston C. J.

WESTON, C. J. The main question in these matters is the validity of the Punjab Requisitioning of Property Acts, 1947 and 1948, under one or other of which the various orders of requisitioning complained against have been made. Although the later Act came into force within eighteen months of the commencement of the Constitution, it has not been certified by the President under Article 31(6), and is, therefore, as open to attack as the former Act on the ground that it is *ultra vires* of the legislative powers conferred by the Government of India Act.

A point has been taken before us by the learned Advocate-General that no writs can be issued by this High Court under Article 226 of the Constitution. His argument is that this Article confers the power to issue writs, but until the jurisdiction to exercise that power is conferred by separate and appropriate

Pt Shyam Krishen
v.
The State of Punjab and others

E. Weston C. J.

legislation, the power remains dormant and cannot be invoked by any person. He relies upon the different language of Articles 225 and 226. The first of these provides for the continuance of existing jurisdiction of the High Courts and the respective powers of the Judges thereof, while in the second it is stated :—

> "Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue * * * within those territories directions, orders or writs * *."

The two words "Power" and "jurisdiction" may not be synonyms, but they have a great deal of common meaning. Jurisdiction is usually used when a question of the quantum or territorial application of power arises. "Power" in certain contexts has a wider meaning than "jurisdiction". I am not able to accept that a provision of law which confers a certain power upon a Court must be taken to mean that the Court has, as it were, only an abstract dignity conferred upon it, and is not at liberty to do anything until it is set in motion by further provision of law. Clause (2) of Article 32 confers power upon the Supreme Court to issue directions, orders or writs in the same language as is used in Article 226, and the exercise of this power, which I think is beyond dispute, is derived from this clause, and not from clause (1) which is the guarantee of the right of the subject to move the Supreme Court. The majority decision of the Madhya Bharat High Court, to which we have been referred, seems to proceed upon assumption, in my opinion erroneous, that the two words "power" and "jurisdiction" have nothing in common. I think there is no substance in the point.

The argument of the learned counsel for the applicants that all laws providing for the requisitioning of property are *ultra vires* of the law making powers under the Government of India Act is based upon a

decision of Bhagwati, J., in *Tan Bug Taim* v. *Collector of Bombay* (1). The learned Judge held that the requisition of land is not included in the item of compulsory acquisition of land (Item No. 9 in List II of the 7th Schedule to the Government of India Act) and could not be brought within land (item No. 21 of the same List). He decided therefore that the Central Legislature had no power to enact provisions for the requisitioning of land, in the absence of a public notification issued by the Governor-General under section 104 (1) of the Government of India Act empowering the Central or Provincial Legislature to enact a law with reference thereto.

This decision was not taken in appeal but was met by the issue of appropriate notification by the Governor-General under section 104(1), and this concludes the argument against general legislative competence to enact laws providing for the requisitioning of land, which of course includes houses.

The correctness of Mr. Justice Bhagwati's decision, however, arises for consideration on the main argument advanced before us. Section 299 of the Government of India Act so far as material reads :—

> "299 (1) No person shall be deprived of his property in British India save by authority of law. (2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which and the manner in which, it is to be determined.

(1) (1946) 57 Bom. L. R. 1010.

Pt Shyam Krishen
v.
The State of Punjab and others

E. Weston C. J.

(3) * * * * * * * *

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section 'land' includes immovable property of every kind and any rights in or over such property, and 'undertaking' includes part of an undertaking."

The Land Acquisition Act (Act I of 1894) by Part II provides for acquisition of land for public purposes and by sections 4 to 6 has made provision for inquiry into and final declaration of the existence of public purpose justifying the proposed acquisition. Part VII of the Act provides for acquisition of land for Companies. Section 40 requires that consent shall not be given to such acquisition unless the Local Government is satisfied upon report or inquiry—

(a) that such acquisition is needed for the construction of some work, and

(b) that such work is likely to prove useful to the public.

Section 299 of the Government of India Act does not state expressly that laws for the compulsory acquisition are for a public purpose, but the necessary implication to that effect cannot, I think, be disputed. Although the Land Acquisition Act of 1894 would not be affected by section 299, the careful provisions of that Act ensuring the serving of public purpose when land is sought to be acquired for companies indicate that acquisition except for public purpose was never contemplated. Article 31 of the Constitution now deals with compulsory acquisition of property. Clause (1) of this Article is identical with clause (1) of section 299 of the Government of India Act, and clause (2)

follows closely the language of section 299 (2). Article 31(2) reads :

> " (2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

The addition of the words relating to taking possession of property in the Article may have been made in view of the decision in *Tan Bug Taim's case* (1), but this does not require that this decision must be taken to be correct, and that acquisition in its true meaning does not include the mere taking of possession. The requisitioning of property is a modern feature of the exercise of the long recognised right of the State termed in America that of eminent domain, and has been made necessary by conditions which have obtained in recent wars and which have survived in some countries the formal termination of those wars. The term " requisition " in its modern sense has not yet received recognition in the dictionaries, or at least in those available to us here. *Tan Bug Taim's case* (1) was one under the Defence of India Rules, rule 2(11) of which runs :

> " Requisition " means in relation to any property to take possession of the property or to require the property to be placed at the disposal of the requisitioning authority. "

(1) (1 46) 57 Bom. L. R. 1010.

Pt Shyam Krishen
v.
The State of Punjab and others

E. Weston C. J.

In the word "requisition" the compulsory nature of the act done is implicit, while in acquisition it is not. In requisition actual taking of possession may not be essential, but for all practical purposes property is requisitioned in order that possession by or on behalf of the State may be taken or retained. By acquisition as the term is used in the Land Acquisition Act (Act No. I of 1894) complete title passes, while by requisition it does not. Lathan, C. J., in his minority judgment, *Ministry of State for the Army* v. *Balziel* (1) which Bhagwati, J. preferred to follow in preference to the majority view in that case, speaking of the requisition then under challenge said :

> "In the present case the Commonwealth has not acquired any interest of any kind in the land. It has not acquired any interest either from the owner of the fee simple or from the tenant. The possession of the Commonwealth may, I think, properly be described as that of a licensee whose rights are defined by the Regulations."

With great respect I think the parallel of license drawn by the learned Chief Justice is far from exact. That of tenancy appears more appropriate. I find it difficult to understand how on requisition no part of the bundle of rights which constitute full ownership can be said to have been acquired. The existence in the Land Acquisition Act of Part VI providing for temporary occupation of land was noticed by Bhagwati, J., but was considered by him to support his conclusion. He relied upon section 48 which provides that except in the case provided for in section 36, Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. Section 36 gives power on payment of compensation to take possession of land for a public purpose for a period not exceeding three years. The proviso to the section provides that if by the temporary occupation the land has become unfit for the purposes for which it was used

(1) (1943-44) 68 Commonwealth L. R. 261.

before the occupation, the persons interested may require Government to acquire the land. I am not able to understand how the exception of acquisitions under this proviso from the operation of section 48 assists the argument in any way. Nor do I see reason to assume that Part VI found place in the Act solely in order that the proviso to section 36 might appear.

Section 299 of the Government of India Act itself shows that any rights in or over immovable property may be acquired. I see nothing to prevent the acquisition under the Land Acquisition Act itself of a lease for a term of years. No doubt on such acquisition all property in the lease will pass. But other rights in the land will not have been taken. I do not see any reason to regard the Land Acquisition Act as necessarily exhaustive. Some provisions for what would now be termed requisition appear in the Act in Part VI. In my opinion requisition is a form of compulsory acquisition, and legislation providing for requisition properly fell within item 9 of List II of the Government of India Act.

If this is correct, the same restrictions must apply to legislation providing for requisitioning as apply to legislation for compulsory acquisition. Requisition in many cases operates more harshly than total acquisition. In the latter the expropriated owner knows his position. In the two impugned Acts one of the two requirements set out in section 299 of the Government of India Act appears, namely, that requiring provision for compensation to be paid. The other requirement, namely, that of public purpose does not appear. The two Acts purport to give power to requisition when it appears necessary or expedient to do so, which is a very different thing from requiring that a public purpose must be served. Of course Government or the authority to which power under the Acts has been delegated would be the judge of public purpose, if public purpose were required to be considered. It is because the two Acts do not require public purpose to be considered that they must fail. I consider, therefore, that the two Acts must be held to be bad as

Pt Shyam Krishan
v.
The State of Punjab and others

E. Weston C. J.

contravening an essential requirement of section 299 of the Government of India Act.

Certain subsidiary points were raised which have been dealt with in the judgment of my learned brother, which I have had the benefit of reading. I agree with his conclusions and the reasons therefor and I agree with the final orders proposed.

REVISIONAL CIVIL

Before Eric Weston, C.J., and Falshaw, J.

RANA BASHISHAT CHAND RAI,—*Petitioner,*

versus

SARDARNI RADHIKA DEVI,—*Respondent.*

1951
Aug. 1st

Civil Revision No. 130 of 1949

Constitution of India, Article 14—Interpretation of—Code of Civil Procedure (V of 1908), Section 133—High Court Rules and Orders Vol. I. Ch. VII, footnote 3—Ruler of an Indian State—Whether exempt from personal appearance in court—Constitution of India.

Held, that Article 14 of the Constitution does not offend against the continuance of the privilege of immunity from appearance in court and the Ruler is exempt from personal appearance.

Held also, that it being well settled that classification or discrimination based upon reasonable distinction is valid, it is incumbent upon courts to take notice of actual circumstances, including matters of High Policy and solemn obligations of the Government, in deciding what is a reasonable classification or discrimination.