without jurisdiction. Since the impugned order does not show as to how much demand has been created for the period ending December 31, 1963, and how much for the last quarter, it is impossible to sustain any part of the order.

I, therefore, allow this writ petition and set aside the impugned order of the Assessing Authority, dated July 9, 1964, and direct that the petitioner-firm would be re-assessed for the year 1963-64, in accordance with law. The question of exemptions to which the petitioner-firm may or may not be entitled under section 5(2)(a)(ii) of the Act read with rule 26 of the rules framed thereunder shall also be considered and decided by the Assessing Authority on merits afresh. In the circumstances of the case there is no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

PRITHVI CHAND,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No 1619 of 1963

April 4, 1967

Defence of India Act (LI of 1962)—Preamble and Ss. 29, 40 and 44—Order requisitioning a shop mentioning that it is expedient and necessary to requisition it for maintaining supplies and services essential to the life of the community—Declaration regarding expediency and necessity—Whether can be challenged—S. 29—Whether falls within purview of the Preamble—Order of requisitioning—Whether should contain the period for which the property is requisitioned—S. 44—Scope of—Whether controls jurisdiction of the authority under S. 29—'Collector' in notification, dated December 13, 1962 issued under S. 40—Whether includes 'Land Acquisition Collector'—Constitution of India (1950)—Article 226—Decision of authority under section 29 regarding necessity and choice of place—Whether can be challenged in a writ petition—Constitution of India (1950)—Article 245—S. 40—Whether suffers from excessive delegation—Interpretation of Statutes—Preamble of an Act—Whether can be looked into.

Held, that where the order of requisition mentions that it is expedient or necessary to requisition the property for maintaining supplies and services essential to the life of the community, a declaration of the Government to that effect is final and that the court cannot, in the absence of proof of *mala fides,* go into the allegation that in fact it was neither expedient nor necessary to requisition the property for any of the permitted purposes.

Held, that the preamble of the Defence of India Act provides for making special measures to ensure not only 'public safety' but 'public interest' and also "for matters connected therewith". The scope of the preamble is wide enough to include the impugned part of section 29 of the Act.

Held, that sub-section (3) of section 29 of the Defence of India Act envisages that no property should be kept under requisition after the purpose for which it is requisitioned has ceased to exist or come to an end. The Act does not provide for any requirement of mentioning in the order the period for which a particular property is being requisitioned. In the nature of things it cannot be said, that it is the duty of the requisitioning authority to mention in the order of requisition the precise period for which the property was sought to be taken over, in the absence of a statutory provision to that effect.

Held, that section 44 of the Defence of India cannot and is not intended to control the jurisdiction of the appropriate authority under section 29, but is merely for the guidance of the authorities and contains principles, which are otherwwise well-known and have always been recognised in all civilised systems of modern jurisprudence. It is not for the High Court to decide as to how many consumers stores were necessary to be provided in the city in question at the relavant time and at what particular places. The opinion and decision of the relevant authority in that respect is final and in the absence of definite charge of *mala fides,* cannot be interfered with by the High Court in proceedings under Article 226 of the Constitution.

Held, that Land Acquisition Collector falls within the expression 'Collector' as used in the notification, dated December 13, 1962, issued by the Central Government in exercise of the powers conferred on it by sub-section (1) of section 40 of the Defence of India Act by which the Central Government delegated its powers, under section 29 of the Act, to various authorities including "all Collectors" in the States.

Held, that the notification under section 40 of the Defence of India Act, does not suffer from excessive delegation as the entire authority of the Government under section 29 of the Act can be delegated to any authority in exercise of the statutory powers of the government under section 40 of the Act, and in the absence of any restrictions laid down in the notification, no fault can be found in the delegation of the entire powers of the government under that section.

Held, that preamble of an Act cannot either restrict or extend the enacting part so long as the language and scope of the Act are not open to doubt. It is not unusual to find that enacting part is not exactly co-extensive with the preamble, and that in a large number of statutes although a particular mischief is recited in the preamble, the legislative provisions extended far beyond it. The preamble of an Act is not more than a recital of some of the inconveniences, and has never been held to exclude any others for which a remedy is given by the body of the statute. The evil recited in the preamble is usually the motive for enacting the statute, though the remedy which may be provided by the body of the Act may be and is usually extended beyond the cure of that evil. The preamble of an Act has often been held to be a key to the understanding of the statute, but has to be referred to or consulted only to remove or solve any ambiguity or to fix the meaning of any words which may be capable of more than one interpretations. Therefore, any part of the Act which does not squarely fall within the four corners of the mischief sought to be prevented according to the wording used in the preamble, cannot be struck down as being *ultra vires* or unconstitutional.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the impugned order of requisition.*

H. R. AGGARWAL, ADVOCATE, for the Petitioner.

K. S. KWATRA, DEPUTY ADVOCATE-GENERAL (PUNJAB), for the Respondents.

ORDER

NARULA, J.—In exercise of powers conferred by sub-section (1) of section 40 of the Defence of India Act (51 of 1962) (hereinafter referred to as the Act), the Central Government delegated its powers under section 29 of the Act, to various, authorities including all Collectors in the States, by notification, dated December 13, 1962 (Annexure 'B'). In exercise of the powers conferred by the said notification, the Land Acquisition Collector, Gurdaspur District, issued the impugned order, dated August 24, 1963, requisitioning shop No. 2092 owned by Prithvi Chand, petitioner under sub-section (1) of section 29 of the Act, as it was, in the opinion of the Punjab Government, necessary to open a co-operative consumers store in the said shop for maintaining supplies and services essential to the life of the community. Certain objections against the order of requisition were preferred by the petitioner, who was admittedly the owner of the shop and was carrying on his own crockery business therein, on August 29, 1963 (Annexure 'C'). According to the petitioner, those objections have

not so far been disposed of and the petitioner was told by the requisitioning authority that the objections would be decided by a Committee. In the above-said circumstances, the present writ petition, dated August 31, 1963, was filed in this Court, and at the time of its admission by the Motion Bench on September 2, in that year, dispossession of the petitioner from the shop in dispute was stayed.

It is somewhat unfortunate that the State of Punjab and the Land Acquisition Collector, Gurdaspur, have not thought it necessary to file any return to the rule issued in this case, though almost four years have gone by since the writ petition was admitted. The statements of fact made in the writ petition have, therefore, to be assumed to be correct.

In support of the petition, it has firstly been urged that the appropriate authority, that is the Punjab Government or even the Land Acquisition Collector, was not satisfied about the necessity or expediency of requisitioning the shop in question, and that in fact the said powers had been exercised in this case *mala fide* by an unknown Committee. No such specific allegation has been made in the writ petition. The reference in the writ petition to the Committee is related only to the disposal of the objections said to have been filed by the petitioner. Moreover, it has already been authoritatively held by their Lordships of the Supreme Court in *Jute and Gunny Brokers Ltd., and others, etc.*, v. *The Union of India and others* (1) that in the absence of allegation of *mala fides*, the opinion of the authority expressed in the order of requisition is final. There is no specific allegation of *mala fides* of either the Punjab Government or of the Land Acquisition Collector in this case. In so far as the Land Acquisition Collector has stated in so many words in the impugned order (Annexure 'A') that it is necessary in the opinion of the Punjab Government to requisition the shop in question for the purpose aforesaid, it is not possible for this Court to question the subjective satisfaction of the appropriate authority, in these proceedings. Mr. Aggarwal has argued that the impugned order refers to the satisfaction of the State Government, whereas the satisfaction required in this case was of the Land Acquisition Collector. The Collector was acting in the instant case as a delegate of the State and the satisfaction of the State Government referred to by him can safely be presumed to have been through the Collector himself.

(1) A.I.R. 1961 S.C. 1214.

It was next contended by the learned counsel that though the national emergency had been declared under the Constitution, requisitioning of the petitioner's shop could not be resorted to in the absence of proof of emergent need for the State itself. Counsel has argued that the unrebutted allegation in the writ petition discloses that newly built municipal shops were available in the locality, and as more than three years have gone by since the impugned order was passed, there is obviously no emergent need for the shop in dispute by the Government. I cannot take into consideration the fact that more than three years have passed since the impugned order of requisition was made, as I have to decide whether the order, when it was made, was valid and legal or not. So far as the question of necessity or expediency is concerned, it has been held by the Supreme Court in the case of *Jute and Gunny Brokers Ltd.*, (supra) that where the order of requisition mentions that it is expedient or necessary to requisition the property, for maintaining supplies and services essential to the life of the community, a declaration of the Government to that effect is final and that the Court cannot in the absence of proof of *mala fides*, go into the allegation that in fact it was neither expedient nor necessary to requisition the property for any of the permitted purposes.

The next argument of Mr. Aggarwal is that so much of section 29 of the Act as provides for the requisitioning of immovable property "for maintaining supplies and services essential to the life of the community", outsteps the preamble of the Act, and is, therefore, *ultra vires* the preamble, inasmuch as the only purposes mentioned in the preamble are: (i) to ensure public safety and interest, (ii) the defence of India, (iii) civil defence, (iv) for the control of certain offences, and (v) for matters connected therewith. The argument is that the maintenance of supplies and services essential to the life of the community does not fall in any of the above-mentioned five categories, and could not, therefore, be lawfully provided by any provision of the Act. Counsel seems to think that the preamble of a statute controls its purview. This argument is based on some misconception. It is settled law that the preamble of an Act cannot either restrict or extend the enacting part so long as the language and object and scope of the Act are not open to doubt. Maxwell in his "Interpretation of Statutes" has observed that it is not unusual to find that the enacting part is not exactly co-extensive with the preamble, and that in a large number of statutes although a particular mischief is recited in the preamble, the legislative provisions extend far beyond it. The preamble of an Act is not more than a recital of

some of the inconveniences, and has never been held to exclude any others for which a remedy is given by the body of the statute. The evil recited in the preamble is usually the motive for enacting the statute, though the remedy which may be provided by the body of the Act may be and is usually extended beyond the cure of that evil. The preamble of an Act has often been held to be a key to the understanding of the statute, but has to be referred to or consulted to remove or solve any ambiguity or to fix the meaning of any words which may be capable of more than one interpretations. There is, therefore, no force in the argument of Mr. Aggarwal to the effect that any part of the Act which does not squarely fall within the four corners of the mischief sought to be prevented according to the working used in the preamble, should be struck down as being *ultra vires* or unconstitutional. Moreover, in the instant case, the preamble provides for making special measures to ensure not only public safety, but "public interest" and also "for matters connected therewith". The scope of the preamble in this case is also wide enough to include the impugned part of section 29 of the Act.

The next argument advanced on behalf of the petitioner is that the Land Acquisition Collector, Gurdaspur, had no jurisdiction to requisition the property under section 29 of the Act, inasmuch as he fell under a category which is distinct from "Collectors" particularly when this matter is viewed with reference to the notification under section 40 of the Act, wherein certain powers have been delegated to "all Land Acquisition Collectors" etc., and certain other powers including those under section 29 of the Act have been delegated to "all Collectors", etc. There is nothing in this argument. Collector is a genus of which the Land Acquisition Collector is one of the species. Whereas the powers under section 29 of the Act can be exercised by any Collector including a Land Acquisition Collector, powers conferred on Land Acquisition Collector, cannot be exercised by any Collector who has not been notified to be a Land Acquisition Collector under section 3 of the Land Acquisition Act or any other provision of law. I, therefore, hold that the Land Acquisition Collector fell within the expression "Collector" as used in the notification (Annexure 'B').

It was then contended that the impugned order of requisition is liable to be set aside as it is violative of the mandatory requirements of sub-section (3) of Section 29 of the Act. The said sub-section reads as follows :—

> "(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond

the period for which such property is required for any of the purposes mentioned in that sub-section."

The argument of Mr. Aggarwal is that according to a proper construction of the above-quoted provision, it is the duty of the requisitioning authority to mention in the order of requisition the precise period for which the property in question is sought to be taken over. I regret I am unable to agree with this contention. All that sub-section (3) envisages is that no property should be kept under requisition after the purpose for which it is requisitioned has ceased to exist or come to an end. The Act does not provide for any requirement of mentioning in the order, the period for which a particular property is being requisitioned. In the nature of things, it does not appear to be possible to insist on such a requirement in every case in the absence of a statutory provision to that effect.

The last argument on which great emphasis has been laid by counsel is that the petitioner is a displaced person who spent a large amount of money on purchasing the shop for carrying on his own business, that other vacant shops were available in the locality, that another shop had in fact been taken over by the Government after about two months of the impugned order, that the shop of Messrs Banshi Ram Roshan Lal (which was the subject-matter of C.W. 1738 of 1963) has been derequisitioned and that whereas the Government has been asking the Municipal Committees under section 176-A of the Punjab Municipal Act to build and let out shops to displaced persons in order to rehabilitate them, it is strange that in this particular case, the petitioner is sought to be deprived of his shop so as to displace him in violation of the provisions of section 44 of the Act, which are in the following terms :—

"44. *Ordinary avocations of life to be interfered with as little as possible* :—Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence."

In my opinion, section 44 of the Act cannot and is not intended to control the jurisdiction of the appropriate authority under section 29, but is merely for the guidance of the authorities and contains principles which are otherwise well-known and have always been

recognised in all civilised system of modern jurisprudence. It is not for this Court to decide as to how many consumers stores were necessary to be provided in the city in question at the relevant time and at what particular places. The opinion and decision of the relevant authority in that respect is final and, as stated above, in the absence of definite charge of *mala fides*, cannot be interefered with by this Court in proceedings under Article 226 of the Constitution.

Mr. Kartar Singh Kwatra, the learned Deputy Advocate-General, has, however, assured the Court that though it may not be possible for the Court to interfere with the impugned order on the grounds suggested by Mr. Aggarwal, he would advise the Government to consider the question of there being still any need for depriving the petitioner of his shop when some alternative arrangement has possibly been made during the course of last three years. I have no doubt that the State Government will look into this aspect of the matter, before actually dispossessing the petitioner, in consonance with the principles laid down in section 44 of the Act.

At this stage Mr. Aggarwal has submitted that he wants to add an argument to the effect that notification under Section 40 of the Act is invalid as it suffers from excessive delegation, inasmuch as all the powers of the State Government or of the Central Government have been delegated to all the Collectors in the States, without any guiding principles having been laid down for the exercise of their discretion under section 29 of the Act. The entire authority of the Government under section 29 of the Act can be delegated to any authority in exercise of the statutory powers of the Government under Section 40 of the Act, and in the absence of any restrictions laid down in the notification, no fault can be found in the delegation of the entire powers of the Government under that section. I do not, therefore, find any force in this additional argument of counsel.

No other point has been urged before me in this case. The writ petition, therefore, fails and is dismissed, but without any order as to costs.

R. N. M.