

**(1951) 02 BOM CK 0001**  
**In the Bombay High Court**  
**Case No : Civ. Application No. 1507 of 1950**

Alarakhia Somijee

APPELLANT

Vs

Collector of Nasik

RESPONDENT

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**Date of Decision :** 13-02-1951

**Acts Referred:**

Bombay Land Requisition Act, 1948 — Section 5, 5(1), 5(2)  
Constitution of India, 1950 — Article 226

**Citation :** AIR 1951 Bom 131 : (1951) 53 BOMLR 369 : (1952) ILR (Bom) 79

**Hon'ble Judges :** Chagla, C.J.;Gajendragadkar, J

**Bench :** Division Bench

**Advocate :** V. Taraporewalla and Mahimtura and Co, for the Appellant; C.K. Daphtary, General and B.G. Thakore, Addl. Asst. Govt. Pleader for H.M. Choksi, Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Chagla, C.J.—By this petn. the petnr. challenges an order of requisition made on 24-8-1950, by the Collector of Nasik. The ground for requisitioning the premises of the petnr., who was a tenant of these premises, was that they had not been occupied for residential purposes for a continuous period of six months by the tenant. The main ground on which the order is challenged is that it is a quasi-judicial order that the petnr. was not heard in his defence & that in the inquiry contemplated by Section 5(2) the rules of natural justice were not observed.

2. Now, the main question that falls for determination is whether the order which is made u/s 5 (1) is a judicial or a quasi-judicial order. Section 5 (2) provides:

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

conclusive evidence that the owner, landlord or tenant has not so resided."

Mr. Taraporewalla's contention on behalf of the petitioner is that before an order of requisition can be made u/s 8 (1) an objective fact has to be determined u/s 5 (2) & what is more, that objective fact has to be determined after the holding of an inquiry by Govt. Mr. Taraporewalla says that it is incumbent upon Govt, to hold an inquiry & the inquiry that the Govt. must hold is a judicial or a quasi-judicial inquiry & therefore, the rules of natural justice must apply to such an inquiry, & inasmuch as the petnr. has not been given an opportunity to make a representation in support of his own case, the rules of natural justice have been violated in this case. We have now an authoritative ruling on the question as to what orders constitute administrative orders & what orders constitute judicial or quasi-judicial orders by the recent decision of the S. C. in *Province of Bombay Vs. Kusaldas S. Advani and Others*, . It will be remembered that this H. C. took the view that when power is given to an executive officer, to affect the rights of subjects & the statute provides the determination of an objective fact before the power could be exercised by that officer then the order made by him was a judicial or a quasi-judicial order. This view has now been rejected by the majority of the Judges of the S. C. The learned Chief Justice of India points out in his judgment that the conditions laid down by Lord Justice Slesser in his judgment in *Rex. v. London County Council; Entertainments Protection Association, Ex parte* (1931) 2 K. B. 215: 100 L. J. K. B. 760 correctly bring out the distinction between a judicial or quasi-judicial decision on the one hand & ministerial decision on the other, & these four conditions are: wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects & (3) having the duty to act judicially, (4) act in excess of their legal authority--a writ of certiorari may issue. Now, in this case the first two conditions are satisfied & we will assume that the fourth condition exists in favour of the subject. The question is whether the third condition is satisfied, viz. whether the Govt. had the duty to act judicially. I take it "duty" means a statutory obligation, an obligation which could be found in the legislation which confers the power upon the authority to affect the rights of subjects. Further on in his judgment the learned Chief Justice of India at p, 6 says:

"It seems to me that the true position is that when the law under which the authority is making a decision itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed."

Therefore, again the learned Chief Justice emphasises the fact that the law itself must provide that in coming to a conclusion or a decision the authority making the order must approach the subject in a judicial manner: further, that the recognised principles, which I again assume are the rules of natural justice, must be required to be followed by the statute itself. Now with these observations of the learned Chief Justice of India in mind let us approach Section 5 (2) & decide

whether an obligation has been cast upon Govt. to hold the inquiry contemplated by that sub-section in a judicial manner. In our opinion, the very expression used by the Legislature that the enquiry to be held by the Govt. shall be such as it deems fit clearly negatives the suggestion that the inquiry is to be a judicial inquiry. The nature, the extent, the scope of the inquiry is to be determined by Govt. How can it then be said that there is a statutory requirement that Govt. should observe the rules of natural justice in holding such an inquiry? Mr. Taraporewalla points out, & rightly points out, the grave consequences of taking this view of Section 5 (2). He says that a man might be deprived of his property without being heard & on an ex parte decision. We have had occasion in the past to point out what wide powers have been conferred by Govt. upon executive officers & we have also drawn the attention of Govt. to the necessity of supplying some judicial corrective to important & far-reaching decisions given by executive officers. That is a matter of policy with which we are not concerned. We can only draw the attention of the Govt. to the hardship that is likely to be caused to those who have been deprived of their property. The result, therefore, is that in our opinion the order made by the Collector of Nasik u/s 5 (1) was an administrative order & therefore, no writ of certiorari can lie to correct that order.

3. The result is the petn. fails & must be dismissed with costs.