
(1992) 08 BOM CK 0004

In the Bombay High Court

Case No : Appeal From Order No. 67 of 1987

G.J. Kanga and Another

APPELLANT

Vs

S.S. Basha

RESPONDENT

Date of Decision : 19-08-1992

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 351, 56, 68

Citation : (1992) 3 BomCR 582 : (1993) 95 BOMLR 632

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : K.K. Singhvi and Hemrajan, for the Appellant; Joaquim Reis, Shashipal Shankar, Yamini Manga and Cariton Gracious, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Agarwal, J.—Whether the Municipal Commissioner can set aside an order passed by the Deputy Municipal Commissioner dropping action of demolition u/s 351 of the Bombay Municipal Corporation Act (hereinafter referred to as the "Act") is the question posed for my decision.

2. The appellants are the original defendants who are the Municipal Corporation of Greater Bombay and its Administrator and the respondent is the original plaintiff. The present appeal seeks to challenge a judgment and order dated 17/21/22nd October, 1986 passed by His Honour Judge Shri R.J. Purandare in Notice of Motion No. 6232 dated 12th December, 1984 in Suit No. 7851 of 1984 whereby the Notice of Motion taken out by the plaintiff for interim injunction restraining the defendants from acting in pursuance of the decision of the Additional Municipal Commissioner dated 3rd December, 1984 and from demolishing the suit shop belonging to the plaintiff was made absolute. The shop in dispute is known as Bombay Arts situate at 274, S.V. Road, Bandra (West), Bombay 400 050. A few facts leading to the passing of the impugned order are as follows :

3. On 21st April, 1982 the Inspector of the defendants found certain construction in progress. A stop work notice dated 24th April, 1982 was, therefore, issued u/s 354-A of the Bombay Municipal Corporation Act. The plaintiff vide his reply dated 29th April, 1982 stated that he was merely replacing the C.P. sheets of his shed. On 6th September, 1982 the defendants issued a notice u/s 351 of the Act calling upon the plaintiff to show cause why the suit structure should not be demolished. The plaintiff on 13th September, 1982 sent his reply. A hearing was given to the plaintiff by the Deputy Municipal Commissioner during which the plaintiff submitted a copy of the City Survey sheet obtained from the office of the Inspector of Land Records. During the inquiry one Shri Keer purporting to be an officer of the Bombay Suburban District was examined for the purpose of deposing to the authenticity of the copy of the survey sheet relied upon by the plaintiff. Ultimately by an order passed by the Deputy Municipal Commissioner on 24th August, 1983 the action u/s 351 of the Act was dropped and the plaintiff was directed to pay certain amounts by way of penalty for construction without Municipal permission and towards regularisation fees. The decision was communicated to the plaintiff by the Ward Officer and the plaintiff thereafter paid the penalty and the regularisation fees.

4. On 31st October, 1983 a complaint was lodged by one Shri Ramdas Naik, the then Corroborator in respect of the structure of the plaintiff. Shri Soman, the then Additional Commissioner perused the file in respect of the inquiry and found that fraud had been perpetrated in the inquiry before the Deputy Municipal Commissioner. He found that Shri Keer who had been examined in the proceedings had been dismissed from service of the Bombay Suburban District way back on 16th August, 1977. The Additional Commissioner, therefore, issued a show cause notice dated 20th September, 1984 calling upon the plaintiff to show cause why the order dated 24th August, 1983 passed by the Deputy Municipal Commissioner should not be cancelled and why the structure of the plaintiff should not be demolished u/s 351 of the Act. The plaintiff vide his reply dated 3rd October, 1984, inter alia, challenged the authority of the Additional Municipal Commissioner to review the order of the Deputy Municipal Commissioner. According to the plaintiff, the order of the Deputy Municipal Commissioner had become final. The Deputy Municipal commissioner after perusing the relevant record had come to the conclusion that the structure in question was in existence prior to 1962. The Deputy Municipal Commissioner directed the plaintiff to pay Rs. 1000/- for carrying out repairs without prior permission. The said amount of Rs. 1000/- was paid by the plaintiff and the same was accepted by the defendants. The plaintiff was asked to pay the assessment for the years 1962 to 1981 and though the plaintiff contended that the same had already been paid, the plaintiff paid a sum of Rs. 12,125/- and the said amount was accepted and acknowledged by the defendants. The defendants were, therefore, estopped from reagitating the matter again. The plaintiff alleged that the intended action on the part of the Additional Municipal Commissioner are prompted by letter written by Shri Ramdas Naik whom himself by his letter dated

21st September, 1984 stated not to take any action. The plaintiff reasserted that the structure in question was not unauthorised. He pointed out that it was not he who had called Shri Keer from the Survey Department but it was the Dy. Municipal Commissioner who had called him. In fact the plaintiff was not even present when Shri Keer was examined before the Dy. Municipal Commissioner. He learnt about passing of the order by Dy. Municipal Corporation only when he was intimated about it by the Ward Officer. In substance the plaintiff alleged that the structure in question was in existence since 1962 and the same was not liable for action u/s 351 of the Act.

5. By an order dated 3rd December, 1984 the Additional Municipal Commissioner was pleased to set aside the order of the Dy. Municipal Commissioner and the amount of Rs. 1000/- recovered towards penalty and Rs. 12,125/- towards assessment dues were directed to be refunded to the plaintiff. The Additional Municipal Commissioner further passed order to demolish the structure which was the subject matter of the notice dated 6th September, 1982 as the said structure was not proved to be an authorised structure which was in existence since 1962.

6. The plaintiff, on 12th December, 1984, file in the City Civil Court, the instant Suit No. 7851 of 1984 for a declaration that the order of the Additional Municipal Commissioner dated 3rd December, 1984 is illegal, null and void and for a perpetual injunction from acting in pursuance of the said order and from in any manner demolishing the structure of the plaintiff.

7. In the suit, the plaintiff took out Notice of Motion No. 6232 of 1984 for interim reliefs restraining the defendants from acting in pursuance of the aforesaid letter dated 3rd December, 1984 and from demolishing the structure belonging to the plaintiff. After the pleadings of the parties in the Notice of Motion were filed and the rival contentions raised by the contending parties were heard, the learned Judge of the Trial Court, by the impugned judgment and order dated 17th/22nd October, 1986 was pleased to confirm and ad-interim order of injunction pending the hearing and final disposal of the suit. The learned Judge, inter alia, has held that the Additional Municipal Commissioner had no authority to review the order of the Dy. Municipal Commissioner and that the proceedings conducted before the Dy. Municipal Commissioner were not tainted by misrepresentation or fraud on the part of the plaintiff. On merits he found that the structure in question is in existence since prior to 1962 and is, therefore, not un-authorised. Consequently, the same is not liable for being demolished u/s 351 of the Act. Consequent upon the said findings the Notice of Motion taken out by the plaintiff was made absolute. Taking exception to the above judgment and order the defendants have preferred the present appeal.

8. Shri K.K. Singhvi, the learned Counsel appearing in support of the appeal submitted that the order passed by the Dy. Municipal Commissioner is an administrative order and not a quasi judicial order. According to him, the process leading to the decision may have entailed quasi judicial functions but what

followed after following the quasi judicial functions is the passing of an administrative order. According to Shri Singhvi the order of the Dy. Municipal Commissioner being an administrative order can always be reviewed. Shri Singhvi next contended that the Addl. Municipal Commissioner found that the fraud had been practiced before the Dy. Municipal Commissioner. The plaintiff had produced a photostate copy of a true copy of the city survey sheet. It was got produced by an Inspector of Land Records Shri Keer who is found to have been dismissed from service way back in the year 1977. If the order of the Dy. Municipal Commissioner is found to have been procured by practising fraud, the same can always be reviewed by the additional Municipal Commissioner. Shri Singhvi placed reliance on the case of *Shiam Lal v. Ram Saroop*, reported in 1971 *Allahabad Law Journal* 1349. The case related to the conduct of election to membership of Roorkee Municipal Board. The constituency was a double member constituency where one seat was reserved for scheduled caste candidates while the other was a general seat. Out of the six contesting candidates Chaman Lal, Ram Swaroop and Lal Singh were scheduled caste candidates who contested for the reserved seat while the remaining three contested for the general seat. The Assistant Returning Officer declared Chaman Lal and Ram Swaroop, both belonging to the scheduled caste to be elected for the membership of the Board. The petitioner Shiam Lal raised an objection before the Assistant Returning Officer that he had made a mistake in declaring the result of the reserved seat first and then declaring the result of the general seat. He claimed declaration in his favour on the basis of the highest number of votes polled by him amongst the contesting candidates for the general seats. The Assistant Returning Officer rejected the petitioner's objection. The petitioner thereupon challenged the validity of the election of Ram Swarup, a scheduled caste candidate, for the seat reserved for the general candidates.

9. The learned Counsel for the petitioner in the above case urged that the Assistant Returning Officer committed an error apparent on the face of record in declaring Chaman Lal and Ram Swarup as duly elected members from Ward No. 6. According to the learned Counsel, mandatory provisions contained in Paragraph 68 of the Order regulating procedure for declaration of the result was not followed as a result of which Ram Swaroop, who had obtained only 593 votes was declared elected. The learned Counsel further urged that the Assistant Returning Officer in his order dated 1st June, 1971 admitted that he had committed a mistake but even then he refused to correct that mistake thereby he failed to exercise jurisdiction vested in him by law. The election of Ram Swarup, according to the learned Counsel for the petitioner is null and void and cannot be upheld on any grounds whatsoever. Justice K.N. Singh in the above case observed as under :

"Learned Counsel for the petitioner has urged that the Assistant Returning Officer had jurisdiction to correct the mistakes which was obvious on its face and in refusing to correct the same the Assistant Returning Officer failed to exercise the jurisdiction vested in him by law. There is considerable force in this contention.

The Assistant Returning Officer in conducting the counting and declaring the result of the election was performing an administrative function. It is a well established principle that an authority discharging administrative functions has power to review its orders. No specific power is required to be conferred on such an authority for this purpose. The provisions of section 21 of the General Clauses Act confer ample jurisdiction on an administrative authority to amend, vary or rescind its orders. The principle laid down in section 21 of the General Clauses Act is of general application and there is no reason why the Assistant Returning Officer could not review his order passed by him under a mistake. In case of an authority discharging quasi-judicial functions, different considerations may arise, as no quasi-judicial authority has any inherent power to review its order unless so empowered expressly or impliedly by an Act or Rules. But an Administrative Authority exercising administrative powers has full jurisdiction to correct mistakes committed by it suo-mote or at the instance of any party. Besides, that whenever a mistake is committed by an administrative authority, it would be in public interest to correct the same as expeditiously as possible in order to avoid perpetration of injustice."

Underlines are provided for emphasising the argument of Shri Singhvi.

10. In my judgment, the above case rather than supporting the contention of Shri Singhvi goes against him. It is clear that the above case related to an exercise of an administrative function pure and simple. The election impugned in the petition was in respect of a double member constituency. One seat was reserved for the scheduled caste category while the other was a general seat. The Assistant Returning Officer had committed an obvious mistake in first declaring the result of a scheduled caste candidate. The result was that the two candidates belonging to the scheduled caste were declared elected, one for reserved category and the other for the general category. This was a mistake committed in respect of an administrative function. No discretion was conferred on the Assistant Returning Officer. It was in these circumstances, that Shri K.N. Singh, J., of the Allahabad High Court rendered the above decision.

11. The question which is posed for my determination is whether the order passed by the Dy. Municipal Commissioner is an administrative order or a quasi-judicial order and whether the said order of the Dy. Municipal Commissioner is liable to be reviewed, not by the Dy. Municipal Commissioner himself but by the Additional Municipal Commissioner.

12. The first man who uttered the word "quasi-judicial" may not be discovered readily, as it has been born in course of the natural evolution of the law. Originally, any authority, other than the courts was described as "administrative" and, when it was required to make a determination affecting the rights of parties, it was stated, in the earlier cases, that it must proceed or act "judicially".

13. But it was soon realised that an administrative authority, even when it has to decide a question according to judicial forms, could not be described as

performing a "judicial" function, because that was an attribute reserved exclusively for the courts of law, the regular judicial tribunals of the realm. Jurists were thus led to invent the word "quasi-judicial", the word "quasi" meaning literally, "not exactly". It is common-place to state that an authority is described as a quasi-judicial because it has some of the attributes or trappings of a "Court" but not all. The first public use of the word "quasi-judicial" appears in the report of the Donoughmore Committee on Minister's powers, (1932) Cmd. 4060 at which the Committee analysed the characteristics of a "true judicial decision" and summed up the characteristics the presence or absence of which stamped a decision as "quasi-judicial".

14. A quasi-judicial function is one which stands midway between a judicial and an administrative function.

I. On the one hand, it differs from a purely administrative act in the following respects :

(a) A purely administrative act does not decide any rights of private parties though it may affect them. But a quasi-judicial act determines private rights with a binding force. *R. v. Dublin Corpn.*, (1878) 2 Ir. 371 : *R. v. Local Govt. Bd.*, (1902) 2 I.R. 349.

(b) An administrative act may be non-statutory and does not necessarily require statutory authority. But a body is called quasi-judicial only when it has statutory authority to discharge the function in question.

(c) A purely administrative body has no procedural obligation, unless it is specifically imposed by state. *E.G. Frankin v. Minister of Town & Country Planning*, reported in (1947) 2 All E.R. 289 ; *University of Celyon v. Fernande*, reported in (1960) 1 All E.R. 631 P.C. ; *Ridge v. Baldwin*, reported in (1963) 2 All E.R. 66 . But as soon as function is held to be "quasi-judicial", the law requires that the rules of natural justice must be observed in discharging that function. *Union of India (UOI) Vs. T.R. Varma*, .

(d) While an administrative or ministerial function may be delegated, a judicial or quasi-judicial function cannot, in the absence of express statutory provision, be delegated, *Vine v. National Dock Labour Bd.*, reported in (1959) 3 All E.R. 393 H.L.

(e) What distinguished a judicial from an administrative decision is that the decision of a Court is objective, i.e. arrived at by the application of fixed standards; even the discretion which a Court of Justice is allowed to exercise in some particular cases, has to be exercised in accordance with certain fixed principles. *Sharp v. Wakefield*, reported in (1891) A.C. 173. On the other hand, the decisions of administrative authorities are usually subjective in the sense that they are reached without applying any standard at all, except that of expediency or policy. *Labour Relations Board v. J.E.I. Works*, reported in (1949) A.C. 134.

15. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of

justice; when there is no such obligation, the decision is called "purely administrative". *Ridge v. Baldwin*, reported in (1963)2 All E.R. 66.

16. It follows from the above that the quasi-judicial obligation to follow the principles of natural justice attaches to a function or the exercise of a power; and much of confusion would arise if it is supposed to attach to an office. *Ridge v. Baldwin*, (supra). It is possible for judicial officer to pass a particular order which is ministerial and for an administrative officer to make an order or arrive at a decision which is quasi-judicial, *Errington v. Minister of Health*, reported in (1935)1 K.B. 249 C.A.

17. Put otherwise, an administrative authority may be under a duty to proceed quasi-judicially at a particular stage of the proceedings before him, e.g., in making an inquiry or hearing objections to a proposal, *Robinson v. Minister of Town & Country Planning*, reported in (1947)1 All E.R. 851. Though the ultimate decision may be administrative, being governed by subjective or policy considerations. *R. v. Manchester Legal Aid Committee*, reported in (1952)1 All E.R. 480; *R. v. Registrar of Building Societies*, (1960)2 All E.R. 549; *Johnson v. Minister of Health*, reported in (1947)2 All E.R. 395.

18. Even a Judge may have administrative functions. Nor is an order necessarily administrative simply because it is made in the course of administrative of the assets of a company. *Shankarlal v. Shankarlal*, reported in AIR 1965 S.C. 506. Broadly speaking, an order is administrative if it is directed to the regulation or supervision of matter as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are subject of adjudication before the Court. Another test is whether the determination, even though discretionary, is to be made on a subjective or an objective basis. *Shankarlal v. Shankarlal*, (supra). A subjective determination is contrary to the judicial approach. *Sachu Singh v. Delhi Administration*, reported in AIR 1965 S.C. 91.

19. The leading English decision on this point is *Errington v. Minister of Health* (supra) where it was held that though ordinarily the Minister's function of confirming a clearance order made by a local authority was administrative, it became quasi-judicial if objections were made by any person, in which case, the minister must, before making his order, hear both the local authority as well as the objector and must not hear either of the parties in the absence of the other. The principle has been explained in the case of *Heggard v. Worsborough U.D.C.*, reported in (1962)1 All E.R. 468 as follows :

"Where two parties are in dispute, and the obligation of some person or body is to decide equitably between the competing claims, each claim must receive consideration and each claimant must.....be invited not merely left so that if he chooses to take the initiative he can do it to put forward the material in the form of documents or accounts which he desires to be considered and an opportunity must be afforded to him of making comment on material of the same

character which has been put forward by rival claimant....."

20. But the lis, if it is essential for the purposes, need not be between two private litigants as in an action at law, but one of the parties in a quasi-judicial proceedings may be the statutory authority itself who is vested with the power to adjudicate the dispute. *Johnson v. Minister of Health*, (1947) 2 All E.R. 395 C.A.; *R. v. Manchester Legal Aid Committee*, (1952)1 All E.R. 480.

A. Of course, where there is a lis inter part, a quasi-judicial obligation will be inferred, if the Legislature has not excluded it expressly. *R. v. Brighton Rent Tribunal*, reported in (1950)1 All E.R. 946 . This view was followed by Bhagwati, J., in the (*Express News-Paper*), case reported in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, with respect to the wage Board under the *Working Journalists (Conditions of Service) Act, 1955*, in these words -

"If the functions performed by the Wage Board would thus consist of the determination of the issues as between a proposition and an opposition on data and materials gathered by the Board in answer to the questionnaire issued to all parties interested and the evidence led before it, there is no doubt that there would be imported in the proceedings of the Wage Board a duty to act judicially and the functions performed by the Wage Board would be quasi-judicial in character."

B. But there are many other cases where a quasi-judicial duty has been implied, in case of quasi-lis, from the nature of the function itself, though the statute was completely silent about the duty to hear or to consider objections.

It is not two parties which is essential; what is essential are---

(a) that there is a "proposition" or "opposition" on a question affecting the civil rights of party;

(b) that the relevant statutory provision does not empower the authority to determine the question solely on his subjective satisfaction or on considerations of policy; mere silence of the statute as to the procedure to be followed is not enough in a matter which involves civil consequences. *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, .

Once the above tests are satisfied the question to be decided quasi-judicially may arise even without the consent of the individual who is interested. *R. v. Westminster Assessment Committee*, reported in (1941)1 K.B. 53 C.A.

21. The numerous new administrative authorities, both local and central, which came into being in the nineteenth and twentieth centuries opened up a large new territory for the principles of natural justice. The courts saw no reason for permitting these new authorities to adopt any less fair procedure than had previously been allowed to the justices of the peace. The character of the authority was not what mattered; what matters was the character of the power

exercised. If it adversely affected legal rights or interests, it must be exercised fairly.

22. One case of 1863 is especially noteworthy : *Cooper v. Wandsworth Board of Works*, reported in (1863)14 C.B. 180. Under an Act of 1855 it was provided that no one might put up a building in London without giving seven days" notice to the local board of works; and that if any one did so, the board might have the building demolished. A builder nevertheless began to erect a house in Wandsworth without having given due notice and when his building had reached the second story the board of works sent men late in the evening who demolished it. The board did exactly what the Act said they might do in exactly the circumstances in which the Act said they might do it. And their action was, of course, purely administrative. Nevertheless, the builder brought a successful action for damages for the injury to his building, merely on the ground that the board had no power to act without first asking him what he had to say for himself. Erle C.J., said :

"I think the board ought to have given notice to the plaintiff and to have allowed him to be heard. The default in sending notice to the board of the intention to build, is a default which may be explained. There may be a great many excuses for the apparent default. The party may have intended to conform to the law. He may have actually conformed.....though by accident his notice may have miscarriedI cannot conceive any harm that could happen to the district board from hearing the party before they subjected him to a loss so serious as the demolition of his house; but I can conceive a great many advantages which might arise in the way of public order, in the way of doing substantial justice, and in the way of fulfilling the purposes of the statute, by the restriction which we put upon them, that they should hear the party before they inflict upon him such a heavy loss. I fully agree that the legislature intended to give the district board very large powers indeed : but the qualification I speak of is one which has been recognised to the full extent. It has been said that the principleis limited to a judicial proceeding, and that a district board ordering a house to be pulled down cannot be said to be doing a judicial act.....I do not quite agree with that;I think the appeal clause would evidently indicate that many exercises of the power of a district board would be in the nature of judicial proceedings."

Willes, J., said :

"I am of the same opinion. I apprehend that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects, is bound to give such subject an opportunity of being heard before it proceeds: and that the rule is of universal application, and founded on the plain test principles of justice. Now, is the board in the present case such a tribunal? I, apprehend it clear is"

And Byles, J., also said :

"It seems to me that the board are wrong whether they acted judicially or

ministerially. I conceive they acted judicially, because they had to determine the offence, and they had to apportion the punishment as well as the remedy. That being so, a long course of decisions beginning with Dr. Bentley's case, and ending with some very recent cases, establish that, although there are no positive words in a statute, requiring that they party shall be heard, yet the justice of the common-law will supply the omission on the legislature."

23. How wide is the right to a fair hearing is illustrated by many later decisions. Whether the case concerned the cancellation of a Crown lease in Queensland, *Smith v. R.*, (1878) 3 AC 614 the condemnation of a house in Manchester as unfit for human habitation, *Hall v. Manchester Corporation*, reported in (1915) 84 L.J. Ch. 732, the compulsory transfer of indentured labour in Trinidad, *De verteuil v. Kpassa*, reported in (1918) A.C. 557 or the refusal of a pension to Canadian police officer obliged to resign, *Lapointe v. L'Association de Bienfaisance et de Retraite de la Police de Montreal*, reported in (1906) A.C. 535 the Court uniformly insisted that the power could be validly exercised only after a fair hearing of the party adversely affected. In the Manchester case Lord Parker said in the House of Lords :

"The question then arises as to whether the power entrusted to the corporation is purely administrative or is a judicial power. On this point I have had considerable doubt, because there is no provision in the Act for hearing any party interested, or for receiving evidence, nor is there any provision for an appeal. But inasmuch as the order of the corporation under the section entails a penalty on persons who disregard it, I think, on the whole, that the corporation's power is in the nature of a judicial power and that consequently any party interested has a right to be heard, and, if he desires it, to adduce evidence, and in case the power is abused he could protect himself by certiorari or injunction."

24. In the case of *R. v. Glamorganshire Inhabitants*, reported in (1700) 1 Ld. R. 580, it was observed :

"For this Court will examine the proceedings of all jurisdiction erected by Act of Parliament. And if they, under pretence of such Act, proceed to encroach jurisdiction to themselves greater than the Act warrants, this Court will send a certiorari to them, to have their proceedings returned here."

This was restated by *Atkin, L.J.*, in the case reported in (1924) 1 K.B. 205, in the following terms and which was approved in many later cases:

"Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

25. The first aspect which need to be emphasized is that the term "administrative" is used to denote those functions of the administration where fairness or natural justice is not applicable. Such a function is discharged by the

administration without giving an opportunity to the concerned party to have his say against a proposed action. May be, in some situations, one or two elements of the hearing procedure may be present, but the function may still be regarded as administrative and not adjudicatory in nature and thus free from the over-all constraints of natural justice or fairness. For example, an administrative order cannot be invalidated on the ground of absence of reasons. It is not essential, though desirable, for an administrative order to be a reasoned order unless the relevant statute specifically enjoins such a requirement. The reason underlying this judicial stance is that the present government has to work through innumerable administrative agencies having a wide functional sphere and if every administrative order is required to give reasons it will bring the governmental machinery to a standstill.

26. It would thus appear that an administrative agency performs : i) administrative functions. ii) quasi-judicial functions and iii) judicial functions. In quasi-judicial function there is always a lis between the authority and a private party. The orders passed after following the principles of natural justice are popularly termed as a quasi-judicial orders. These orders normally bring about civil consequences. Naturally, the principles of natural justice have to be followed before passing of quasi-judicial orders. Administrative functions, on the other hand, are purely ministerial functions where no discretion is conferred on the authority. In judicial and quasi-judicial functions there always lies an area of discretion being exercised by the administrative agency. Where the administrative agency performs purely an administrative function where there is no discretion conferred, there lies always a power of review. However, as far as quasi-judicial and judicial functions are concerned, there can be no power of review by implication. The power of review has to be expressly provided for.

27. It will be useful to refer to the provisions to sections 56 and 68 of the Act. Section 56 in so far as is relevant for the present inquiry provides that the Dy. Commissioner shall be subordinate to the Commissioner and subject to his orders shall exercise such of the powers and such of the duties of the Commissioner as the Commissioner shall from time to time depute to him. Sub-section (1) of section 68 in so far as is relevant provides that, any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner by any of the sections, sub-section or clauses mentioned in sub-section (2) may be exercised, performed or discharged, under the Commissioner's control and subject to his revision and to such conditions and limitations, if any, as he shall think fit to prescribe, by any municipal officer whom the Commissioner generally or specially either by name or by virtue of office, empowers in writing in this behalf; and in each of the said sections, sub-sections and clauses the word "Commissioner" shall, to the extent to which any municipal officer is so empowered be deemed to include such officer.

28. It has to be noted that section 351 is not one of the sections mentioned in section 68 in which the functions of the Commissioner can be delegated to other

Municipal officers. It is further pertinent to note that the phrase which is found in section 68 "under the Commissioner's control and subject to his revision" and to such conditions and limitations, if any, as he shall think fit to prescribe" is conspicuously absent in section 56. A reading of section 56 would show that the decision of the Deputy Municipal Commissioner u/s 351 is performed by him as a Commissioner. These functions are not revisable by the Commissioner as is the case in respect of functions covered by section 68. It may be that the Deputy Municipal Commissioner is subordinate to the Commissioner and subject to his orders but these orders can only be in respect of the areas in which the Deputy Municipal Commissioner can exercise his powers, functions and duties. The Commissioner by his order fixes the areas within which different Deputy Municipal Commissioner can exercise the powers conferred on the Commissioner. He may depute different Deputy Municipal Commissioner for different Wards or localities. This, however, does not mean that the Commissioner is entitled to sit in appeal or in revision against the orders passed by the Deputy Municipal Commissioner.

29. In the case of Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary, , this is what the Supreme Court has observed :

"No question has been raised that any of the amendment is ultra vires so the words of section 68 must be reasonably construed. It goes without saying that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication permits it. In the present case the amendment of section 68 by inclusion of delegation of the functions of the Commissioner under sections 105-B to 105-E does indicate the intention that the judicial or quasi-judicial powers contained in Chapter VI-A were expressly intended to be delegated. To the delegation as such there can be no objection. What is objected to is the provision, both in section as well as in the order of delegation, that the exercise of the function is to be under "the Commissioner's control" and "subject to his revision". These words are really appropriate to a delegation of administrative functions where the control may be deeper than in judicial matters. In respect of judicial or quasi-judicial functions these words cannot of course bear the meaning which they bear in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate. What those words meant was that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate could take action or the period or during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate's duties was to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case. This is also the intention of section 68 as interpreted in the context of the several delegated powers. This is apparent from the fact that the order of the delegate amounts to an order by the Commissioner and is appealable as such. If it were not so the appeal to the Bombay City Civil Court

would be incompetent and the order could not be assailed. The order of the delegate was the order of the Commissioner and the control envisaged both in section 68 and the order of delegation was not their disposal. No allegation has been made that the Commissioner intervened in the decision of the case or improperly influenced it. In these circumstances, the order impugned in the appeal cannot be sustained."

30. It would thus be seen that even in the matter of delegation of powers u/s 68, the Commissioner cannot reserve upon himself the right to intervene to impose his own decision upon his delegate. Hence, even where section 68 speaks to the power of delegation subject to the Commissioner's control and revision, it was held that all that those words meant was that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate could take action or the period or time during which the power might be exercised. Hence, the power to decide by the delegate is not appealable or revisable by the Commissioner. This being the case in respect of the provisions u/s 68, the provisions of section 56 which do not contain the phrase "subject to his revision" cannot be construed as entitling the Commissioner to review or revise the orders passed by his delegate, in this case the Dy. Municipal Commissioner. In the case of Harbhajan Singh Vs. Karam Singh and Others, , the Supreme Court was concerned with the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. The question which was posed before the Supreme Court was whether an order made u/s 42 could be reviewed by the State Government. This is what the Supreme Court has held :

"There is no provision in the Act granting express power of review to the State Government with regard to an order made u/s 42 of the Act. In the absence of any such express power, it is manifest that the Director, Consolidation of Holdings, cannot review his previous order of 3rd April, 1958 dismissing the application of Harbhajan Singh u/s 42 of the Act. It follows therefore that the order of the Director dated 29th August, 1958 is ultra vires and without jurisdiction and the High Court was right in quashing that order by the grant of a writ under Art. 226 of the Constitution."

31. The Supreme Court in the above case has cited with approval the case of Anantharaju Shetty v. Appu Hegade, reported in AIR 1919 Madras page 244, wherein Justice Seshagiri Aiyer of the Madras High Court observed :

"It is settled law that a case is not open to appeal unless the statute gives such a right. The power to review must also be given by the statute. Prima facie a party who has obtained a decision is entitled to keep it unassailed, unless the Legislature had indicated the mode by which it can be set aside. A review is practically the hearing of an appeal by the same officer who decided the case. There is at least as good reason for saying that such power should not be exercised unless the statute gives it, as for saying that another tribunal should not hear an appeal from the Trial Court unless such a power is given to it by statute."

32. In the case of Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, , the Supreme Court observed as under :

"It is now well established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principle acts as a quasi judicial authority. The provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing the order and the order is a nullity.

"Further, it is well established that an alternative remedy is not an absolute bar to the maintainability of writ petition, when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. In the instant case, the Vice-Chancellor had no power of review and the exercise of such a power was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity; such an order could be challenged before the High Court by a petition under Article 226 of the Constitution and the High Court was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant u/s 68 of the U.P. State Universities Act."

33. The question to be decided is whether an order of demolition u/s 351 is an administrative order or a quasi-judicial order. In the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the Supreme Court observed :

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like India which is regulated and controlled by the rule of law it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

"With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new depotism, courts are gradually evolving the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power."

34. In the case of *Neelima Misra v. Harinder Kaur Paintal*, reported in : [1990]2SCR84 , this is what the Supreme Court observed :

".....we must, at the expense of some space, analyse the distinctions between quasi-judicial and administrative functions. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called "purely administrative" and there is no third category. This is what was meant by Lord Reid in *Ridge v. Baldwin* (supra) :

"In cases of the kind with which I have been dealing the Board of Workswas dealing with a single isolated case. It was not deciding, like a judge in a law suit, what were the rights of the persons before it. But it was deciding how he should be treated - something analogous to a judge's duty in imposing a penalty....."

So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter and to require it to observe the essentials of all proceedings of a judicial character the principles of natural justice. Sometimes the functions of a minister or department may also be of that character and then the rules of natural justice can apply in much the same way....."

Subba Rao, J., as he then was, speaking for this Court in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, , put it on a different emphasis :

"The concept of a quasi-judicial act implies that the act is not wholly judicial, it describes only a duty cast on the executive body or authority to conform to normal of judicial procedure in performing some acts in exercise of its executive power....."

Prof. Wade says :

"A judicial decision is made according to law. An administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice."

"An administrative order which involves civil consequences must be made

consistently with the rule expressed in the Latin maxim *audi alteram partem*. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, ."

35. Whether an order of demolition u/s 351 is an administrative order or a quasi-judicial order. It cannot be disputed that demolition results in serious civil consequences. It leads to loss and destruction of property entailing loss of money. It renders the occupiers homeless. It would, therefore, be futile to term the order an administrative order and the process leading to the order a quasi-judicial function. If I were to say, "you be hanged", can it be said that this is an administrative order and the trial leading to the order is a judicial or quasi-judicial process. Just as there is discretion in the matter of passing judicial orders so similarly there is discretion in the matter of passing orders u/s 351. A decision u/s 351 requires a decision whether the offending structure is authorised or unauthorised. Whether the whole of it or only a part of it is unauthorised, if unauthorised why is it unauthorised, whether it can be tolerated or whether it can be regularised. In my view, there lies a large area of discretion in the matter of passing orders u/s 351. An order u/s 351 leads to civil consequences, there is a large area of discretion in the matter of passing orders u/s 351, it is on this ground that the concerned Municipal authorities are required to follow the principles of natural justice. An order passed u/s 351, therefore, is a quasi-judicial order and it cannot be termed an administrative order. Hence, such an order is neither revisable nor open to review. Had the legislature intended to make those orders subject to appeal, revision or review, it would have so provided in specific terms. Provisions of appeal, revision or review cannot be inferred by implication. They have to be provided for in specific terms. The power of review as is understood in common parlance is the exercise of a power by the very officer who passed the order and not by his superior officer. An order can only be made appealable or revisable by a superior officer. Hence, in the absence of a specific provision in that behalf, I hold that the order u/s 351 is neither revisable nor reviewable.

36. There is one more ground why in the instant case the Additional Municipal Commissioner has no jurisdiction to review the order passed by the Dy. Municipal Commissioner. The order of the Dy. Municipal Commissioner dropping the action u/s 351 was passed on 24th August, 1983. A notice dated 20th September, 1984 was issued to show cause why the order of 24th August, 1983 should not be reviewed. The notice is issued after a period of one year of the passing of the order by the Dy. Municipal Commissioner. In the case of *Bhagwanji Bawanji Patel Vs. State of Gujarat and Another*, , the Gujarat High Court was concerned with the power of the State Government to review its own order in exercise of its

power u/s 211 of the Bombay Land Revenue Code, 1879. The Court observed :

".....there is no provision in the Land Revenue Code, whereby the State Government can review its own order already passed in exercise of its powers u/s 211 of the Land Revenue Code, and, therefore, if the contents of the letter dated 23-8-1960 can be taken as a decision so communicated in the matter, the remedy of the State Government u/s 211 would not survive. It may, if permissible in law, have recourse to a remedy by filing a suit in a Civil Court. But it cannot review its own order. No such powers are shown to have been in the State Government under the provisions of the Land Revenue Code."

37. In the instant case even if a suit were to have been filed by the Municipal Corporation, the same would be required to be filed within a period of one year which is a period of limitation provided under Article 100 of the Limitation Act. Hence, it would appear that period of one year had already elapsed between the passing of the order by the Dy. Municipal Commissioner and the show cause notice issued for setting aside the said order. By this time even the period of limitation for filing a suit for setting aside the order had elapsed. The order of the Addl. Municipal Commissioner, therefore, is without jurisdiction and bad in law on this ground also.

38. Having found that the order of the Addl. Municipal Commissioner is without jurisdiction and without the authority of law, it is really unnecessary to consider the merits of the claim of the plaintiff. Even on merits all that is required to be seen at this stage is whether the plaintiff has a prima facie case for the grant of interim reliefs claimed in the suit. In the plaint the plaintiff has averred that the suit shop has been in existence for the last many years and his father-in-law was in occupation of the suit shop since about the year 1960. He has stated that the shop has been assessed by the Corporation under assessment No. H-110(1-2). The plaintiff has produced before me the assessment receipts for the period 1982-83 and also for 1992-93. Both these receipts bear the No-H-110(1-2). Both these receipts recite that the structure in question is in existence prior to 1961-62. The plaintiff has also relied upon a letter dated 20th September 1982 addressed to him. It makes a reference to the extract of the inspection book in respect of the property in question. This letter also makes a reference to the same No. H-110(1-2). In my view, this is sufficient prima facie evidence adduced by the plaintiff to entitle him to the grant of interim reliefs pending the suit. The plaintiff has raised several other contentions in the suit. He has made averments in respect of the animosity the Addl. Municipal Commissioner had against the Dy. Municipal Commissioner after the retirement of latter. He has alleged that the order of the Addl. Municipal Commissioner is prompted by a certain Municipal Corporator. According to the plaintiff the order of the Addl. Municipal Commissioner is, therefore, tainted by mala fides. In my view those are matters which raise triable issues which will be required to be decided at the trial. In the circumstances I find that the plaintiff has made out a strong prima facie case for grant of interim reliefs claimed in the suit. Moreover, the balance of convenience

lies in his favour.

39. Looked at from any view of the matter the impugned order passed by the Trial Court granting interim reliefs to the plaintiff is liable to be maintained and the appeal filed by the defendants is liable to be dismissed. In the result the order dated 17th-22nd October, 1986 passed by His Honour Judge R.J. Purandare in Notice of Motion No. 6232 of 12th December, 1984 in Suit No. 7851 of 1984 of the City Civil Court is maintained and the appeal is dismissed. The defendants will pay the costs both of the Notice of Motion as also of this appeal to the plaintiff.