
(1959) 06 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 11 of 1959

Prabhat Chandra Deka

APPELLANT

Vs

K.C. Barua and Others

RESPONDENT

Date of Decision : 08-06-1959

Acts Referred:

Assam Land (Requisition and Acquisition) Act, 1948 — Section 18, 2, 3, 3(1), 3(2)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 21 Rule 90
Constitution of India, 1950 — Article 226

Citation : (1959) 06 GAU CK 0002

Hon'ble Judges : C.P. Sinha, C.J;H. Deka, J;G. Mehrotra, J

Bench : Full Bench

Advocate : S.K. Ghose, D.K. Sarma and J.P. Bhattacharjee, for the Appellant;
S.M. Lahiri, A.G., R.K. Goswami, Jr. Govt. Advocate, P.K. Lahiri, P.C. Dutta and
Sulaiman, for the Respondent

Final Decision : Allowed

Judgement

H. Deka, J.—This rule was issued on an application under Article 226 of the Constitution for an appropriate writ quashing the order of the State Government dated 5th December, 1958 and for restraining the operation of the order of the Deputy Commissioner, Kamrup dated 22nd December 1958, whereby the Land Acquisition Officer was asked to take steps to realise from the Petitioner the money already paid to him as compensation for acquisition of certain lands belonging to the Petitioner.

2. The facts shortly put are, that the Petitioner Prabhat Chandra Deka was the recorded proprietor and owner of 2 Kathas 13 Lechas of land covered by Kheraj Periodic Patta No. 867 within the Gauhati Municipal area. There is no dispute as to the title of the Petitioner to the land in question but there was some dispute as to the ownership of the houses standing thereon which question, however, is not very material for us to decide. The, Deputy Commissioner of Kamrup requisitioned the land measuring 2 Kathas 13 Lechas belonging to the Petitioner

by notification dated 30th August 1956 for the office of the District Transport Office Gauhati u/s 3(1) of the Assam Land (Requisition and Acquisition) Act 1948 (or Act XXV of 1948 which we might call "the Act" hereafter) and notices were served on the Petitioner as well as on his father Abhi Ram Deka, who is Respondent No. 4, and on the tenants living on the land.

The Respondent No. 4 raised an objection to the requisition which was rejected by the Deputy Commissioner and the land was subsequently acquired as provided u/s 4 of the Act by the Revenue Department Notification No. R.L.A. 38/57/3 dated 11th March 1957. The Collector gave his award on 19th August 1957 on the basis of this acquisition. Notices were thereafter served on the Petitioner and the occupants to give vacant possession of the acquired land. On being pressed by the Petitioner the compensation amounting to Rupees 43,040-25 nP, was paid to the Petitioner on 22nd August 1957 by a cheque.

3. On 20th September 1956 Respondent No. 4 Abhi Ram Deka addressed an objection petition to the Transport Minister of Assam objecting to the requisition of the land which was purported to be an appeal against the order of the Deputy Commissioner rejecting his objection to a notification issued u/s 3 of the Act. A similar objection petition was addressed to the Deputy Commissioner on 24th September 1956 which was rejected. It is alleged by the State Government that the Transport Minister directed the said appeal or objection petition by Abhi Ram Deka to the Deputy Commissioner of Kamrup for disposal by his order dated 29-4-57, but nothing material happened on that representation, nor is the copy of the order placed before us.

It is further alleged that after the acquisition of the land on 11-3-57, when an award was given by the Deputy Commissioner, Abhi Ram raised an objection as to the award and made an application on 17-9-57 to the Deputy Commissioner for a reference u/s 18 of the Land Acquisition Act, to which the Deputy Commissioner agreed and passed an order to that effect but before that order could be given effect to Abhi Ram made another representation to the Chief Minister on 18-2-58 objecting against the order of requisition and acquisition, who, it is presumed, directed a regular hearing of the matter on a review of the circumstances. And on 5-12-58 the State Government purporting to exercise the appellate powers passed the impugned order where by the requisition order was vacated and the Petitioner was asked to refund the amount that he received as compensation on the basis of the award, consequent to the acquisition of the land. The Petitioner's contention is that this order is without jurisdiction or is in excess of jurisdiction.

4. Two points primarily arise for our consideration on the contentions raised by the parties: first, as to whether there was a competent appeal on the basis of which the impugned order could have been passed and secondly, whether the order of 5-12-58 is an order within the jurisdiction or in a excess of the jurisdiction of the State Government. It may not be necessary for us to decide the first point in case we find the second point in favour of the Petitioner. The

second contention on behalf of the Petitioner is based on the ground that after the acquisition was completed u/s 4 of the Act, there was no scope for setting aside the act of requisition made u/s 3 of the said Act which expired by operation of law.

5. Section 4 of the Act runs as follows (material portions alone being quoted):

4(1) Where any land has been requisitioned u/s 3, the State Government may use or a deal with it in such manner as may appear to it to be expedient and may acquire such land by publishing in the official Gazette, a notice to the effect that the State Government has decided to acquire such land in pursuance of this section.

(2) Where a notice as aforesaid is published in the official Gazette the requisitioned land and premises shall on and from the beginning of that day on which the notice is so published vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end.

* * * *

Another point that has been argued on behalf of the Petitioner is that the State Government had jurisdiction to pass the impugned order, the order is wrong on the face of it or it contains an error of law apparent on the face of the record.

6. The learned Advocate General appearing on behalf of the State Government opposes the petition mainly on the ground that the order passed by the State Government is an administrative order and this Court has no jurisdiction to interfere under Article 226 of the Constitution. He further contended that since the appeal by Respondent No. 4 presented to the Transport Minister was filed within time as provided u/s 3(3) of the Act and since no formal order was passed by the State Government disposing of the appeal it was within competence of the State Government to revive the appeal and pass the impugned order. He argued that since the requisition order was vacated, the acquisition order must ipso facto fail. He further contended that the order passed in appeal was quite correct in the eye of law. The same argument was adopted by the learned Counsel appearing for Respondent No. 4.

7. It is mainly because of the contention raised by the learned Advocate General that the order passed by the appellate authority is an administrative order, that this matter was referred to the Special Bench, inasmuch as the learned Advocate General drew our attention to three or four cases decided by a Division Bench of this Court which held that the order in appeal passed u/s 3(3) of the Act was of the nature of an administrative order and not judicial or quasi-judicial.

8. Even if we assume for argument's sake that the order of the appellate authority was administrative in nature, but if it is passed in excess of jurisdiction or in direct violation of law, this Court is competent to issue a writ of Mandamus quashing the particular order or asking the State Government not to give effect to the same. The position is not disputed that if the High Court is satisfied that

the Government or any Government officer is acting contrary to statute, the court can interfere by a writ of Mandamus.

9. The first point that is of primary importance, as I have already indicated, is as to whether there was any scope for interference with the order of requisition after the acquisition was completed and duly notified. I have already quoted Sub-sections (1) and (2) of Section 4 of the Act which definitely provides under Sub-section (2) that after the notice of acquisition is published in the official Gazette, the requisitioned land and premises shall on and from the beginning of the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such is land shall end.

Therefore the moment the notice of acquisition is published, the property vests in the State Government free from all encumbrances. The requisition which was a temporary phase, no longer stands and there is no scope for vacating requisition as has been done in this case, in spite of showing that the acquisition had already been completed and at the moment the property in law belonged to the State Government. The learned Advocate General argued that the relation between the acquisition and requisition of the property is similar to as between a final decree and a preliminary decree in a mortgage suit and he has cited some rulings to show that even if no appeal is filed against a final decree, but the preliminary decree is varied or set aside in an appeal, the final decree would be accordingly altered. He has cited before us in this connection *Mt. Wahidunnissa v. Dip Narain Pershad* AIR 1916 Pat 370 (2) (FB), *Basawant Mallappa Neje Vs. Kallappa Virbhadrappa Kotiwale*, and *Taleb Ali and Another Vs. Abdul Aziz and Others*,

He had further pressed before us one of the decisions of this Court where we had held that acquisition u/s 4 of the Act is not valid unless there be requisition u/s 3 of the Act prior thereto. This point does not arise here and with due deference, we must say that the analogy between a final decree and a preliminary decree does not apply to acquisition and requisition under the Assam Act. The preliminary decree in a mortgage suit forms an integral part of the final decree, or in other words, the preliminary decree survives along with the final decree whereas the requisition and acquisition are two different operations provided under the Act which do not exist simultaneously.

The requisition itself might continue without merging into an acquisition for an indefinite period unless the State Government wants to acquire the land, but the preliminary decree in a mortgage suit has no independent existence apart from its finalisation, for the purpose of effectuating the decree. Therefore the analogy as argued by the learned Advocate General has no basis. The clear wordings of Section 4 to the effect that the period of requisition would end the moment the acquisition takes place distinctly indicate that the order vacating requisition at a date consequent to acquisition was clearly without legal effect and contrary to the wordings of the statute.

Accordingly the observation of the appellate authority in the impugned order to the effect that since the requisition u/s 3 had not been completed the subsequent acquisition u/s 4 of the Act was bad, was distinctly erroneous. On the other hand there was no scope for vacating the order of requisition which did not exist at the time the appellate order was passed. It is evident that a valid order of requisition existed at the time the acquisition took place and then it ceased. Further there was no provision for an appeal against an order of acquisition, which must be treated as final, under the Act.

Respondent No. 4 also acquiesced to this position and he raised an objection to the amount of compensation, which I have already indicated. This further bears corroboration from the order of the Land Acquisition Officer dated 26-12-57 wherein he stated that Abhi Ram Deka made an application on 19-9-57 praying that the matter might be referred u/s 8 of the Act to the proper court for just apportionment of the compensation.

10. We may incidentally decide here whether the order of 5-12-58 of the State Government can be supported on the ground set forth therein. The order it appears to us is a half-hearted one and does not seem to be based on a clear understanding of the law involved. The relevant observation in the order runs as follows:

Now the patta stands in the name of the son and in the Municipal Register the houses stand in the name of the father and the latter is residing there for many years before the requisition proceedings were started and used to realise rents from tenants and appropriate the same.

There is therefore no doubt that the father is either the sole owner or a joint owner along with the son of the houses standing on the land; under such circumstances, the Assam Act does not apply at all.

Possibly all that the appellate authority seems to convey by the words "the Assam Act does not apply" is that there could be no requisition of the property because of the proviso to Section 3(1) of "the Act, which is in the following words:

Provided that no land used for the purpose of religious worship or for charitable purposes and no building or part thereof wherein the owner has actually resided for a continuous period of one year immediately preceding the date of the order shall be requisitioned under this section.

The word "owner" is defined in the Act itself u/s 2(c) to mean "proprietor or patta holder and his co-sharer," but the evident finding is that Respondent No. 4 was neither a proprietor nor patta-holder nor a co-sharer. The learned Advocate General argued that he was held to be the owner of the house, but under the proviso to Section 3(1) the owner of a house or a tenant is not entitled to protection from requisitioning the premises. Therefore even if it be held that Respondent No. 4 had any interest in any of the house or houses, he could not

come as an owner under the Act to avail of the protection given under the proviso referred to above.

The appellate order was obviously wrong when it purported to say that the land could not be requisitioned because of the residence of Respondent No. 4 in a house therein for a year or more, in the absence of his title to the land. In the light of the above findings it can be said that the order of the Government setting aside or vacating the order of requisition was palpably wrong and without jurisdiction. Further, there is no provision in the Act for refund if this money paid as compensation after the acquisition and therefore the direction to the Petitioner to refund the, amount is not covered by the Assam Land (Requisition and Acquisition) Act 1948 and is without any legal sanction and is liable to be quashed.

11. The other point which is more or less of some academic importance is as to whether the appellate authority could be considered to be exercising quasi-judicial powers or simply administrative power. The decisions of this Court to which our attention was drawn by the learned Advocate General are reported in *Hanumanbax Agarwalla v. Sub-Divisional Officer, Sibsagar* AIR 1952 GAU 115 . *The Assam Company Ltd. Vs. The State of Assam and Others*, and *Maniruddin Ahmed v. Chunilal Dharamchand* AIR 1954 GAU 143.

Before entering into the merits of these decisions I must say here that I was a party to these decisions and I must say in all humility that in the light of the subsequent decisions of the Supreme Court, I am now of the opinion that the views expressed in those decisions were not quite exhaustive in their nature in the sense that they did not expressly deal with a position where the dispute would or did arise as between the parties as to the title to or interest in the property which was the subject matter of requisition.

The judgments may be good to the extent to what they decided but they will not in any view cover the present case where the appellate authority had a lis or a dispute to be decided between the parties on an objective approach. In AIR 1952 GAU 115, the only point to be investigated was whether the land sought to be acquired was going to be acquired for a public purpose as provided under the Act and who had the final say in the matter of selection. We considered that no objective standard or test was laid down to determine as to whether a house or a land should be requisitioned u/s 3 of the Act, whereas it depended on the subjective discretion of the authorities concerned.

Even in the appellate stage the State Government being the appellate authority, the Government had to consider the self-same question namely as to whether they considered the particular plot of land suitable for the purpose of requisition for a public purpose and whether such requisitioning was necessary. That view was based more or less on the decision of the Supreme Court in the case of *Province of Bombay Vs. Kusaldas S. Advani and Others*, where the majority view was expressed as follows:

When the Executive authority has to form an opinion about objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari. When the law under which the authority is making a decision, itself requires a judicial approach, decision will be quasi-judicial.

In the light of the above observation of the Supreme Court we interpreted that Section 3 by itself laid down no objective standard for the purpose of the requisition of the land or a house whereas it indicated only a subjective approach. We further considered that even in the appellate stage the State Government had only to consider the advisability of requisition itself and therefore it had not to approach the subject judicially for the purpose of decision, though the minority view in Khushaldas's case was that even for the purpose of requisition a judicial approach was necessary. In the other two cases mentioned above we followed what we had decided in Hanumanbax's case. The view point is more clear if we refer to the following passage occurring in the judgment of this Court in the case of AIR 1953 Assam 177 at p. 188:

The Act prescribes no enquiry before the order u/s 3, Clause (1) is made either by the Provincial Government or any other person who is authorised to make the order. If the Government or the officer concerned regard requisitioning as necessary for any of the prescribed purposes they can proceed to pass the order. No objective standard or test is laid down for their guidance in the exercise of the power vested in them. The opinion has to be formed subjectively without the observance of any fixed or recognised rules.

Even a notice to the person whose property is sought to be requisitioned is not provided. The power can be exercised ex parte, so to say. At this stage thus obviously there is no lis and no other party. No judicial approach is contemplated. The proceeding at this stage, therefore, cannot be regarded as judicial or quasi-judicial.

In this case cited above, the court had not to consider the position whether the land is exempted from requisition because of the bar under the Proviso to Section 3(1) of the Act, in which case it would be apparent that the position had to be examined objectively or there would be a lis. However, that is not very essential to consider now.

12. I now refer to the Supreme Court decisions on this point, namely, Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, This case refers to appellate powers exercised by the Commissioner of Excise and the Appellate Authority under the Eastern Bengal Assam Excise Act and B.P. Sinha J., while considering the jurisdiction or the capacity of those courts observed at page 406 of the report as follows:

Where there is a right vested in an authority created by statute, be it administrative or quasi-judicial, to hear appeals and revisions, it becomes its

duty to hear judicially, that is to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned in the dispute, to place their respective cases before it.

His Lordship further quotes with approval a passage from the Halsbury's Laws of England, Vol. II, 3rd Edn. pp. 56-57 to the effect that even an administrative body has to make a judicial approach if the body concerned has to consider proposals and objections and if at some stage of the proceedings leading up to the decision there is something in the nature of a lis before it, then in the course of such consideration and at that stage the body would be under a duty to act judicially.

13. In *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, the same view has been expressed and it has been held that even administrative agencies set up for the purpose of fixation of wages, can nevertheless be exercising judicial functions if certain conditions are fulfilled. There reliance is placed on the decision of the earlier case reported in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, In this case even before the appellate authority the mere question was not as to whether the land in question could or should be requisitioned for a public purpose, but the other thing awaiting decision was the dispute between the parties, namely the Petitioner and Respondent No. 4, as to who had title in respect of the land and premises which were the subject matter of requisition or acquisition and whether by virtue thereof the Respondent No. 4 had a right to resist. Therefore evidently there was a lis and the matter had to be approached judicially for the purpose of a decision.

14. In *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, Das, C.J. relied on the following passage from Halsbury's Laws of England, 3rd Edition Volume II at page 57 paragraph 115:

The duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case and the construction of the particular statute with the assistance of the general principles laid down in the judicial decisions.

S.K. Das, J. observed in this connection in the same decision (at page 120) that to get at the bottom of the expression "duty to act judicially" some of the decisions dealing with the point laid down the following tests:

- (i) Whether there is a lis inter parties;
- (ii) whether there is a claim (or proposition) and an opposition;
- (iii) whether the decision is to be founded on the taking of evidence or on affidavits;

(iv) whether the decision is actuated in whole or in part by questions of policy or expediency, and if so, whether in arriving at the decision, the statutory body has to consider proposals and objections and evidence; and

(v) whether in arriving at its decision the statutory body has only to consider policy and expediency and at no step has before it any form of lis.

In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, Subba Rao J. referred to the above decisions, namely Province of Bombay Vs. Kusaldas S. Advani and Others, Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, and Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, and as a result of the discussion of these decisions made the following observations at page 322:

The aforesaid three decisions lay down that whether an administrative tribunal has duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially.

This decision would clearly indicate that in the present circumstances it was necessary for the appellate authority to act judicially, which would only imply that the appellate authority was exercising the powers of a quasi-judicial nature in which case a writ of Certiorari can be issued. I have already indicated that in the present case the impugned order passed by the State Government in the capacity of an appellate authority was without jurisdiction or in excess of jurisdiction and therefore the order in appeal which is also found to be wrong on merit's according to law, is liable to be quashed. The direction of the Deputy Commissioner for refund of the amount of compensation by the Petitioner on the basis of the Government order, is also liable to be quashed, as it has no independent foundation, and since the Government order itself is going to be vacated.

15. Though we consider it unnecessary for us to decide as to whether an appeal was pending before the State Government at the time the impugned order was passed, -- as has been the view expressed by the Government in the order the validity of which has been challenged before us, I find it difficult to hold that an appeal not filed in proper form or before a proper person could be said to be an appeal duly presented or registered. The obvious difficulty was created due to absence of any set of distinct rules regarding the filing of the appeals, -- this is the stand taken on behalf of the State -- though the State itself is responsible for absence of the rules. The alleged appeal by Respondent No. 4 Abhi Ram Deka against the order of requisition was purported to be presented before the Transport Minister but from the "Assam Secretariat Manual" Appendix I, -- it appears that the requisition and acquisition cases were under the management

or administration of the Revenue Department of the Revenue Secretary with the Revenue Minister as the head.

The learned Advocate General argues that there being joint responsibility amongst the members of the cabinet, the appeal could have been addressed to or presented before any of the Ministers and unless a final order was passed by the Minister purporting to be on behalf of the State Government, the appeal must be treated to be pending. In a province where there are say twelve Ministers, can it be imagined that twelve appeals would be competent -- one to each of the Ministers -- and all of them could be considered pending in the eye of law at one and the same time? There is no doubt that this will lead to an anomalous position and to diverse orders being passed by separate Ministers according to their own light. Would this point really come up for consideration, I do not think I could have accepted the contention raised by the learned Advocate General. In this case for instance -- by operation of what rule or law the appeal filed before the Transport Minister got transferred to the Revenue Minister -- and how was the order of the Transport Minister dated 29-4-57 got rid of?

16. I have already indicated why we consider the impugned orders to be bad and without jurisdiction and this point as to the competence of the appeal need not be answered. The result is that we make the Rule absolute and direct that the impugned orders be vacated and the order for recovery of the amount of compensation quashed. The State Government is ordered to pay Rs. 200/- as costs to the Petitioner, as hearing fee.

17. C.P. Sinha, C.J.: I agree to the order proposed and after having perused the judgment prepared by both my learned brethren, I find there is nothing which I can usefully add to.

G. Mehrotra, J.

18. I have had the advantage of reading the judgment delivered by my Lord Deka, J. and I am in agreement with the order proposed, but I would like to add my own reasons.

19. The Petitioner is the son of Respondent No. 4 Abhiram Deka. An order for requisition of 2 kathas 13 lechas of land in the town of Gauhati for the office of the District Transport Office, was issued by the Deputy Commissioner, Kamrup by the notification dated 30th August, 1956 u/s 3(i) of the Assam Land (Requisition and Acquisition) Act, hereinafter called the Act. Due notices were served on the Petitioner, Respondent No. 4 and tenants who were in occupation of the houses standing on the aforesaid land. On the 8th October, 1956, Respondent No. 4 submitted a petition dated 20th September, 1956 to the Transport Minister Government of Assam, challenging the order of requisition.

On the 24th September, 1956 a petition was also filed by the Respondent No. 4 before the Deputy Commissioner, Kamrup against the aforesaid order of requisition. The claim was rejected by the Deputy Commissioner. Thereafter the

said land was acquired u/s 4 of the Act by the Revenue Department by its notification dated 11th March, 1957. Notices were given calling upon persons interested to file claims for compensation and the Collector made his award on the 19th August, 1957. Thereafter notices were issued to the Petitioner, Respondent No. 4 and to the tenants for vacating the land. The Petitioner was then paid the compensation money on the 22nd August, 1957. It appears that on the 36th February, 1958, a representation was made by Respondent No. 4 to the Chief Minister and report was called for from the Deputy Commissioner who submitted a detailed report.

On the 5th December, 1958, the Secretary to the Government of Assam, Revenue Department passed an order purporting to be one disposing of the appeal filed by Respondent No. 4 to the Government against the order of requisition and held that the requisition was null and void. He allowed the appeal and vacated the order of requisition. On the 22nd December, 1958, the Deputy Commissioner passed an order that a draft withdrawal notification be submitted to the Government and the money paid to the applicant, be realised immediately. This order appears to have been passed by the Deputy Commissioner on the receipt of the order passed by the Respondent No. 1 on the appeal said to have been filed by Respondent No. 4 against the order of requisition.

The present petition was filed in this Court on 11th February, 1959 under Article 226 of the Constitution for a writ in the nature of certiorari quashing the order dated 5th December, 1958 and for mandamus directing the Respondents not to give effect to the order passed on the 22nd December, 1958 by Respondent No. 2 the Deputy Commissioner, Kamrup, as a consequence of the order passed on the 5th December, 1958. The main contention raised by the Petitioner is that the order of the 5th December, 1958 was without jurisdiction and that the authorities had no power under the law to direct refund of the amount of compensation paid to the Petitioner by a mere executive order. It was also urged that due notice of the hearing of the appeal before the Minister, Revenue was not given to the Petitioner and the order of the 5th December, 1958 is liable to be set aside as the principles of natural justice were not observed in dealing with the appeal.

20. In this connection it was also contended that there was no proper appeal before the Minister of Revenue. When the petition was filed by the Respondent on the 20th September, 1956 before the Transport Minister, he sent the petition to the Deputy Commissioner for report and the appeal, if any, was thus finally disposed of by the order of the Transport Minister. No fresh appeal could, therefore, be filed before the Chief Minister or Revenue Minister. It was contended by the Advocate General that the order passed by the State Government on appeal by any party interested in the land requisitioned u/s 3(i) of the Act is an administrative order and is not amenable to a writ of certiorari by this Court under Article 226 of the Constitution.

It was further urged by the Advocate General that the order of acquisition depends upon the existence of an order of requisition, and when the order of

requisition was set aside by the State Government on appeal, all subsequent proceedings consequential to the order of requisition will automatically terminate. The order of acquisition, therefore, came to an end as soon as the order of requisition was set aside on appeal by the State Government. The order of acquisition having come to an end, the Petitioner who had receive compensation under aforesaid order is liable to refund it. In my opinion, it is not necessary for the purposes of this case to decide if the order passed by the State Government on appeal u/s 3(3) of the Act is an administrative order or quasi-judicial order.

If the order passed by the State Government on the 5th December, 1958 is wholly without jurisdiction, the Petitioner need not ask for setting aside of that order and a writ of mandamus directing the Respondents not to give effect to that order can be granted. Section 3 of the Act can be divided into three parts: (i) The Government or any person authorised by the State Government should form an opinion that it is necessary for maintaining supplies and services essential to the life of the community or for various other purposes mentioned therein to requisition; (ii) after having formed an opinion that it was necessary for purposes enumerated in the Section to requisition to issue an order in writing requisitioning any land and to pass any other order as it appears to it to be necessary or expedient in connection with the requisition; (iii) no land used for the purpose of religious worship or for charitable purposes or building or part thereof wherein the owner has actually resided for a continuous period of one year immediately preceding the date of the order shall be requisitioned. There is an absolute prohibition against the requisition of certain kinds of land

21. Sub-section (2) of Section 3 then provides for the issue of notice on the tenants and Sub-section (3) gives a right to any person interested in the land within 30 days from the date of the service of the order, to appeal to the State Government, and the decision of the Government in such appeal has been made final. This power of appeal has been given only if the requisition order has been passed by any person authorised on behalf of the Government and not when the Government itself has passed the order.

Section 4 of the Act then provides that any land which has been requisitioned u/s 3 can be dealt with by the Government in any manner which appears to it to be expedient, and further to acquire it by publishing in the official gazette a notice to the effect that Government has decided to acquire such land in pursuance of the aforesaid section. Section 4 no doubt gives power to the State Government to acquire a land only if it has been requisitioned, but it nowhere lays down that the Government, before issuing notification for acquisition of the land, has to wait indefinitely for the orders to be passed in appeal, if any, filed against the order of requisition.

Sub-section (2) of Section 4 lays down that when a notice is published in the official gazette the requisitioned land and premises shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the

State Government free from all encumbrances and the period of requisition of such land shall end. Section 6 provides for release from requisition. If the land requisitioned is not acquired and is to be released from requisition, it will revert to the owner and the Collector will deliver the possession of the land to such owner or an interested person who was recognised u/s 7(3).

The requisition order comes to an end if the order is withdrawn or the land is acquired u/s 4 of the Act or it is de-requisitioned. The State Government u/s 3(3) can only pass an order in respect of a subsisting order for requisition. If the order has ceased to subsist at the time when the appeal is disposed of by the State Government, there is no order which can be dealt with by the State Government u/s 3(3).

On the date when the State Government passed the order in question the period of requisition had expired under the provisions of Section 4(2). There was, therefore, no requisition subsisting which could be set aside by the State Government in appeal. The order, on the face of it, is therefore, no order at all in the eye of law and it cannot be given effect to. The order of the State Government can be ignored and need not be quashed. A mandamus can be issued directing the opposite parties not to give effect to that order in so far as it has the effect of declaring the acquisition ineffective.

22. It was contended by the Advocate General that the appeal having been filed within 30 days from the date of the service of the notice of the order, there is no period prescribed under the Act under which the appeal is to be disposed of. The appeal being there, the State Government had jurisdiction to decide it. It cannot, therefore, be said that the order is without jurisdiction. Once it is conceded that the State Government was competent to decide the appeal, the effect of the decision, is that the requisition order will be deemed to be non-existent from the date when it was passed, and there being no requisition order in the eye of law, the acquisition order automatically falls through.

The argument may be very attractive but it has no substance. By filing objection to the requisition order before the State Government the order is not suspended till final decision by the State Government. The order remains perfectly valid liable to be defeated by the order of the State Government in appeal. The power to acquire is conditional on a requisition order having been passed. On the date, therefore, when the order of acquisition was passed, there was a subsisting requisition order and the condition precedent for exercise of the power by the State Government u/s 4 subsisted on the date when the order of acquisition was passed.

The order of requisition gives power to the Government to take possession of the property for limited duration and purpose; the acquisition vests the property in the State free from all encumbrances. In the case of requisition the use of the land can be regulated by the State Government. But after the acquisition, the title to the property passes to the State. Consequently, on the date when the

requisition order was set aside by the Government, the interest of the State as the owner of the property had come into existence. In some cases, it may be that the land has been acquired for some third party. In that case the interest of a party other than even the Government may come into existence.

It cannot, therefore, be said that the Government is competent to pass an order u/s 3(3) setting aside an order of requisition even after the interest of the third party has come into existence by acquisition u/s 4 of the Act. The proper way of construing Section 3(3) of the Act is that the right given to the State Government to interfere with the order of requisition can be exercised at a stage when the requisition is subsisting. When the interest of a third party accrues and the property vests in the State Government, the stage for the exercise of the powers by the State Government u/s 3(3) comes to an end.

In the case of AIR 1931 33 (Privy Council) an award given by the Registrar of Co-operative Societies which was executable like a Civil Court decree was put into execution. The properties attached were put up for auction and were purchased by a third party, on the 15th September, 1923. On the 24th September, 1923 before the sale was confirmed, an application was put in by the judgment-debtors for setting aside the sale under Order 21 Rule 90. On the 15th June, 1924 during the pendency of the objection under Order 21 Rule 90, the company came forward with an application that the judgment-debtors' debt had been adjusted and they asked for the Certification of the adjustment.

The question arose whether the power to certify under Order 21 Rule 2 could be exercised at that stage when the property had already been auctioned and purchased by a third party. It was observed by their Lordships of the Privy Council that Order 21 Rule 2 which provides for certification of adjustment comes into effect out of Court contemplates a stage in the execution proceedings when the matter lies only between the judgment-debtor and the decree-holder and when no other interests have come into being. When once the sale has been effected, a third party's interest intervenes and there is nothing in this rule to suggest that it is to be disregarded.

23. Applying the principle laid down above, it can be said that as a matter of construction the stage for deciding the objection by the State Government is only during the pendency of the requisition order. Once the requisition order has ceased to exist, the stage has passed and any order passed by the State Government thereafter will be without jurisdiction. The argument can be tested in another way.

If the power to requisition any land is an administrative act, it is open to the authority issuing an requisition to withdraw it at any time. But from the very nature of the power it is to be limited to the duration of the subsistence of the order. There can be no difference in principle between the power to withdraw the order and the power to set it aside u/s 3(2). If the power to withdraw is to be limited to the period before acquisition, the power to set aside is also to be

exercised before acquisition.

24. The Advocate General cited a number of authorities such as AIR 1916 Pat. 370(2), Lakshmi v. Marudevi AIR 1915 Mad 197 and Basawant Mallappa Neje Vs. Kallappa Virbhadrappa Kotiwale, for the proposition that an appeal against a preliminary decree does not become incompetent if during the pendency of the appeal a final decree has been prepared. The final decree follows a preliminary decree and if the preliminary decree is set aside in appeal, the final decree may go, but the appeal against the preliminary decree does not become incompetent only by the preparation of the final decree. The analogy in my opinion cannot hold good in the present case. By the passing of the final decree the preliminary decree does not cease to exist and any appeal, therefore, filed against the preliminary decree is competent even though a final decree has been passed during the pendency of the appeal.

But in the present case by virtue of Section 4 the requisition ceases to exist and consequently any appeal against the order of requisition becomes incompetent after the land has been acquired. Moreover, as has been discussed above, the power u/s 3(3) can only be exercised during the subsistence of the requisition order passed by the Deputy Commissioner, and in cases where an appeal is provided against a preliminary decree, the power of the appellate court is not circumscribed.

There is nothing in the CPC which circumscribes the power of the appellate court and directly or by implication can be said to lay down that the appellate power can only be exercised till the final decree has been prepared. The order of the State Government is also without jurisdiction as it decides a matter which was not within its competence. The order is based on the finding that the opposite party No. 4 being the owner of the house and being in its occupation, there was an absolute bar to the acquisition of the said land under the provisions to Section 3(1) of the Act.

It has been held that the Act does not apply to the present case. The proviso to Section 3(1) places certain lands outside the ambit of the power conferred on the authority to requisition. If the authority over-steps the limit of its powers the order of requisition will not be binding on any one and can be challenged by a suit, but the amplitude of the power of the State Government to examine the order of requisition is not wide enough to give power to the State Government to decide if the Act does or does not apply to that case.

25. Even if the order is not set aside the Petitioner can ask for mandamus directing the Respondents not to treat the acquisition as being null and void and order refund of the compensation which has already been paid to the Petitioner. For granting a relief of mandamus directing the opposite party not to give effect to the order of refund, it may not be necessary to quash the order passed by the State Government.

It is significant to note that there is no provision in the Act for directing the

refund of the compensation paid to a claimant by an executive order if subsequently the acquisition is declared void. The order of the Deputy Commissioner dated 22nd December, 1956 for taking necessary action for realisation of the amount is nothing but an executive order directing the Petitioner to refund the amount of compensation, and in any view of the matter, the Petitioner is entitled to a mandamus restraining the Respondents not to direct refund of the compensation paid to the Petitioner.

26. For the decision of this case therefore it may not have been necessary to go into the question of the nature of the power exercised by the States Government u/s 3(3) but as the correctness of some earlier decisions of this Court has been challenged and it has been further contended by the counsel for the Petitioner that the order of the State Government is liable to be quashed, both on the ground that the Minister hearing the appeal did not observe the fundamental principles of natural justice inasmuch as he did not give proper notice to the Petitioner, and also on the ground that the order on the face of it is erroneous in law, it is necessary to examine that aspect of the matter.

The grounds of attack could only be available to the Petitioner if the State Government when acting under Section, 3(3) acts in quasi-judicial capacity and its decision is amenable to a writ of certiorari. As to what is a quasi-judicial act has been the subject matter of many judicial pronouncements. As early as 1878, May, C.J. in *Queen v. Dublin Corporation*, 2 ILR (1878) Ir. 371 described a quasi-judicial act as follows:

In this connection the term judicial does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law but for purposes of this question a judicial act seems to be an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights. And if there be a body empowered by law to enquire into facts, make estimates to impose a rate on a district it could seem to me that the acts of such a body involving such consequence would be judicial acts.

27. Lord Atkinson, J. as he then was, in *Rex v. Electricity Commissioner* (1924) 1 K.B. 171, defined a quasi-judicial act as follows:

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.

28. In the case of AIR 1950 S.C. 222, the majority approved of this definition. As was observed by Kania, C.J. in that case 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.

29. Das, J. as he then was analysed the scope of the third condition as follows:

That if a statute empowers an authority not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis* and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority, will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

30. Earlier in the case of *In Re: Banwarilal Roy* 48 Cal W.N. 766 Das, J. as he then was, had observed as follows:

A judicial or quasi-judicial act on the other hand, implies more than mere application of the mind or the formation of the opinion. It has reference to the mode or manner in which that opinion is formed. It implies "a proposal and an opposition" and a decision on the issue. It vaguely connotes "hearing evidence and opposition" as Scrutton, L.J. expressed it. The degree of formality of the procedure as to receiving or hearing evidence may be more or less according to the requirements of the particular statute, but there is an indefinable yet an appreciable difference between the method of doing an administrative or executive act and a judicial or quasi-judicial act.

31. In order, therefore, to determine whether a particular statutory authority is a quasi-judicial body or a mere administrative body, it has to be ascertained whether the statutory authority has a duty to act judicially. Whether an authority has duty to act judicially, is to be determined by looking into the provisions of the statute itself. The difficulty arises in laying down any specific tests for determining under what circumstances can a statutory body be said to be under a duty to act judicially. In the case of AIR 1958 S.C. 398, it was observed at page 408 of the report as follows:

Whether or not an administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity, must be determined in each case on an examination of the relevant statute and the rules framed thereunder.

32. In another case of AIR 1958 S.C. 578 dealing with the question whether the Wage Board functioning under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 45 of 1955 was only discharging administrative functions or quasi-judicial functions, the following observations were made at page 613 of the report:

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 answers 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.

33. In the case of AIR 1959 S.C. 308, the question which arose for consideration was whether the State Government when it considers objections to the scheme published in the official gazette with regard to the route taken over by the State Transport undertaking, acts in a quasi-judicial capacity or in administrative capacity. It was held that "whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and if an authority is called upon to decide respective rights of contesting parties or, if there is a lis ordinarily there will be a duty on the part of the said authority to act judicially."

34. From the examination of the cases decided by English Courts it will appear that in many cases where the statutory bodies were held to be quasi-judicial bodies and their decisions were regarded as quasi-judicial acts, there were some parties making a claim under the statutes and some parties opposing such claim and the statutory authority was empowered to adjudicate upon the matter in issue between the parties and to grant or refuse the claim. In each of such cases there was a to -- a proposition and an opposition and the statutory authority was authorised to decide the question and the decision of the authority is regarded as a quasi-judicial decision.

35. Examining the provisions of the Act in the light of these decisions Section 3 gives power to the State Government or any authority authorised on that behalf to requisition any land by an order in writing, if in its opinion, it is necessary so to do it, and for certain specified purposes enumerated therein. The order passed by the authority is examinable by the State Government u/s 3(3) and the decision of the State Government is final. Any order passed by the authority affects the rights of the objectors who are interested in the land.

The statute gives to the persons whose rights are affected by the order a remedy to apply to the State Government and the State Government has to decide the matter and pass orders affecting the rights of the objector. There is thus a dispute between the authority, who passes the order of requisition and the objectors which is to be decided by the State Government and thus there is a lis. It may be that the Government's power in examining the order passed by the authority is limited to the purpose for which the order could be passed by the authority concerned.

But nonetheless there is a proposition and opposition and the State Government has been given power to pass orders affecting the rights of the subjects. The

purposes for which the order can be passed by an authority are enumerated in the section itself and they necessarily involve determination of objective facts. The State Government therefore when given the power to examine that order necessarily has power to examine those objective facts and to decide whether the decision of the authority is correct on those matters. The powers, therefore, to be exercised by the State Government u/s 3(3), to my mind, from its very nature is quasi-judicial in character and it cannot be said to be purely administrative.

It may not be judicial in the sense that the State Government when deciding the matter need follow the procedure prescribed for the Courts, but nonetheless there is an implied duty cast upon the State Government to act judicially in deciding the objection. It cannot be said that when deciding the objections the State Government acts in its administrative capacity. Under the Constitution a State Government means the Governor; the executive power of the State vests in the Governor; it is exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the Ministers headed by the Chief Minister advise him in the exercise of his functions.

The Governor has made rules in the State of Assam also enabling the Minister in charge of particular department to dispose of cases before him and also authorising him, by means of standing orders, to give such directions as he thinks fit for the disposal of the cases in the department. In the present case it appears that the Minister in charge of the Revenue Department was authorised to hear such objections. It will appear from the facts stated in paragraph 4 of the affidavit in opposition that in the present case also the Minister for Revenue issued notices for hearing of appeal to the Petitioner and Respondent No. 4. In these circumstances, it cannot be said that the power exercised by the State Government u/s 3(3) of the Act is not one in its quasi-judicial capacity.

From the circumstances that there are two contesting parties, there is a proposal and opposition, that is a lis, the State Government in examining the order passed by the authority concerned has to consider objective facts the existence of which alone gives jurisdiction to the authority to pass the order; any order passed by the State Government will affect the rights of the parties concerned, and that the procedure followed in such cases is that notice is given to the parties concerned and that the Minister decides the objection on consideration of information or evidence before him, there is an obligation on the State Government to act judicially and in deciding the objection it acts in its quasi-judicial capacity.

36. Strong reliance was placed on the decision, of House of Lords in *Franklin v. Minister of Town and Country Planning* 1948 AC 87. The principles underlying this case have been fully explained by the following observation made by Robson in "Justice and Administrative Law":

It should have been obvious from a cursory glance at the New Towns Act that the rules of natural justice could not apply to the Minister's action in making an

order, for the simple reason that the initiative lies wholly with him. His role is not to consider whether an order made by a local authority should be confirmed nor does he have to determine a controversy between a public authority and private interests. The responsibility of seeing that the intention of Parliament is carried out is placed on him.

37. This passage has been quoted with approval by K. Subba Rao, J. in the case of AIR 1959 SC 308, referred to above. Coming to the cases of this Court, it is necessary only to refer to the case of AIR 1952 Assam 115 as the other two cases reported in AIR 1953 Assam 177 and AIR 1954 Assam 143, merely follow the earlier decision. In Hanumanbax Agarwalla's case there was an order of requisition passed by the Sub Divisional Officer, Sibsagar u/s 3(1) of the Act, and an appeal was filed against his order to the State Government which was rejected.

Thereupon, a petition under Article 226 of the Constitution was filed and it was held by this Court that both the State Government and the Sub-Divisional Officer who were authorised u/s 3(1) of the Act, have the legal authority to form the opinion before acting u/s 3(1), that the requisition of the land was necessary for any of the purposes defined in Section 3(1). But it is clear from the language of Section 3(1) that a judicial approach is not contemplated. Relying upon the case of AIR 1950 SC 222, it was held by this Court that both the existence of a recognised purpose and the need for requisitioning are matters to be decided by the authorities acting u/s 3(1), and that for the determination of these matters no objective standards or tests are laid down. The determination is left to the subjective discretion of the authorities concerned, and there is no other indication of a contemplated judicial approach in any provision of the Act.

Where the determination of a question is left to the exercise of subjective discretion the decision is administrative in character. The reason is that in such a case the Legislature confides the power to a particular body with a discretion. There can be no objection to the above statement of law so far as the order of the authority u/s 3(1) is concerned. But the same argument, to my mind, cannot apply to a determination by the State Government u/s 3(3).

When an order for requisition is passed, the authority has to form an opinion as to the necessity of requisition and also as to the existence of the required purposes. Till the stage of passing of the order by the authority, there is no proposal or opposition and there is no lis. But when a right of appeal has been given to a person interested and he objects to the order of requisition, the State Government in appeal has to decide the controversy between the Officer who claims a right to deprive the objector of his property and the objector and any order passed by the State Government affects the rights of the parties.

There is no question of State Government at that stage forming any subjective opinion as regards the necessity of requisition or as regards the existence of recognised purposes. The opinion has been formed by the authority passing an

order of requisition and the State Government has to examine the correctness of that opinion and thus the determination by the State Government cannot be regarded to be a subjective determination. Dealing with certain observations made in the case of AIR 1950 SC 222, in the case of this Court it is observed as follows:

It is clear that these observations do not support the contention that the mere existence of a right of appeal against an order is enough to indicate that the officer whose order is subject to appeal is under an obligation to act judicially.

38. It will not certainly be a sound argument to contend that because an appeal is provided against an order, there is necessarily an obligation on the officer against whose order the appeal is provided to determine the matter judicially. The question as to whether the authority hearing the appeal is under an obligation to act judicially, will depend upon the considerations of the provisions of the Act and will have to be examined independently of the powers of the officer against whose order the appeal is provided.

It is not correct to hold that the nature of the function of an officer who may be authorised to function u/s 3(1) by the Provincial Government is exactly the same as of the Provincial Government itself when deciding the objection u/s 3(3). There is a substantial difference in the nature of the functions of the two. It cannot be said that the State Government could decide the objection by exercising its subjective discretion. It has to decide the matter, examine the order and though no rules of procedure as observed by the Court are to be observed by the State Government, still from the very nature of the question to be determined it is incumbent upon the Government to act judicially and the power granted to the State Government under, Section 3(3) cannot be regarded as mere subjective discretion conferred on it.

The case of AIR 1953 Assam 177, was also a case where the validity of the order passed u/s 3(1) and u/s 3(3) on appeal by the State Government were challenged. The learned Acting Chief Justice after having field that up to the stage of the passing of the order, no judicial approach is contemplated on the ground that there was no lis till then, has proceeded to observe that "the proceeding may not assume judicial or quasi-judicial character at the appellate stage merely on the ground that a right of appeal has been allowed against an administrative order."

39. Although he is right in holding that the mere right of appeal does not import an element of duty on the appellate authority to decide the matter judicially, but at the same time it cannot be said that the mere fact that at the initial stage the authority passing the order has to determine the matter subjectively, and the appellate authority having power co-extensive with that of the authority concerned, necessarily acts in an administrative capacity when deciding the appeal. In the case of Debendra Bandhu Lahiri Vs. The State of West Bengal and Others, it was observed by Sinha, J. as follows:

As I have already slated, it is not necessary in a statute to lay down any particular made of procedure to render a proceeding under it quasi-judicial. If there is a duty east to hear the parties and in doing so, to have in general a judicial approach then such acts are quasi-judicial. In my opinion, an appeal under the provisions stated above does not require a judicial approach and, therefore, is a quasi-judicial proceeding. Since no particular procedure has been laid down for the conduct of such a proceeding, all that is necessary to do is to follow the rules of natural justice.

40. The decision is based on the reasoning that Section 3(3) does not provide for any hearing and lives no other indication of any judicial approach. As I have already indicated earlier, in my opinion, having regard to the fact that there is a lis at the stage of appeal, the order will affect the rights of parties and the State Government has to examine the correctness of the order as regards the existence of the recognised purposes and that notice was issued to the parties in this case apparently for the reason that such a procedure of issuing notices of the date of hearing of the appeal is always followed in such cases, the State Government acts in a quasi-judicial capacity when deciding the appeal.

41. In the result, therefore, in my opinion, in any view of the matter, the petition must be allowed.