

section. The obvious reason is that he has already got jurisdiction to try such offences under the Criminal Procedure Code. We are accordingly of the opinion, with great respect, that it would not be necessarily conclusive argument to say that because the legislature by enacting a section empowers a First Class Magistrate or a Presidency Magistrate to pass a sentence of more than two years' rigorous imprisonment, it must follow that the Magistrate derives competence to try a particular offence under that section. In the case in hand, however, we have already seen that unless the legislature intended that the Court of the Magistrate referred to in s. 3 of Act No. XXXVI of 1947 was also to be the Court to try offences under s. 2, sub-s. (1), of the Act, s. 3 would be meaningless. We have also pointed out that unless we hold that the intention of the legislature was that the Magistrate referred to in s. 3 of Act No. XXXVI of 1947 was also to be the Court which could try offences under s. 2, sub-section (1), of the Act, we shall have to attribute ignorance of law to the legislature which we are not prepared to do. We must, therefore, hold, as the learned Chief Justice and Gajendragadkar, J. held in Criminal Appeal No. 800 of 1949 of this Court, that in enacting s. 3 of Act No. XXXVI of 1947, the legislature intended that the Magistrate referred to in s. 3 would be the Court to try offences under s. 2 (1) of the Act. Therefore we reject the first contention advanced before us by Mr. Dalal for the appellant. [The rest of the judgment is not material to this report.]

*Appeal dismissed.*

M. W. P.

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### APPELLATE CIVIL

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*Before the Hon'ble Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar.*

ALARAKHIA SOMJEE BHIVANDIWALA *v.* COLLECTOR OF NASIK.\*

1951  
Feb. 13

*Bombay Land Requisition Act (Bom. Act XXXIII of 1948) s. 5 (1) and (2)—Nature, extent and scope of inquiry to be determined by Government under s. 5 (2)—Order of requisition made under s. 5 (1)—Whether such order quasi-judicial or administrative—Writ of Certiorari.*

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\* Civil Application No. 1507 of 1951.

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THE STATE  
*v.*  
AKBARALLI  
TAYEBALLI  
*Vyas J.*

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Under s. 5 (2) of the Bombay Land Requisition Act, 1948, there is no obligation cast upon Government to hold the inquiry contemplated by that sub-section in a judicial manner. The nature, extent, and the scope of the inquiry under the sub-section is to be determined by Government. There is no statutory requirement that Government should observe the rules of natural justice in holding such an inquiry. Therefore, an order made under s. 5 (1) of the Act is an administrative order and no writ of certiorari can lie to correct that order.

*Province of Bombay v. Khushaldas Advani*,<sup>(1)</sup> followed.

Civil Application made under art. 226 of the Constitution of India.

The petitioner, Alarakhia Somjee was a tenant of a flat in a building known as Ganesh Mahal situated at Trimbak Road, Nasik. On August 24, 1950, the Collector of Nasik wrote to the petitioner that the flat in Ganesh Mahal which was occupied by the petitioner had been lying locked for 10 months and was not being used for a *bona fide* purpose and was therefore liable to be requisitioned under s. 5 (1) of the Bombay Land Requisition Act, 1948. The petitioner was called upon to vacate the flat within a week. The petitioner having failed to vacate the following order requisitioning the flat was passed by the Collector on September 26, 1950.

"Whereas the owner, landlord or the tenant in the premises specified below has not actually resided therein for a continuous period of six months immediately preceding the date of this order:—

Now, therefore, in exercise of the powers conferred by clause (1) of s. 5 of the Bombay Land Requisition Act of 1948 (Bombay Act XXXIII of 1948) read with Government Notification in Health and Local Government Department No. O-561/3011-N dated the 8th May 1948, the Collector of Nasik is pleased to requisition the said premises..."

The petitioner applied to the High Court under art. 226 of the Constitution of India to set aside the aforesaid order.

The application was heard.

V. F. Taraporewalla, with Mahimtura & Co. for the petitioner.

C. K. Daphtary, Advocate General, with B. G. Thakore, Additional Assistant Government Pleader, for the opponent.

CHAGLA C. J. By this petition the petitioner challenges an order of requisition made on August 24, 1950, by the Collector of Nasik. The ground for requisitioning the premises of the petitioner, who was a tenant of these premises, was that they

<sup>(1)</sup> (1950) 53 Bom. L. R. 1.

had not been occupied for residential purposes for a continuous period of six months by the tenant. The main ground on which the order is challenged is that it is a *quasi-judicial* order that the petitioner was not heard in his defence and that in the inquiry contemplated by s. 5 (2) the rules of natural justice were not observed.

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

“Where any building or part thereof is to be requisitioned under subsection (1), the State Government shall make such enquiry as it deems fit and make a declaration in the order of requisition that the owner, the landlord or the tenant, as the case may be, has not actually resided therein for a continuous period of six months immediately preceding the date of the order and such declaration shall be conclusive evidence that the owner, landlord or tenant has not so resided.”

Mr. Taraporewalla's contention is that before an order of requisition can be made under s. 5 (1) an objective fact has to be determined under s. 5 (2), and what is more, that objective fact has to be determined after the holding of an inquiry by Government. Mr. Taraporewalla says that it is incumbent upon Government to hold an inquiry and the inquiry that the Government must hold is a judicial or a *quasi-judicial* inquiry and, therefore, the rules of natural justice must apply to such an inquiry, and inasmuch as the petitioner has not been given an opportunity to make a representation in support of his own case, the rules of natural justice have been violated in this case. We have now an authoritative ruling on the question as to what orders constitute administrative orders and what orders constitute judicial or *quasi-judicial* orders by the recent decision of the Supreme Court in *Province of Bombay v. Khushaldas Advani*<sup>(1)</sup>. It will be remembered that this High Court took the view that when power is given to an executive officer, to affect the rights of subjects and the statute provides the determination of an objective fact before the power could be exercised by that officer then the order made by him was a judicial or *quasi-judicial* order. This view has now been rejected by the majority of the Judges of the Supreme Court. The Chief Justice of India points out in his judgment that the conditions laid down by Lord Justice Slesser in his judgment in *Rex v. The London County Council : The Entertainments Protection Association, Ex parte*<sup>(2)</sup> correctly bring out the distinction between a judicial or *quasi-judicial* decision on the one hand and

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<sup>(1)</sup> (1950) 53 Bom. L. R. 1.

<sup>(2)</sup> [1931] 2 K. B. 215.

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a ministerial decision on the other, and these four conditions are: wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority—a writ of *certiorari* may issue. Now, in this case the first two conditions are satisfied and we will assume that the fourth condition exists in favour of the subject. The question is whether the third condition is satisfied, viz. whether the Government had the duty to act judicially. I take it 'duty' means a statutory obligation, an obligation which could be found in the legislation which confers the power upon the authority to affect the rights of subjects. Further on in his judgment the learned Chief Justice of India at p. 6 says :

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

Therefore, again the learned Chief Justice emphasises the fact that the law itself must provide that in coming to a conclusion or a decision the authority making the order must approach the subject in a judicial manner; further, that the recognised principles, which I again assume are the rules of natural justice, must be required to be followed by the statute itself. Now, with these observations of the learned Chief Justice of India in mind let us approach s. 5 (2) and decide whether an obligation has been cast upon Government to hold the inquiry contemplated by that sub-section in a judicial manner. In our opinion, the very expression used by the Legislature that the inquiry to be held by the Government shall be such as it deems fit clearly negatives the suggestion that the inquiry is to be a judicial inquiry. The nature, the extent, the scope of the inquiry is to be determined by Government. How can it then be said that there is a statutory requirement that Government should observe the rules of natural justice in holding such an inquiry? Mr. Taraporewalla points out, and rightly points out, the grave consequences of taking this view of s. 5 (2). He says that a man might be deprived of his property without being heard and on an *ex-parte* decision. We have had occasion in the past to point out what wide powers have been conferred by Government upon executive officers and we have also drawn the attention of Government to the necessity of supplying some judicial corrective to important and far-reaching decisions given by executive officers. That is a matter of policy

with which we are not concerned. We can only draw the attention of the Government to the hardship that is likely to be caused to those who have been deprived of their property. The result, therefore, is that in our opinion the order made by the Collector of Nasik under s. 5 (1) was an administrative order and, therefore, no writ of *certiorari* can lie to correct that order.

The result is the petition fails and must be dismissed with costs.

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*Petition dismissed.*

J. G. R.

## APPELLATE CIVIL

*Before Mr. Justice Rajadhyaksha and Mr. Justice Dixit.*

NARAYAN GANESH VARDE (ORIGINAL APPLICANT—DECREE-HOLDER),  
 APPLICANT *v.* FATMA W/O DAUD TARAPORWALA AND OTHERS  
 (ORIGINAL JUDGMENT-DEBTOR'S HEIRS AND APPLICANT IN DARKHAST No. 22  
 OF 1948), OPPONENTS.\*

1951  
 Feb. 20

*Civil Procedure Code (V of 1908), s. 73—Rateable distribution, right to—Property sold pending suit and proceeds deposited in Court to the credit of the suit—Subsequent decree-holder's right to rateable distribution—Executing Court and Custody Court same—Assets held by a Court, meaning of—When assets are said to be received.*

In order to entitle a person to claim rateable distribution the assets must be assets held by a Court and secondly, the person claiming rateable distribution must have made an application for execution of his decree before the receipt of such assets. When the executing Court and the Custody Court are the same the amount realised by the sale of the judgment-debtor's property and kept to the credit of the particular suit becomes "assets held in Court" within the meaning of s. 73, Civil Procedure Code, 1908, only when the Court passes an order for payment to the decree-holder in that particular suit. If a subsequent decree-holder makes an application for rateable distribution before that order is passed he is entitled to succeed.

*Nachiappa Chettiar v. Subbier*<sup>(1)</sup>; *Imperial Bank of India v. Balasubramania Pandia*<sup>(2)</sup>; *Visvanadhan Chetty v. Arunachalam Chetty*<sup>(3)</sup>; and *Bithal Das v. Nand Kishore*<sup>(4)</sup> relied upon.

\* Civil Revision Application No. 258 of 1948.

<sup>(1)</sup> (1923) 46 Mad. 506.

<sup>(2)</sup> [1945] A. I. R. Mad. 412.

<sup>(3)</sup> (1920) 44 Mad. 100.

<sup>(4)</sup> (1900) 23 All. 106.