Province Of Bombay vs Kusaldas S. Advani And Others on 15 September, 1950

Equivalent citations: 1950 AIR 222, 1950 SCR 621

Author: Hiralal J. Kania

Bench: Hiralal J. Kania, Saiyid Fazal Ali, Mehr Chand Mahajan, B.K. Mukherjea

```
           PETITIONER:
PROVINCE OF BOMBAY

        Vs.

RESPONDENT:
KUSALDAS S. ADVANI AND OTHERS

DATE OF JUDGMENT:
15/09/1950

BENCH:
KANIA, HIRALAL J. (CJ)
BENCH:
KANIA, HIRALAL J. (CJ)
FAZAL ALI, SAIYID
SASTRI, M. PATANJALI
MAHAJAN, MEHR CHAND
DAS, SUDHI RANJAN
MUKHERJEA, B.K.

CITATION:
 1950 AIR  222            1950 SCR  621
 CITATOR INFO :
 E&F        1959 SC 107  (10,10A,11,43,44,45,46,49,54,*
 F          1959 SC 308  (19,44,46,58)
 F          1960 SC 415  (18)
 APL        1960 SC 606  (6)
 R          1961 SC1506  (18)
 R          1961 SC1669  (3,4,11)
 F          1962 SC1110  (7)
 R          1962 SC1621  (36,60)
 R          1963 SC 677  (11)
 RF         1963 SC 874  (5)
 D          1964 SC1230  (16)
 R          1965 SC1595  (10)
 R          1965 SC1798  (6)
 R          1966 SC  81  (5)
 F          1966 SC  91  (11)
```

R	1967 SC 908	(8)
MV	1967 SC 997	(47)
R	1967 SC1507	(6)
RF	1969 SC 707	(50)
APL	1970 SC1896	(18)
D	1972 SC2656	(11)
R	1973 SC 834	(20)
E	1973 SC2237	(3)
RF	1975 SC 596	(3,6,8)
F	1976 SC 667	(4)
RF	1976 SC1207	(527)

ACT:

Bombay Land Requisition Ordinance (V of 1947), ss. 3, 4, 10,12--Order requisitioning land--Application for writ of certiorariOrder of requisition, whether judicial or quasi-judicial act, or administrative act--Construction of s. 3--Existence of public purpose, whether condition precedent to exercise of power to requisition --Whether collateral fact or composite part of power to requisition-Distinction between judicial or quasi-judicial acts, and administrative acts--Guiding principles and tests--Writ of certio-rari--Nature and incidents of the writ--Power of High Court to issue writ against Provincial Government--Government of India Act, 1935, ss. 176, 306--" Sue, "meaning of.

HEADNOTE:

Held by the Full Court, (KANIA C.J., FAZL ALl, PATANJALI SASTRI, MEHR CHAND MAHAJAN, MUKHERJEA and BAs JJ.).--A writ of certiorari lies whenever a 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; it does not lie to remove or adjudicate upon an order which is of an administrative or ministerial nature.

Section 3 of the Bombay Land Requisition Ordinance (V of 1947) provided as follows :--" If in the opinion of the Provincial Government it is necessary or expedient to do so the Provincial Government may, by order in writing requisi-tion any land for any public purpose: Provided that no land used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section." The let respondent who was a refugee from Sind got an assignment of the tenancy rights in a flat in Bombay and went into possession of the fist. A few days later the Government of Bombay issued an order requisition-ing the flat under s. 3 of the abovesaid Ordinnance, allot-ted the same to another refugee and issued orders to an Inspector to take possession of the same. On an application

under Art. 32 of the Constitution, a writ of certiorari was issued by the Bombay High Court against the Province of Bombay and others and this order was confirmed on appeal as against the Province of Bombay by a Division Bench of the said High Court.

Held, per KANIA C.J., FAZL ALI, PATANJALI SASTRI and DAS JJ. (MAHAJAN and MUKHERJEA JJ. dissenting)--that on a proper construction of s. 3 of the Ordinance the decision of the Bombay Government that the property was required for a public

622

purpose was not a judicial or quasi-judicial decision but an administrative act and the High Court of Bombay had therefore no jurisdiction to issue a writ of certiorari in respect of the order of requisition. Per MAHAJAN and MUKHERJEA JJ. (contra).-- The Government of Bombay is a body of persons having legal authority to determine questions affecting the rights of subjects and in deciding whether a land was required for a public purpose under s. 3 of the Ordinance it had to act judicially. The conditions necessary for the granting of a writ of certiorari were accordingly satisfied and the High Court of Bombay had power to issue the writ.

KANIA C.J.-- Though a writ of certiorari may be issued where a body of persons having legal authority to determine questions affecting the rights of subjects and having a duty to act judicially act in excess of their legal authority, yet merely because an executive authority has to determine certain objective facts affecting the rights of subjects as a preliminary step to the discharge of an executive function it does not follow that it must determine those facts judicially. On the contrary, when the executive authority has to form an opinion about an 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.

It cannot be laid down broadly that in order that a determination may be a judicial or quasi-judicial one there must be a proposition and an opposition, or that a lis is necessary, or that it is necessary that there should be right to examine, cross examine and reexamine witnesses. The true test is whether the law, under which the authority is making a decision, itself requires a judicial approach. Prescribed forms are not necessary to make an inquiry judicial, provided in coming to the decision well recognised principles of approach are required to be followed.

FAZAL ALI J.-- The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference and the real test is there any duty to decide judicially. There is

nothing in s. 3 or any other section of the Ordinance in question which imposes expressly or impliedly a duty on the Provincial Government to decide the existence of a public purpose judicially or quasi-judicially.

It is well settled that when an Act or regulation commits to an executive authority the decision of what is necessary or expedient and that authority make the decision, it is not competent to the courts to investigate the grounds or the reasonableness of the decision in the absence of an allegation of bad faith, and the opinion formed by the Provincial Government whether it is necessary or expedient to acquire land, given a public purpose,

623

cannot therefore be questioned. The same cannot be said with regard to the decision of the Provincial Government as to the existence of a public purpose which is the foundation of its power and is a condition precedent to its exercise. The determination of the public purpose and the opinion formed as to the necessity or expediency of requisition do not form one psychological process but are two distinct and independent steps and if the executive authority requisitions land under s. 3 without there being a public purpose in existence its action would be a nullity, and the person whose right is affected can go to the proper court and claim a declaration that his rights cannot be affected. An application for certiorari would not, however, lie in such a case as the requisition of premises under s. 3 of the Ordinance is a purely administrative act and does not involve any duty to decide the existence of a public purpose or any other matter judicially or quasi-judicially.

MAHAJAN J.--The question whether an act is a judicial or a quasi-judicial one or a purely executive act depends on the terms of the particular rule and the nature, scope and effect of the particular power in exercise of which the act may be done and would therefore depend on the facts and circumstances of each case. The question whether a land is required for a public purpose or is being used for public worship involves difficult questions of law and fact seriously affecting the rights of parties. These are not questions for the mere determination of the Government subjectively by its own opinion, but are matters for determination objectively and in a judicial manner, on materials which the Government have sufficient power to call for under es. 10 and 12 of the Ordinance after hearing any opposition to its proposal, and the High Court of Bombay had therefore jurisdiction to issue a writ of certiorari.

MUKHERJEA J.--Under s. 3 of the Ordinance, the act of requisitioning land is left to the executive discretion of the Provincial Government. But the section makes the existence of a public purpose an essential prerequisite to the taking of steps by the Provincial Government in the matter of requisitioning any property and under the section the essential fact on which the jurisdiction to proceed with the

requisition is rounded is the existence of a public purpose as an objective fact, and not the subjective opinion of the Provincial Government that such fact exists. Whether a public purpose exists or not has to be determined judicially as there is a lie or controversy between the interest of the public on the one hand and that of the individual who owns the property on the other hand, and the determination of the Government was therefore a judicial act; the determination was further a collateral matter on which the jurisdiction to requisition was rounded, and not a part of the executive act of
624
requisitioning, and a writ of certiorari could therefore be issued in

DAS J.--The words "to do so" in s. 3 of the Ordinance refer to the entire composite matter of "requisitioning for a public purpose," not merely to the act of requisitioning simpliciter and the existence of a public purpose was left as much to the subjective opinion of the Provincial Government as the necessity or expediency for requisitioning a particular land. As the formation of the opinion on the entire matter was purely subjective and the order of requisition was to be rounded on this subjective opinion, it was not a judicial or quasi-judicial act but a purely administrative act and consequently it was not a matter in respect of which a writ of certiorari could be issued. Even on the assumption that the question of the existence of a public purpose had not been left to the subjective opinion of the Provincial Government and that the question had to be determined by it, there was nothing in s. 3 to suggest that such determination had to be made judicially and a writ of certiorari would not in any case lie.

Even if the existence of a public purpose was a collateral fact, then at best is was only a case of an administrative body assuming jurisdiction to perform its administrative powers, and if it assumes jurisdiction on an erroneous assumption it might be corrected by an action, but certiorari cannot be an-appropriate remedy; and assuming further that this collateral fact had to be decided quasi-judicially and its decision might be quashed, the administrative act, namely the formation of opinion and the order based thereon would still remain unaffected by certiorari.

In order that a body may be a quasi-judicial body it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially.

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 lie 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.

If a statutory body his 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.

625

A mere provision for an enquiry as a preliminary step to coming to a decision will not necessarily make the decision a quasi-Judicial act, for, the purpose of the enquiry may only be to enable the deciding authority to make up its mind to do what may be a purely administrative act.

Held, per KANIA C.J., FAZL ALI, PATANJALI SASTRI, and DAS JJ.--The powers given to the Provincial Government under ss. 10 and12 of the Ordinance are only enabling and in terms are not compulsory, and there is nothing in these sections which makes it incumbent on the Government to set judicially in the matter of making an order for requisition under s. 3.

Held also, per MAHAJAN, and MUKIIERJIEA JJ.--(i) that the immunity granted by s. 306 of the Government of India Act, 1935, related to the Governor and not, to the Provincial Government and under the said Act the High Court of Bombay had jurisdiction to issue a writ of certiorari against the Provincial Government of Bombay; (ii) that the word "sue" in s. 176 of the said Act meant the enforcement of a claim or a civil right by means of legal proceedings and was wide enough to include an application for a writ of certiorari.

Rex v. Electricity Commissioners ([1924] 1 K.B. 171), Rex v. London Coounty Council ([1931] 9, K. B. 215), The Queen v. Corporation of Dublin ([1878] 2 L.R. Ir. 371), Frome United Breweries v. Bath Justices ([1996] A.C. 386), _Rex v. Archbishop of Canterbury ([1944] 1 K.B. 281), Rex v. Woodhouse ([1906] 2 K.B. 501), King v. Postmaster General ([1928] 1 K.B. 291), _Rex v. Boycott and Others ([1939] 2 K.B. 651), Franklin v. Minister of Town and Country Planning ([1948] A.C. 87), In re Banwarilal Roy (48 C.W.N. 766), Jugilal Kamlapat v. Collector of Bombay (47 Bom. L.R. 1070), Hamabai Framji Petit v. Secretary of State for India (L. R, 42, I.A.

44),King v. Bradford ([1908] 1 K.B. 865), and other cases referred to.

JUDGMENT:

APPELLATE JURISDICTION (CIVIL): Case No. III of 1949.

Appeal under section 205 of the Government of India Act, 1935, from the judgment of the Bombay High Court (Chagla C.J. and Tendolkar J.) dated the 4th day of:January, 1949, in Appeal No. 65 of A948.

M.C. Setalvad, Attorney-General for India and C.K. Daphtary,Advocate-General of Bombay (G.N. Joshi and M.M. Desai with them) for the appellant.

H.M. Seervai, R.J. Joshi and Rameshwar Nath, for re- spondents Nos. 1 (a) and 1 (b).

1950. September 15. The Court delivered judgment as follows:--

KANIA C.J.--This is an appeal from a judgment of the High Court at Bombay and it relates to the power of the High Court to issue a writ of certiorari against the province of Bombay to quash an order to requisition certain premises. The material facts, as stated in the judgment of the High Court, are these. One Abdul Hamid Ismail was, prior to the 29th of January, 1948, the tenant of the first floor of a building known as" Paradise" at Warden Road, Bombay, the landlord of which was one Dr. M.D. Vakil. On the 29th January, 1948, Ismail assigned his tenancy to the petitioner and two others, the son and brother's daughter's son of the petitioner (the respondent). All the three assignees were refugees from Sind. On the 4th February, 1948, the petitioner went into possession of the flat. On the 26th Febru- ary, 1948, the Government of Bombay issued an order requisi- tioning the flat under section 3 of the Bombay Land Requisi- tion Ordinance (V of 1947) which came into force on the 4th December, 1947 On the same day Dr. Vakil was informed that the Government had allotted the premises to Mrs. C. Dayaram who was also a refugee from Sind. Further orders were issued authorising an Inspector to take possession of the premises. On the 4th March, 1948, the petitioner filed a petition for a writ of certiorari and n order under section 45 of the Specific Relief Act. The petition was heard by Mr. Justice Bhagwati who, iNter alia, granted the writ against the province of Bombay and the Secretary etc. On appeal the appellate Court confirmed the order as regards the issue of the writ of certiorari against the appellant, but cancelled the order as regards the other parties. The appellant has come on appeal to this Court.

The learned Attorney-General, on behalf of the appel- lant, urged the following three points for the Court's consideration:

(1)(a). Having regard to the provisions of Ordinance V of 1947, whether the order in question was quasi-judicial or only administrative ?

(b) Assuming the order to be of a quasi-judicial nature, whether it was a case of want or excess of jurisdiction, or it was only a case of mistake of law ?

(2) Whether a writ of certiorari can be. issued against the appellant, which for its actions under the Ordinance, represents the Crown ?

(3). Whether the order in question was made for a public purpose ?

Sections 3, 4, 10 and 12 of the Ordinance which are material for the discussion in this appeal run as follows:

> "& Requisition of land .... If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in writing requisi- tion any land for any public purpose:
>
> Provided that no land used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section.
>
> 4. Requisition of vacant premises.--(1) If any premises situate in an area specified by the Provincial Government by notification in the Official Gazette are vacant on the date of such notification and whenever any such premises become vacant after such date either by the landlord ceasing to occupy the premises, or by the termination of a tenancy, or by the eviction of a tenant, or by the release of the prem-

ises. from requisition or otherwise, the landlord of such premises shall give intimation thereof in the prescribed form to an officer authorised in this behalf by the Provin- cial Government.

(2) Such intimation shall be given by post within one month of the date of such notification in the case of premises which are vacant on such date, and in other cases within seven days of the premises being vacant. (3) A landlord shall not, without the permission of the Provincial Government, let the premises before giving such intimation and for a period of one month from the date on which such intimation is given.

(4) Whether or not an intimation under subsection (1) is given, and notwithstanding anything contained in section 3, the Provincial Government may by order in writing requi- sition the premises and may use or deal with the premises in such manner as may appear to it to be expedient. (5) Any landlord who fails to give such intimation within the period specified in sub-section (2) shall on conviction, be punishable with fine which may extend to one thousand rupees and any landlord who lets the premises in contravention of the provisions of sub section (8), shall, on conviction, be punishable with imprisonment which. may extend to three months or with fine or with both.

10. Power to obtain information.--(1) The provincial Government may, with a view to carrying out the purposes of this Ordinance, by order require any person to furnish to such authority as may be specified in the order such infor- mation in his possession relating to any land which is requisitioned or is continued under requisition or is in- tended to be requisitioned or continued under requisition. (2) Every person required to furnish such information as is referred to in sub-section (1) shall be deemed to be legally bound to do so within the meaning of sections 176 and 177 of the Indian Penal Code (XLV of 1860).

12. Power to enter and inspect land.--Without prejudice to any powers otherwise conferred by this Ordinance any officer or person empowered in this behalf by the Provincial Government by general or special order may enter and inspect any land for the purpose of determining whether, and, if so, in what manner, an order under this Ordinance should be made in relation to such land, or with a view to securing compli- ance with any order made under this Ordinance."

On the first question, it was pointed out that under section 3 of the Ordinance the decision of the Provincial Government to requisition certain premises is clearly a matter of its opinion and therefore not liable to be tested by any objective standard. It was urged that the decision as to whether the premises were required for a public purpose was also a matter for the opinion of the Provincial Government, and not a matter for judicial investigation, and therefore the making of the order was in no sense a quasi-judicial decision, but an administrative or minis- terial order. In this connection it was pointed out that unlike the Land Acquisition Act there was no provision in the Ordinance for issuing a notice, or for inquiries to be made, or for rival contentions to be examined and evidence to be weighed before a decision is arrived at. It was pointed out that if public purpose was outside the scope of the opinion of the Provincial Government, the section would have run: "If for any public purpose in the opinion of Government.... ....."

A discussion about the distinction between judicial and quasi-judicial functions is not useful in this case as the point for determination is whether the order in question is a quasi-judicial order or an administrative or ministe- rial order. In Regina (John M'Evoy) v. Dublin Corporation(1), May CJ. in dealing with this point observed as follows:--" It is established that the writ of certiorari does not lie to remove an order merely ministerial, such as a warrant, but it lies to remove and adjudicate upon the validity of acts judicial. 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 the purpose of this question a judicial act seems to be an act done by competent authority, upon consid- eration of facts and circumstances, and imposing liability or affecting the rights of others." This definition was approved by Lord Atkinson in Frome United Breweries Co. v. Bath Justices (2) as the best (1) [1878] 2 L.R. Irish 371, 376. (2) [1926] A.C, 586.

602. definition of a judicial act as distinguished from an admin- istrative act.

A distinction between the nature of the two acts has been noticed in a series of decisions. This Irish case is one of the very early decisions. On behalf of the respond- ent it was contended that as stated by Chief Justice May, whenever there is the determination of a fact which affects the rights of parties, that determination is a quasi-judi- cial decision and, if so, a writ of certiorari will lie against the body entrusted with the work of making such decision. As against this, it was pointed out that in several English cases emphasis is laid on the fact that the decision should be a judicial decision and the obligation to act judicially is to be found in the Act establishing the body which makes the decision. This point appears to have been brought out clearly in The King v. The Electricity Commissioners (1), where Lord Justice Atkin (as he then was) laid down the following test: "Wherever 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." This passage has

been cited with approval in numerous subsequent decisions and ac- cepted as laying down the correct test. A slightly more detailed examination of the distinction is found in The King v. London County Council (2), where Scrutton L.J. observed as follows :--"it is not necessary that it should be a court in the sense in which this court is a court; it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a court; if it is a tribunal which has to decide rights after hearing evidence and opposition, it is amenable to the writ of certiorari." Lord Justice Slesser in his judgment at page 243 separated the four conditions laid down by Atkin L.J. under which a rule (1) [1924] 1 K.B. 171. (2) [1931] 2 K.B. 215, 233.

certiorari may issue. They are: wherever any body of per- sons (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. He examined each of these conditions separately and came to the conclusion that the existence of each was necessary to determine the nature of the act in question. In. The Ryots of Garabandho and other villages v. Zamindar of Parlakimedi (1) Viscount Simon L.C., in delivering the judgment of the Board, accepted the test of these four conditions to determine the nature of the act. He stated: "This writ does not issue to correct purely executive acts but, on the other hand, its applica- tion is not narrowly limited to inferior 'courts' in the strictest sense. Broadly speaking, it may be said that if the act done by the inferior body is a judicial act, as distinguished from being a ministerial act, certiorari will lie. The remedy, in point of principle, is derived from the superintending authority which the Sovereign's superior courts and in particular the court of King's Bench, possess and exercise over inferior jurisdictions. This principle has been transplanted to other parts of King's Dominions and operates, within certain limits, in British India." In Franklin v. The Minister of Town and Country Planning (2), the points of distinction are again noticed. The question arose in respect of the town and country plan- ning undertaken under the relevant Statute on the order of the Minister following a public local inquiry under the provisions of the Act. The question was whether the order of the Minister was a quasi-judicial act or a purely. admin- istrative one. Lord Thankerton pointed out that the duty was purely administrative but the Act prescribed certain methods or steps in the discharge of that duty. Before making the draft order, the Minister must have made elabo- rate inquiry into the matter and have consulted any local authorities who appear to him to be concerned and other departments (1) 70 I.A. 129. (2) [1948] A.C. 87, 102, of the Government. The Minister was required to satisfy himself that it was a sound scheme before he took the seri- ous step of issuing a draft order. For the purpose of inviting objections and where they were not withdrawn, of having a public inquiry to be held by someone other than the respondent to whom that person reports was for the further information of the respondent for the final consideration of the soundness of the scheme. He observed: "I am of opinion that no judicial duty is laid on the respondent in discharge of these statutory duties and that the only question is whether he has complied with the statutory directions to appoint a person to hold the public inquiry and to consider that person's report."

Learned counsel for the respondent referred to several cases but in none of them the dicta of Atkin L.J. or the four conditions analysed by Slesser L.J. have been suggested, much less stated, to be not the correct tests. The respondent's argument that whenever there is a determi- nation of a fact which affects the rights of parties, the decision is quasijudicial, does not appear to be sound. The

observations of May C.J., when properly read, included the judicial aspect of the determination in the words used by him. I am led to that conclusion because after the test of judicial duty of the body making the decision was expressly stated and emphasized by Atkin and Slesser L.JJ. in no subsequent decision it is even suggested that the dictum of May C.J. was different from the statement of law of the two Lords Justices or that the latter, in any way, required to be modified. The word "quasi-judicial" itself necessarily implies the existence of the judicial element in the process leading to the decision. Indeed, in the judgment of the lower court, while it is stated at one place that if the act done by the inferior body is a judicial act, as distin- guished from a ministerial act, certiorari will lie, a little later the idea has got mixed up where it is broadly stated that when the fact has to be determined by an objec- tive test and when that decision affects rights of some- one, the decision or act is quasi-judicial. This last statement overlooks the aspect that every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to deter- mine certain objective. facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the execu- tive authority has to form an opinion about an 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. Observations from different decisions of the English Courts were relied upon to find out whether a particular determination was quasi-judicial or ministerial. In some cases it was stated that you require a proposition and an opposition, or that a lis was necessary, or that it was necessary to have a right to examine, cross- examine and reexamine witnesses. As has often been stated, the observations in a case have to be read along with the facts thereof and the emphasis in the cases on these different aspects is not necessarily the complete or exhaustive statements of the requirements to make a decision quasi-judicial or otherwise. 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 proce- dure 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. In my opinion the conditions laid down by Slesser L.J. in his judgment cor- rectly bring out the distinction between a judicial or quasi-judicial decision on the one hand and a ministerial decision on the other.

On behalf of the respondent it was strongly urged that even applying these tests the decision of the Provincial Government under section a is quasi-judicial. The decision whether the premises were required for a public purpose was contended not to be a matter of opinion. The power to make inquiries under sections 10 and 12 were strongly relied upon in this connection.

Two cases were strongly relied upon by the learned counsel for the respondent in support of his contention that the order in the present case was quasi-judicial. The first is The King v. The Postmaster General (1). In that case an employee claimed compensation under the Workmen's Compensa- tion Act. The compensation was payable to him if the workman obtained a certificate of the certifying surgeon that he was suffering from the telegraphists' cramp and was thereby disabled. A medical practitioner was appointed by the Secre- tary of State and was given powers and duties of a certify- ing surgeon under section 4 of the relevant Act. By an order of the Secretary of State, made in pursuance of that section, it was provided that so far as regards the post office employees, the

post office medical officer "under whose charge the workman is placed shall, if authorized to act "be substituted for the certifying surgeon in cases of telegraphists' cramp. It was the practice of the post office to refer all cases of such cramp to the chief medical officer of the post office and this reference was relied on as constituting him the substitute for the certifying surgeon under the Act and Order. The applicant suffering from telegraphists' cramp was on the capitation list of the local post office medical officer but in fact never consult- ed him. On her claiming compensation for telegraphists' cramp the case was referred to the chief medical officer in accordance with the usual practice who certified that the applicant was not suffering from such cramp. It was held that the giving of the certificate was therefore the appro- priate subject of proceedings by way of certiorari. In rejecting the argument that on the issue of such certificate no right to obtain a writ came into existence, because the certificate was a mere nothing as it had to be followed by another examination and inquiry, Lord Hewart C.J. observed as follows: "I do not think that it was (1) [1928] 1 K.B.291.

contemplated at all that the judgment of the medical referee should, in the smallest degree, be lettered or influenced by a certificate given by a wholly unauthorized person and I do not think Mrs. Carmichael would be in the same position before the medical referee as that in which she would have been if there had been a refusal on the part of the proper officer to give her any certificate at all." A surgeon's certificate which gave or deprived a person of right to compensation was thus considered a judicial act and if the person had no jurisdiction to give such a certificate a writ of certiorari was considered the proper remedy. It should be noticed that in this case a procedure of inquiry was provided under the Act. The case was under entirely differ- ent provisions of the Workmen's Compensation Act, which, inter alia, gave a right of appeal against the surgeon's decision. It may be further noticed that the subsequent right to obtain compensation started with the certificate in question and was not an independent act of the deciding authority having no connection or concern and not influenced by this decision. A similar decision in respect of the mental capacity of a boy in a school is in Rex v. Boycott and Others (1). In that case also the opinion of the examin- ing doctor, which had to be followed by subsequent examina- tion and inquiry, was considered subject to a writ of certi- orari because that decision directly related to the boy and was the starting point for proceeding under the Detention Act and the Mental Deficiency Act.

Bearing in mind the important factor which distinguish- es a quasi-judicial decision from an administrative act, it is next necessary to find out whether the action of Provin- cial Government permitted under section 3 of the Ordinance, read along with the scheme of the Ordinance, is a quasi-judicial decision or an administrative act. Section 3 of the Ordinance permits the Provincial Government, if in its opinion it is necessary or expedient to do so, to make an order in writing to requisition any land for any public purpose. Keeping aside for the moment the proviso to the (1) [1939] 2 K.B. 651.

section, it is not seriously disputed that the subjective opinion of the Provincial Government in respect of the order of the requisition is not open to challenge by a writ of certiorari. The Ordinance has left that decision to the discretion of the Provincial Government and that opinion cannot be revised by another authority. It appears there- fore that except when mala fides is clearly proved, that opinion cannot be questioned. The next question is whether the requirement "for any public purpose" stands on the same footing. On behalf of the appellant, it was argued that the opinion of

the Government, that it is necessary or expedient to pass an order of requisition, stands on the same footing as its decision on the public purpose. In the alternative it was urged that the two factors, viz., necessity to requi- sition and decision about public purpose, form one composite opinion and the composite decision is the subjective opinion of the Provincial Government. The third alternative conten- tion was that the decision of the Government about a public purpose is a fact which it has to ascertain or decide, and thereafter the order of requisition has to follow. The decision of the Provincial Government as to the public purpose contains no judicial element in it. Just as the Government has to see that its order of requisition is not made in respect of land which is used for public religious worship or is not in respect of land used If or a purpose specified by the Provincial Government in the Official Gazette, (as mentioned in the proviso to section 3) or that the premises are vacant on the date when the notification is issued (as mentioned in section 4 of the Ordinance), the Government has to decide whether a particular object, for which it is suggested that land should be requisitioned, was a public purpose.

In my opinion, this third alternative contention is clearly correct and it is unnecessary therefore to deal, with the first two arguments. There appears nothing in the Ordinance to show that in arriving at its decision on this point the Provincial Government has to act judicially. Sections 10 and 12, which were relied upon to show that the decision was quasi-judicial, in my opinion, do not support the plea. The enquiries mentioned in those sections are only permissive and the Government is not obliged to make them. Moreover, they do not relate to the purpose for which the land may be required. They are in respect of the condition of the land and such other matters affecting land. Every decision of the Government, followed by the exercise of certain power given to it by any law is not necessarily judicial or quasi-judicial. The words of section a read with the proviso, and the words of section taken along with the scheme of the whole Ordinance, in my opinion, do not import into the decision of the public purpose the judicial element required to make the decision judicial or quasi-judicial. The decision of the Provincial Government about public purpose is therefore an administra- tive act. If the Government erroneously decides that fact it is open to question in a court of law in a regular suit, just as its action, on its decision on the facts mentioned in the proviso to section 3 and in section 4, is open to question in a similar way. The argument that a suit may be infructuous because a notice under section 80 of the Code of Civil Procedure is essential and that remedy is therefore inadequate, is unhelpful. Inconvenience or want of adequate remedy does not create a right to a writ of certiorari. It is clear that such writ can be asked for if two conditions are fulfilled. Firstly, the decision of the authority must be judicial or quasi-judicial, and secondly, the challenge must be in respect of the excess or want of jurisdiction of the deciding authority. Unless both those conditions are fulfilled no application for a writ of certiorari can suc- ceed. As, in my opinion, the decision of the Provincial Government about public purpose is not a judicial or quasi-judicial decision, there is no scope for an application for a writ of certiorari.

Having regard to my conclusion, it is not necessary to discuss the other points urged by. the AttorneyGeneral against the issue of a writ against the Province of Bombay and I pronounce no opinion on the same.

The result is that the appeal is allowed and the petition dismissed. The order of costs made by the lower courts in favour of the respondents is cancelled. The respondents will pay the costs

throughout. The costs of the lower courts will be taxed in favour of the appellant on the terms allowed by those courts in favour of the respondents. The respondent will pay the costs of the appeal here. The order of costs against the respondents will be limited to the assets of the deceased come to their hands, as the original applicant has died pending these proceedings.

FAZL ALl J.--This is, in my opinion, quite a simple case, but it has been greatly complicated by the citation of a mass of decisions by the parties and by an attempt on their part to extract from them some principle to support their respective contentions.

The principal question to be decided in this appeal is whether a writ of certiorari is avail able to the respondent to remove or quash an order made by the Government of Bombay requisitioning certain premises under section a of Bombay Ordinance No. V of 1947. It is well settled that a writ of certiorari can be issued only against inferior courts or persons or authorities who are required by law to act judi- cially or quasi-judicially, in those cases where they act in excess of their legal authority. Such a writ is not avail- able to remove or correct executive or administrative acts. The first question therefore to be decided in this case is whether the order passed by the Government of Bombay requi- sitioning the premises in question is a judicial or quasi- judicial order or an executive or administrative order.

Without going into the numerous cases cited before us, it may be safely laid down that an order will be a judicial or quasi-judicial order if it is made by a court or a judge, or by some person or authority who is legally bound or authorized to act as if he was a court or a judge. To act as a court or a judge necessarily involves giving an oppor- tunity to the party who is to be affected by an order to make a representation, making some kind of inquiry, hearing and weighing evidence, if any, and considering all the facts and circumstances bearing on the merits of a controversy, before any decision affecting the rights of one or more parties is arrived at. The procedure to be followed may not be as elaborate as in a court of law and it may be very summary, but it must contain the essential elements of judicial procedure as indicated by me. In some of the cases which were cited before us and which have been discussed in the elaborate judgments under appeal, an attempt has been made to lay down certain formu- lae for determining whether an order is a judicial or quasi-judicial order or not, but in my opinion it is safer to grasp the principle than to depend on the application of any formula or formulae. Again, a large number of cases were cited to show various instances in which a person or persons was or were held to act judicially or quasi-judicially, but those cases, as I have already indicated, often obscure what may otherwise be a simple question; and apart from the fact that this Court is not bound to refer to cases unless it finds it necessary to do so, I fully share the view ex- pressed by the Privy Council in Wijeyesekar v. Festing (1)as to why cases decided under different enactments are often not very helpful. In that case, which related to a Ceylon Ordinance, one of the provisions of which appears to be similar in certain respects to section a of the Ordinance before us, the Privy Council observed:

> "Reference has been made to cases dealing with similar questions arising under statutory enactments in India. Their Lordships do not refer to those cases because the wording of the enactment is not the same, and their discus- sion might, to some extent, complicate what appears to their Lordships to be a very simple issue."

Having made these observations, they proceeded say:

> (1) [1919] A.C. 646.
>
> "The whole case is decided, in the opinion, of their Lordships, in the last three lines of section 6 of the Ordinance."

In the present case also, the simplest way to decide it is to try to construe correctly section 3 of the Ordinance under which this case has arisen. That section, runs as follows:

> "If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in writing requisition any land for any public purpose:
>
> Provided that no land used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section."

In construing this section, it is our first duty to enter into the mind of the framers of the Ordinance and look at the whole matter as they must have looked at it. Pro- ceeding in this way, two things seem to me to be clear: (1) The existence of a public purpose is the foundation of the power (or jurisdiction, if that term may appropriately be used with reference to an. executive body) of the Provin- cial Government to requisition premises under section 3, or, as is sometimes said, it is a condition precedent to the exercise of that power. I think that this aspect of the matter has been very lucidly summed up by Bhagwati J. in these words:

> "Unless and until there was a public purpose in exist- ence for the achievement of which they would exercise the power invested in them under section 3, there would be no jurisdiction at all in the Provincial Government to make any order for requisition of land. It is only when that public purpose existed that the jurisdiction of the Provincial Government would come to be exercised and then and then only would they be invested with the discretion of deciding whether it is necessary or expedient to requisition any land for the achievement of that purpose. It therefore follows that the existence of a public purpose.is a condition precedent to the exercise of the power of requisitioning invested in the Provincial Government by section 3 of the Ordinance. The Provincial GOvernment are not constituted the sole judges of what that public purpose is. The public purpose has to exist before they can exercise any power of requisi- tion of land within the meaning of that section."

(2) The framers of the Ordinance never intended to impose any duty on the Provincial Government to determine judicially whether a certain purpose is a public purpose or not. There are no express words in section a or any other section, to impose such a duty; nor is there anything to compel us to hold that such a duty is implied. A reference to section 6 of the Ordinance wherein an inquiry is specifi- cally provided for with a view to assess the compensation and sections 10 and 12 under

which the Provincial Government is empowered to obtain certain information and enable its officer to inspect land, show that where an inquiry or anything like an inquiry was intended to be made it was specifically provided for. There is however no provision for any inquiry being made for determining the public pur- pose. Indeed it appears to me that in a large majority of cases no inquiry should be necessary as the existence of a public purpose would, be selfevident or obvious, and a mere reference to the purpose will make anyone say: This is of course a public, purpose. It may be that just in a few exceptional cases, legalistic or some other considerations may make the position obscure, but in an Act or Ordinance which has to provide for prompt action and which in its day-to-day application must be confined to normal and not exceptional cases, the legislature may not attach too much importance to such cases and may credit the Provincial Government with sufficient intelligence to know before acting under the Ordinance whether a certain purpose is a public purpose or not. However that may be, the fact remains that there is nothing in the Ordinance to suggest that the public purpose is to be determined in a judicial way.

In this appeal, two principal contentions, which in the view I am inclined to take are the only contentions which need be referred to, were raised in the course of the argu- ments, one on behalf of the respondent and the other on behalf of the appellant. The contention of the respondent was that the Provincial Government has to act judicially in determining the public purpose and its action is therefore subject to a writ of certiorari if it acts beyond its legal authority. The contention on behalf of the appellant is that section 3 empowers the Government to form an opinion on two matters: (1) whether there is a public purpose; and (2) whether it is necessary or expedient in the interests of that purpose to requisition certain premises. Such being the case, the opinion of the Provincial Government on both these matters is final and cannot be questioned in any court of law.

I have said enough with regard to the first contention, but I shall add just a few words more. For prompt action the executive authoriti.as have often to take quick deci- sions and it will be going too far to say that in doing so they are discharging any judicial or quasi-judicial func- tions. The word "decision" in common parlance is more or less a neutral expression and it can be used with reference to purely executive acts as well as judicial orders. The mere fact that an executive authority has to decide some- thing does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference, and the real test is there any duty to de cide judicially? As I have already said, there is nothing in the Ordinance to show that the Provincial Govern ment has to decide the existence of a public purpose judicially or quasi-judicially. It is not obliged to call for or consider any objections, make any inquiry or hear evidence, but it may proceed in its own way--ex parte on prima facie grounds, just to see that it is acting within the limits of the power granted to it. Besides, the determination of the public purpose per se does not effect the rights of any person. It is only when the further step is taken, namely, when the Provincial Government forms an opinion that it is necessary or expedi- ent in the interests of public purpose to requisition cer- tain premises that the rights of others can be said to be affected. In these circumstances, I am unable to hold that the Provincial Government has to act judicially or quasi- judicially under section 3 of the Ordinance. The contention on behalf of the appellant, to which I have referred, raises the question as to whether, if certain premises are requisitioned by the Provincial Government for a non-public purpose, the matter is open to challenge in a court of law. It is well settled that where an Act or regulation commits to an executive authority the decision of what is necessary or expedient and that

authority makes the decision, it is not competent to the courts to investi- gate the grounds or the reasonableness of the decision in the absence of an allegation of bad faith. Therefore, since the question as to whether it is necessary or expedient to acquire land (given a public purpose) has been left entirely to the satisfaction of the Provincial Government, the opin- ion formed by it, provided it is formed in good faith, cannot be questioned. In other words, if there is a public purpose, the mere fact that to the court or to any other person the requisition of the premises does not appear necessary or expedient in the public interest will not make the requisition bad. But the same cannot be said with regard to the decision of the Provincial Government as to the existence of a public purpose, which is the foundation of its power and is a condition precedent to its exercise. If the executive authority requisitions land under section 3 without there being any public purpose in existence, its action is a nullity and the position in law is as if the authority did not act under section 3 at all. Such being the legal position, a person whose right is said to have been affected can always go to a proper court and 'claim a decla- ration that in law his right cannot be affected. I am not prepared to subscribe to the view that the determination of a public purpose and the opinion formed as to the necessity or expediency of requisition form one psychological process and not two distinct and independent steps ;and therefore the rule which applies to one applies to the other. The correct position in my opin- ion is that the determination of the public purpose is the first step so that if the Provincial Government decided that there is no public purpose the second step need not follow. Besides, whereas the subjective opinion of the Government as to necessity or expediency is not capable of being accurate- ly tested objectively, the existence of a public purpose can be so tested, because there are well-known definitions of public purpose and those definitions can form the common basis for the ascertainment of a public purpose by different individuals. I think that the following dictum of Lord Halsbury in Mayor etc. of Westminster v. London & North Western Ry. Co.(1), sums up the legal position correctly:

> "Where the legislature has confided the power to a partic- ular body with a discretion how it is to be used, it is beyond the power of any Court to contest that discretion. Of course, this assumes that the thing done is the thing which the Legislature has authorised."

A number of cases were cited before us by the appellant to show that in construing certain provisions in other enactments which are drafted in similar language, the courts have held that the existence or otherwise of a public pur- pose is as completely left to the satisfaction of the execu- tive authority as the question as to whether it is necessary or expedient to acquire land. The leading case in support of this proposition is Wijeyesekara v. Festing (2). The deci- sion of that case turned on the construction of sections 4 and 6 of Ceylon Ordinance No. 3 of 1876, which run as fol- lows:

> "4. Whenever it shall appear to the Governor that land in any locality is likely to be needed for any public pur- pose, it shall be lawful for the Governor to direct the Surveyor-General or other officer generally or specially authorized by the Governor in this behalf, to examine such land and report whether the same is fitted for such purpose.

(1) [1905]- A.C. 426. (2) [1919] A.C. 646.

6. The Surveyor-General or other officer as author- ized as aforesaid shall then make his report to the Gover- nor, whether the possession of the land is needed for the purposes for which it appeared likely to be needed as afore- said. And upon the receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government Agent to take order for the acquisition of the land."

It appears that the procedure prescribed by the Ordi- nance in the above sections was followed and an order was made by the Governor of Ceylon directing the Government Agent to make an order for the acquisition of certain land for a public purpose, namely, the making of a road. The appellant to the Privy Council, who was the person whose land had been acquired, contended that the land was not required for any public purpose and that the direction of the Governor was invalid.-The Privy Council repelled this contention and held that it was not open to the appellant to contend that the land was not needed for a public pur- pose. Lord Finley who delivered the judgment of the Board quoted with approval a previous decision of the Ceylon Court, Government Agent v. Perera (1), in which the first two paragraphs of the headnote run as follows:

> "In the acquisition of a private land for a public purpose, the Governor is not bound to take the report of the Surveyor-General as to the fitness for such a purpose. His decision on the question whether a land is needed or not for a public purpose is final, and the District Court has no power to entertain objections to His Excellency's decisions."

In my opinion, this case does not go so far as it is supposed to have gone and it is apt to be misunderstood and misapplied. The land was acquired there for the purpose of making a road, and it could not have been argued that the making of a road was not a public purpose. The emphasis was on whether the land was (1) 7 Cey. N.L.R. 313.

actually needed or wanted for a public purpose and not on the character of the purpose and their Lordships held that the question whether the land was or was not needed for a public purpose had been left to the satisfaction of the executive authority. It seems to me that if the land had been acquired not for the purpose of making a road but for a purpose which was evidently not a public purpose at all, the courts could not have held that the Governor's action in acquiring the land for a non-public purpose was not open to challenge.

I do not wish to refer to cases decided under the Land Acquisition Acts, such as Ezra v. Secretary of State (1) and others because, apart from other things, as was pointed out by the Privy Council in the course of the arguments in Wijeyesekara v. Festing (2) the Indian Land Acquisition Acts expressly provide that the order of the local Government directing the acquisition of land is conclusive.

A third class of cases are those arising under certain war and emergency laws, of which Carltona Ltd. v. Commis- sioners of Works and Others (3) may be taken to be a speci- men. That case was decided under regulation 51 (1) of the Defence (General) Regulations which ran as follows:

> "A competent authority, if it appears to that authority to be necessary or expedient so to do in the interests of the public safety, the defence of the realm or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may take possession of any land, and may give such directions as appear to the competent authority to be necessary or expedi- ent in connection with the taking of possession of that land."

In that case' and other similar cases, it was held that the Parliament had completely entrusted to the executive the discretion of deciding when it would be necessary or expedi- ent to requisition land in the (1)I,L.R. 30 Cal. 36. (3) [1943] 2 All E.R. 560. (2) [1919] A.C. 646.

interests of public safety, the defence of the realm, etc., and therefore with that discretion if bona fide exercised no court could interfere. It is clear that the relevant provi- sions under which those cases have been decided refer to matters such as interest of public safety, defence of the realm, efficient prosecution of the war, etc., of which the executive authorities alone could be the best judges. So far as these matters are concerned, it is difficult to lay down an objective test for determining when the conditions upon which the executive authorities are to act should be deemed to be fulfilled. Thus there is no true-analogy be- tween this case and the case before us. An analogy to be complete must rest not only on similarity of language but also on similarity of objects. In certain complicated or border-line cases, the courts may find it difficult to decide whether a certain matter has been committed to the judgment of the executive authority and made entirely de- pendent on its satisfaction or whether it is a condition precedent to the exercise of its jurisdiction or power. The line of demarcation between these two matters may appear to be a thin one but it has to be drawn for arriving at a correct conclusion.

As I have already stated, a petition for a writ of certiorari can succeed only if two conditions are fulfilled:

> firstly, the order to be quashed is passed by an inferior court or a person or authority exercising a judicial or quasi-judicial function, and secondly, such court or quasi-judicial body has acted in excess of its legal authority. The second element would seem to be present in this case on the concurrent findings of the three Judges of the Bombay High Court which are clear and well-reasoned. But that does not seem to be enough for the purpose of granting a writ of certiorari to the respondent, since the requisitioning of the premises under section a of the Ordinance was a purely administrative act and did not involve any duty to decide the existence of a public purpose or any other matter judi- cially or quasi-judicially. The remedy of the respondent is clearly by action and not by asking Iota writ of certiorari. In the circumstances, the further points raised in the case do not call for decision, and I agree that this appeal should be allowed. It would however be for the Provincial Government to consider whether in view of the findings of the Bombay High Court it is desirable to pursue the matter any further. PATANJALI SASTRI J.--I agree that the appeal should be allowed for the reasons indicated in the judgment of my Lord and have nothing useful to add.

MEHR CHAND MAHAJAN J.--I agree with the judgment which my brother Mukherjea proposes to deliver and wish to add some observations of my own out of respect for my Lord the Chief Justice from whose judgment we feel constrained to differ.

The principal questions raised by this appeal are: (1) Whether the order of requisition dated 26th February 1948 made under section 3 of the Bombay Land Requisition Ordinance (Ordinance No. V of 1947) is a quasi-judicial order ?

(2) Whether a writ of certiorari lies against the Gov- ernment of Bombay ?

(3) Whether the High Court has jurisdiction to issue a writ of certiorari against the Provincial Government ? (4) Whether the requisition of the said flat and its allotment to Mrs. C. Dayaram, a refugee from Sindh, was for a public purpose ?

The case of the appellant is that the said requisition order is an administrative order, hence no writ of certio- rari can issue, that no writ of certiorari lies against the Provincial Government, that the High Court has no jurisdic- tion to issue a writ of certiorari against the Provincial Government which in law means and includes the Governor and that the requisition and the allotment of the said flat to Mrs. C. Dayaram was for a public purpose.

It is well settled that a writ of certiorari lies if the order complained of is either a judicial or a quasi-judicial order but iris not competent if the order is an administrative or an executive order. The circumstances under which a writ of certiorari can be issued are succinct- ly stated by Atkin L.J. in Rex v. Electricity Commissioners (1) in these terms:

"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 juris- diction of the King's Bench Division exercised in these writs."

It was said in Rex v. London County Council (2) that four conditions have to be fulfilled before a writ of certi- orari can issue, (1) there must be a body of persons, (2) it must have legal authority to determine questions affect- ing the rights of subjects, (3) it has the duty laid upon it to act judicially, and (4) it acts in excess of its legal authority.

The learned trial Judge as well as the Judges of the court of appeal have not in any way departed from these conditions. On the other hand, they have stood firmly by them. Mr. Justice Bhagwati, the learned trial judge, ob- served that it is only when these conditions are fulfilled that the body of persons is subject to the controlling jurisdiction of the King's Bench Division exercised in these writs. In the court of appeal the learned Chief Justice said that the very basis and foundation of the writ is that the act complained of must be a judicial or a quasi-judicial act. The fundamental rules governing the writ were not disputed before us during the course of the arguments. The real controversy centered round the definition of a judi- cial and a quasi-judicial act as distinguished

from an administrative or a purely ministerial act. The question is where to draw a line which demarcates the executive or purely administrative act from a quasi-jUdicial or a judi- cial act. The learned Chief Justice in the court below summed up the result of the authorities on the point in these terms:

> "In the first place, a duty must be cast by the legisla- ture upon the person or persons who is or are (1) [1924] 1 K,B. 171 at 205. (2) [1931] 2 K.B. 215 at 243.

empowered to act to determine or decide some fact or facts. There must also be some lis or dispute resulting from there being two sides to the question he has to decide. There must be a proposal and an opposition. It must be necessary that he should have to weigh the pros and cons before he can come to a conclusion. He would also have to consider facts and circumstances bearing upon the subject. In other words, the duty cast must not only be to determine and decide a question, but there must also be a duty to determine or decide that fact judicially."

The statement of the law seems unexceptionable. It is based on high authority. The classic definition of the term "judicial" was given by May C.J. in The Queen v. The Corpo- ration of Dublin (1), and this definition is in these terms:

> "It is established that the writ of certiorari does not lie to remove an order merely ministerial, such as a war- rant, but it lies to remove and adjudicate upon the validity of acts judicial. 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 the purpose 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 of others."

These observations of May C.J. were quoted by Lord Atkinson in Frome United Breweries v. Bath Justices (2) as "one of the best definitions of a judicial act as distin- guished from an administrative act." They seem to have been approved by Lord Greene M.R. in Rex v. Archbishop of Canter- bury C). In Rex v. Woodhouse(4) Lord Fletcher Moulton L. J. observed as follows:

> "The term 'judicial act' is used in contrast with purely ministerial acts. To these latter the process of certiorari does not apply, as for instance to the issue 'of a warrant to enforce a rate, even though the rate is one which could itself be questioned by certiorari. In short, there must be the exercise of some right or duty in (1) (1878) 2 L.R. Ir. 371. (3) [1944] 1 K.B. 282. (2) [1926] A.C. 586. (4) [1906] 2 K.B. 501.

order to provide scope for a writ of certiorari at common law."

In Jugilal Kamlapat v. The Collector of Bombay(1) Bhag- wati J. after a consideration of a number of English au- thorities reached the conclusion that the phrase "judicial act" must be taken in a very wide sense including many acts that would not ordinarily be termed judicial. The cases cited at the Bar fully bear out this conclusion. Reference may be made to The King v. Postmaster General (2),

where it was held that the giving of a certificate by a medical man was of the nature of a judicial act, and that the certifi- cate was a proper object of proceedings by way of certio- rari. By the effect of section 1 sub-section (1) (i) of the Workmen's Compensation Act, 1925, and an order extending its provisions to include telegraphists' cramp, a post office workman obtaining the certificate of the certifying surgeon that he was suffering from that complaint and was thereby disabled, was entitled to compensation. By section 44, sub- section (3), a medical practitioner appointed by the Secre- tary of State was given the powers and duties of a certify- ing surgeon. An order made by the Secretary of State in pursuance of that sub-section provided that so far as re- gards post office employees the post office medical officer under whose charge the workman was placed shall, if author- ized to act, be substituted for the certifying surgeon in cases of telegraphists' cramp. It was the practice of the post office to refer all cases of telegraphists' cramp to the Chief Medical Officer of the post office and this refer- ence was relied on as constituting him the substitute for the certifying surgeon under the above sub-section and order. The applicant in that case claimed compensation for telegraphists' cramp and the case was referred to the Chief Medical Officer in accordance with the usual practice. He certified that she was not suffering from telegraphists' cramp. It was the giving of this certificate that was treat- ed in the nature of a judicial act. Lord Hewart C.J. ob- served as follows:

(1) (1945) 47 Bom. L.R. 1070. (51) [1928] 1 K.B, 291.

"There was a moment in this case when it was argued that the document was of such a kind as not to be proper for the writ of certiorari. But I am satisfied, when I look at the part which a certificate of this nature must play in the making of any claim for compensation by a post office worker suffering from telegraphists' cramp, that the certificate of the certifying surgeon is of the nature of a judicial act, and is a fit subject for certiorari." In Rex v. Boycott (1) certification as to mental deficiency of a boy was held to be a quasi-judicial act within the mischief of the remedy of certiorari. By section 31 of the Mental Deficiency Act, 1913, it is provided that in case of doubt whether a child is or is not capable of receiving benefit from instruction in a special school or class, or whether his retention in such school or class would be detrimental to the interests of the other children, the matter shall be determined by the Board of Education. A certificate that the boy was incapable by reason of mental defect, of receiving further benefit from instruction in a special school or class and was an imbecile was issued by the medical officer. The father of the boy moved for an order of certiorari to remove and quash the certificate. Lord Hewart C.J. in issuing the writ made the following observations:

"In my opinion, on the facts of. this case, this certifi- cate of October 5, 1938, created in the way in which we know that it was created, purported to be and to' look like the decision of a quasi-judicial authority."

Reliance was placed on the observations of Atkin L.J. in Rex v. Electricity Commissioners(2) In The King v. The London County Council (3), a writ of certiorari was issued to the London County Council who had exercised the power to grant a licence under the Cinemato- graph Act, 1909, and had given permission to open the prem- ises on a Sunday under the Sunday Observance Act, 1780. By section

2, sub-section (1) of the Cinematograph Act, 1909, it was provided that (1) [1939] 2 K.B. 651.(2) [1924] 1 K.B. 171. (3) [1931] 2 K.B. 615.

a county council may grant licences to persons to use prem- ises for the exhibition of pictures or other optical effects by means of a cinematograph on such conditions and under such restrictions as the council may determine. The council had also power to modify or waive any of the conditions or restrictions attached by the council to the licence. Section 1 of the Sunday Observance Act, 1780, provided that any house, room or other place which shall be opened or used for public entertainment or amusement upon any part of the Lord's Day called Sunday, and to which persons shall be admitted by the payment of money, shall be deemed a disor- derly house. A company applied for a licence to open and use premises for cinematograph entertainments and also for permission to open the premises for such purposes on Sun- days, Christmas Day and Good Friday. In compliance with this application the county council made an order accordingly provided a sum of pound 35 was paid to charity in re- spect of each Sunday, Christmas Day or Good Friday. Scrut- ton L.J. in issuing the writ made the following observa- tions:

> "It is quite clear that every proceeding of magistrates or confirming authorities in granting new or renewing old licences is in the nature of a Court, excess of jurisdiction in which can be dealt with by the writ of certiorari; and the procedures in granting licences under the Cinematograph Act, and proceedings consequential thereon appear to me to stand exactly on the same footing as the proceedings of magistrates or confirming authorities dealing with licences for public houses. When the question is, on what terms and conditions shall a licence be granted, and when the commit- tee proceeds to require that notice of the proposal shall be given, and to hear the applicant and his opponents, and to take evidence, the proceeding seems to me to be exactly that of a tribunal which the King's Bench Division, by the writ of certoirari, restrains within its jurisdiction."

Slesser L.J. in the same case discussed this matter at some length and in the concluding portion of the judgment made the following observations:

> "The legal authority is clearly given by the section to grant the licences, and I have pointed out how it affects the rights of the subject. But the third question is the one which was most strenuously debated in the argument before us: Are the Council under a duty to act judicially? It is said that what has here been done is not a judicial act, or not an act of an administrative body having judicial duties to perform, but is in substance an administrative act for the review of which the writ of certiorari is not appropri- ate. I am unable to distinguish in principle between the application for a licence under the Cinematograph Act, 1909, and an application made with regard to a licence for a public house, which for many years, as to the Confirming Authority, and later, as to the whole proceedings, has been held to be a judicial act. It was suggested, so far as I understood the argument which attempts to differentiate this application from an application for a public house licence, that there is not provided in terms in s. 2 any provision for opposition; and that is perfectly true. There is an obligation to

> notify the police, but there is not in terms there any provision for dealing with opposition, though the County Council have made an elaborate code under which opposition may be heard. I have examined other statutes which similarly contain powers to grant licences, but do not in terms mention opposition,.and I find that in one, at any rate, the action of the magistrates was treated as a judi- cial act, although the statute contained no express provi- sion for opposition. Reg. v. Justices of Walsall (1) is an authority that where, on the face of it, it appears that a licence is to be granted to certain persons and not to others, conferring upon them certain rights and obligations, the mere fact that the statute does not in terms provide for opposition to be heard, does not any the less make the duty of the magistrates a judicial duty and therefore it is clear that they were acting or purporting to act judicially in hearing this application, assuming that it was an applica- tion, to modify the licence. Of course, as was pointed out by Greer L.J. in the course of the (1) [1854] 3 W.R. 69 argument, unless the body was usurping a jurisdiction or acting contrary to their juridical powers, it would not be necessary to have a certiorari at all; and to argue that, because they have gone beyond their powers, therefore certi-

orari would not lie, would be to defeat the whole purpose of the writ. But the question is, have they purported under the statute, and have they a duty under the statute, to perform a judicial function in hearing applications for these licences ? In my opinion they certainly have." The learned Attorney-General cited the case of Franklin v. Minister of Town and Country Planning(1), for the propo- sition that the mere circumstance that an enquiry may have to be made publicly and objections may have to be heard of persons affected does not necessarily convert the act into a judicial or quasi-judicial act. That case related to the functions of a Minister under the Town and Country Planning Act and the New Towns Act, 1946. Lord Thankerton made the following observations:

> "In my opinion, no judicial, or quasi-judicial duty was imposed on the respondent, and any reference to judicial duty, or bias, is irrelevant in the present case. The re- spondent's duties under section 1 of the Act and Sch.1 thereto, are in my opinion purely administrative, but the Act prescribes certain methods of or steps in, discharge of that duty. It is obvious that, before making the draft order,which must contain a definite proposal to designate the area concerned as the site of a new town, the respondent must have made elaborate inquiry into the matter and have consulted any local authorities who appear to him to be concerned, and obviously other departments of the Govern- ment, such as the Ministry of Health, would naturally re- quire to be consulted. It would seem, accordingly, that the respondent was required to satisfy himself that it was a sound scheme before he took the serious step of issuing a draft order. It seems clear also, that the purpose of inviting objections, and, where they are not withdrawn, of having a public inquiry, to be held (1) [1948] A.C. 87.

by someone other than the respondent, to whom that person reports, was for the further information of the respondent, in order to the final consideration of the soundness of the scheme of the designation; and it is important to note that the development of the site, after' the order is made,

is primarily the duty of the development corporation estab- lished under section 2 of the Act. I am of opinion that no judicial duty is laid on the respondent in discharge of these statutory duties, and that the only question is wheth- er he has complied with the statutory directions to appoint a person to hold the public inquiry, and to consider that person's report."

In view of these authorities all that can be said is that there is an indefinable, yet an appreciable, differ- ence between the doing of an executive or administrative act and a judicial or a quasi-judicial act. The question, however, whether an act is a purely ministerial or a judi- cial one depends on the facts and circumstances of each case. As observed by my brother Das in re Banwarilal Roy (1), the question whether an act is a judicial or a quasi- judicial one or a purely executive act depends on the terms of the particular rule, the nature, scope and effect of the particular power in exercise of which the act may be done. In the actual application of the abstract propositions to the circumstances of different cases the exercise of jurisdiction to issue a Writ of certiorari varies according to the foot of the Chancellor.

The question therefore for decision in this case is whether the Government is a body of persons having legal authority to determine questions affecting the rights of subjects, and secondly, to the extent to which it has and in performing that duty has it the duty to act judicially. In my opinion, the position and duties of the Government under the Bombay Land Acquisition Ordinance are such that it satisfies both the tests. It is a body of persons having legal authority to determine questions affecting the rights of subjects and I (1) (1944) 48 C.W.N. 766 think its duty is to act judicially. It cannot arrive at its determination on a mental process of its own. An examination of the provisions of this Ordinance shows that before the Government forms the opinion that it is necessary and expedient to requisition any land it has to determine the following questions of fact and law-- (1) whether the land is required for a public purpose; (2) whether the land, the subject matter of the requisi- tion is being used for public religious worship; (3) whether the land which it is intended to requisi- tion is being used for a purpose which the Provincial Gov- ernment has specified by a notification; and (4) whether the premises are vacant premises. All these questions are mixed questions of law and fact. No precise definition of the phrase "public purpose" can be attempted and none has been given in judicial decisions. It was, however, observed in Hamabai Premjee Petit v. Secretary of State for India (1) that in order to constitute a "public purpose" in taking land it is not necessary that the land when taken is to be made available to the public at large, but that it includes a purpose, that is an object in which the general interest of the community as opposed to the particular interest of the individuals is directly and vitally concerned. It was said in that case that prima facie the Government are good judges of the question whether the purpose is one in which the general interests of the community is concerned but that they are not absolute judges, that is, they cannot say "I desire it, therefore I order it". Under the proviso the question whether the land is being used for public religious worship is again a matter which involves difficult questions of fact and law and the determination of these questions may seriously affect legal rights of worshippers, trustees and other people interested in a place of worship. Similarly the question whether the premises are vacant is a matter that has to be determined in view of the definition of "vacant premises"

> given in section 4. It involves the determination of the question whether the vacancy was caused by the termination of a tenancy, or by the eviction of a tenant, or by the

release of the premises from requisition, etc. A duty has been cast on the landlord to give information of the vacancy of a premises to Government and any failure in the perform- ance of that duty is punishable under the law. The determi- nation by the Government that certain property is required for a public purpose and therefore in its opinion it should be requisitioned entitles the person whose premises are requisitioned to a right to compensation which has to be determined admittedly in a judicial manner under the provi- sions of the Act. The point therefore arises whether it was intended by the provisions of the order that all these questions of fact and law which have to be determined before Government forms an opinion as to the expediency or necessi- ty of requisitioning certain premises, were to be subjec- tively determined and the rights of persons were to be affected merely on the opinion of the Government; or. whether the determination was intended to be of a judi- cial or quasi-judicial nature; in other words, whether the determination of these important questions has to be in the infinite mind of the Government or is in the truth of the facts themselves. Are these questions to be determined by the mental operations or the idiosyncracy of the officers of Government or does their determination depend on existence of material facts ? If the decision of all the questions is to be arrived at by a subjective process, then there can be no doubt that the act of the Government in making the requi- sition will be a purely ministerial act and will not fall within the mischief of the writ; if, on the other hand, these questions of fact and law have to be determined objec- tively, then the inference is irresistible that the determi- nation will be of a judicial nature. The method and manner of reaching it will be a judicial process. It will consider a proposition and an opposition;both sides of the question will have to be considered, i.e., the Government's point of view as well as the point of view of the person affected and the determination would only be reached on a consideration of facts and circumstances. The line of approach in the matter is, does section 3 of the Ordinance contemplate a thinking on the part of the Government that the place is not being used for the purpose of public religious worship, or does it contemplate a finding on facts that the place is not a place of public worship. As stated by Lord Atkin in Liversidge v. Sir John Anderson C), does the Ordinance contemplate a case of a thinking that a person has a broken ankle and not a case of his really having a broken ankle ? Similarly, can it be said that section 4 contemplates merely a vacancy in the mind of the Government, not a vacancy in fact as a real thing. After a careful consideration of the matter I have no hesitation in holding that these questions are not questions for the mere determination of the Govern- ment subjectively by its own opinion but are matters of determination objectively. That being so, the determina- tion of these questions depends on materials which the Government have sufficient power to call for under the Ordinance. It is not only the duty of the Government to determine these questions but its duty is to determine them in a judicial manner, that is, by hearing any opposition to the proposal and by placing its determination on some mate- rials which it has called for under the provisions of sec- tion 10 or 12 of the Ordinance. The determination affects valuable rights of persons as to property, it affects rights of worship and any such determination may entail serious consequences. The case-The King v. Bradford (2)

furnishes an apposite illustration. In that case authority was given to take materials for a period of five years from a certain enclosed land which in the opinion of the High Court was a park. It was held that the justices could not by wrongly deciding that the land was not a park give themselves juris- diction in the matter. In my opinion, the Government by wrongly deciding that the place is not a place of public worship cannot acquire jurisdiction for requisitioning the land. Similarly they cannot by describing a private purpose as a public purpose acquire jurisdiction to make an order of requisition. The Ordinance contemplates the making of necessary enquiries and enabling provisions have been made in it for facilitating them. It seems that a duty is cast on Government before reaching its decision on such important matters to make enquiries and hear persons concerned. Though no express provision exists that objections have to be heard, the power given under section 12 to make enquiries from the person occupying the premises or owning them show that no sooner enquiries are made all that a person has to say on the matter will be said and heard.

For the reasons given above I cannot accede to the contention of the learned Attorney-General as to the con- struction of section3 of the Ordinance when he says that it means that the determination of "public purpose" is a matter which rests in the opinion of the Government alone and that the decision of the facts mentioned in the proviso also depends on that opinion. I cannot also agree in the contention that even if these matters required deter- mination objectively, they can be so determined by making administrative enquiries and without hearing persons con- cerned. In my judgment the learned trial Judge as well as the Judges of the Court of appeal reached a correct decision in this case which is a case on the border line and I do not think that there are any substantial grounds for reversing their well considered decision. As regards the second question, I have no hesitation in holding that a writ of certiorari lies against the Govern- ment of Bombay. Section 306, read with section 176 of the Government of India Act, 1935, expressly preserves the right to sue in all cases where such a right could be exercised as against the East India Company. The learned Attorney-General argued that the section was confined to suits and to actions and did not cover the case of a writ of certiorari. It was said that there is no power to issue a command to the Sovereign. My simple answer is that the Provincial Government is not the sovereign and that the Government of India Act expressly says that there is a right to sue the Province. The expres- sion "sue" means "the enforcement of a claim or a civil right by means of legal proceedings." When a right is in jeopardy, then any proceedings that can be adopted to put it out of jeopardy fall within the expression "sue". Any remedy that can be taken to vindicate the right is included within the expression. A writ of certiorari therefore falls within the expression "sue" used in section 176 of the Government of India Act, 1935, and the remedy therefore is within the express terms of the statute. The immunity granted by section 306 is to the Governor and not to the Province. It was argued that the word "Governor "in the section is synonymous with "Provincial Government" by reason of the definition of the phrase "Provincial Government"

given in section 46 (3) of the General Clauses Act. In my opinion, this definition cannot affect the interpretation of the Government of india Act. In that Act the Provincial Government and the Governor have been used in two different senses and not in one sense. Immunity from suits is given to the Governor and not to the Provincial Government,though the Governor may be one of the important component parts of the Provincial Government. Reference in this connection was made to the East India Company Act, 1780 (21 Geo. 3, c. vii), and to various statutes which eventually culminated in sections 306 and 176 of the Government of India Act, 1935. On the basis of the Act of 1780 it was contended that the High Court had no jurisdiction to issue a writ against the Gover- nor. That statute, however, did not prohibit the issue of a writ against the East India Company. On the other hand, there are caSeS which show that such writs were being issued against the East India Company. In my opinion, the matter has to be decided exclusively under the terms of the Government of India Act, 1935, and not on the terms of any repealed statute. Clauses 4 and 13 of the Charter of the Supreme Court gave the power to issue a writ of certiorari to the High Court against the East India Company and the same jurisdiction has been kept alive by the Government of India Act., 1935. Reference was made to a number of Madras cases but, in my opinion, those cases have not been correct- ly decided inasmuch as they have placed the Governor on the same footing as the Provincial Government by a process of reasoning which to my mind is not correct.

On the merits of the case whether the land in the present case was required for a public purpose, there is a concurrent finding of fact to the effect that the object of this requisition was to benefit an individual and no public purpose was involved in it. That being so, the writ was in my opinion properly issued in this case and the appeal is without force. I would accordingly dismiss it with costs. MUKHERJEA J.--This appeal is on behalf of the Province of Bombay and is directed against the judgment of an appellate Bench of the Bombay High Court (consisting of Chagla C.J. and Tendolkar J.) dated January 4, 1949, by which the learned Judges affirmed an order of Bhagwati J. dated September 27, 1948, in so far as it granted a writ of certiorari, for bringing up and quashing a requisition order made by the Provincial Government under section a of the Bombay Land Requisition Ordinance (V of 1947). There is not much controversy about the facts of the case which lie within a short compass. The requisition order was made by the Province of Bombay on February 26, 1948, in respect of the first floor of a building known as "Paradise" situated at 22, Warden Road, Mahalakshmi, Bombay. The entire build- ing is owned by one Dr. M, B. Vakil, and one Abdul Hamid was in occupation of the first floor as a tenant under Dr. Vakil prior to January 29, 1948. Abdul Hamid intended to go to Pakistan and was on the look out for some premises at Karachi where he might reside and carry on business. The petitioner Khusal Das, who was the main respondent in this appeal and is now dead and represented by his heirs, was a refugee from Karachi where he owned a Bungalow worth more than Rs. 50,000 and also a running business in which a considerable sum of money was invested. On 29th January, 1948, there was an agreement entered into by and between Abdul Hamid on the one hand, and the peti- tioner Khusal Das, his son Gobind Ram and his brother's daughter's son Hiranand on the other, by which the former assigned to the latter his tenancy right in the first floor of the Paradise in exchange of his getting a leasehold interest in the petitioner's Bungalow at Karachi. There were other terms of this transaction which are not relevant for our present purpose. The petitioner went into possession of the flat on February 4, 1948. On February 26, 1948, the Government of Bombay issued an order requisitioning the flat, the order being made under section 3 of the Bombay Land Requisition Ordinance (Ordinance No. V of 1947)

which came into force on and from the 4th of December, 1947. The order was signed by Mr. P.L. Rao as Secretary to the Govern- ment of Bombay, Health and Local Government Department. On the same day a letter was addressed by Mr. Rao to Dr. Vakil intimating to him that the said flat had been requisitioned as per copy of the Requisition Order enclosed therewith and that Government had allotted the flat to one Mrs. C. Dayaram at a rental of Rs. 85 per month. Mrs. Dayaram, it may be mentioned here, was also a refugee from Sind. On February 27, 1948, a further order was passed under the signature of Mr. Rao authorising one Lalwani, an Inspector in the Health and Local Government Department of the Government of Bombay, to take possession of the requisitioned flat under the provision of section 9 of the Requisitioning Ordinance. On March 4, 1948, the petitioner Khusal Das filed an applica- tion in the Original Side of the Bombay High Court against P.L. Rao, Secretary to the Government of Bombay as party respondent alleging that the order of requisition was illegal and ultra vires on various grounds and praying for writs of certiorari, prohibition and an order under section 45 of the Specific Relief Act against the respond- ent. On this application, an interim injunction was granted by Coyajee J. restraining the Government from ob- taining possession of the flat. By a subsequent amendment of' the petition the Province of Bombay, as well as Mr. G.D. Vartak, the Minister-in-charge of the Health and Local Government Department were added as parties respondents. A large number of defenses were taken by the respondents in answer to the prayers of the petitioner. It was contended inter alia that the orders made under the Ordinance were not judicial or quasi-judicial orders, but executive orders made by the Province of Bombay and no writs of certiorari or prohibition would lie against orders of this description. On behalf of Mr. Rao, it was urged that he did not make any order himself and had merely authenticated and signed the orders in accordance with the provisions of section 59 (2) of the Government of India Act. As regards the Province of Bombay a point was taken that no writ could be issued against the Provincial Government which meant and included the Governor of the Province, he being immune from all proceedings in, and processes from any court of India under section 306 of the Government of India Act. The Minister respondent, it was said, was not personally responsible for the orders or for the consequences thereof under the Consti- tution. It was contended further that the requisition of the flat, and the allotment of it to Mrs. Dayaram were for public purpose. The petition was heard by Bhagwati J., who overruled all the contentions of the respondents and granted the petitioner's prayer. Writs of certiorari and prohibi- tion were directed to be issued against all the respondents, and there were also orders of mandamus granted against respondents other than the Province of Bombay. Against this decision an appeal was taken to the appeal Bench of the High Court (being Appeal No. 65 of 1948) and the appeal was heard by Chagla C.J. and Tendolkar J. By their judgment dated January 4, 1949, the learned Judges allowed the appeal in favour of the two respondents other than the Province of Bombay and set aside the orders made against them. They affirmed however the judgment of Bhagwati J., so far as it related to the Province of Bombay, and maintained the writ of certiorari issued against it. The Province of Bombay has now come up on appeal to this Court.

The learned Attorney-General who appeared in support of the appeal contended before us, that having regard to the provisions of the Ordinance under which the requisi- tion order was made no writ of certiorari would be at all available in law. It has been argued in the first place that the order complained of is a ministerial or administra- tive order which does not involve exercise of any judicial or quasi-judicial function and to a purely adminis- trative order of this character no writ of

certiorari lies. It is argued in the alternative that assuming that the Provincial Government has any semijudicial function to exercise while making an order under section 3 of the Ordi- nance, the question as to whether the requisition was for a public purpose or not, was a question of fact which the Provincial Government was competent to entertain and decide, under the terms of the Ordinance itself, and no writ of certiorari would lie to bring up an order of the Provincial Government on the ground that its decision on this point was erroneous or unsound. Lastly, it is contended that the Provincial Government is immune from all court processes and no writ of certiorari could be issued to it.

The first and the second points are really inter-con- nected, and I may have to discuss them together. They raise questions of considerable nicety and general importance, and we had arguments of the most elaborate character advanced on them by the learned counsel on both sides.

The first and the most important point for our consider- ation is whether the act of requisition against which the writ of certiorari has been issued by the High Court is a judicial or an administrative act. It is not disputed that the writ does not lie to remove an act which is purely ministerial. It can be availed of only to remove and adju- dicate on the validity of judicial acts (1). To ascertain the exact connotation of the expression "judicial act" in connection with the issuing of a writ of certiorari and to determine whether the act complained of in the present case is a judicial act or not it would be necessary and conven- ient to set out briefly how the law on the point as de- veloped by the Courts in England stands at present. A writ of certiorari like the writ of prohibition is a judicial writ of antiquity and it is the ordinary process by which the Court of King's Bench Division exercises control over the acts of bodies vested with inferior jurisdiction. The writ is intended to bring up before the High Court the records of proceedings or determinations of inferior tribu- nals and to quash them if the tribunals are found to have acted in excess of their jurisdiction.

It is well settled that the writ is not limited to bringing up the acts of bodies that are ordinarily consid- ered to be Courts. "The procedure of certiorari" as has been observed by Fletcher Moulton L.J. in Rex v. Woodhouse (2) "applies in many cases in which the body whose acts are criticised would not ordinarily be called a 'Court' nor would its acts be ordinarily termed judicial acts. The true view of the limitation would seem to be that the term 'judicial act' is used in contrast with purely ministerial acts. To these latter the process of certiorari does not apply, as for instance to the issue of a warrant to enforce a rate, even though the rate is one which could itself be questioned by certiorari. In short there must be the exer- cise of some right or duty to decide in order to provide scope for a writ of certiorari at common law." Per May C.J. in Reg. v. Dublin Corporation [1878] LR. 9 Ir. 371 at. p. 376.(2) [1906] 2 K.B. 501 at p.535.

There can be no doubt that originally the writ of certi- orari was issued only to inferior Courts using the word "Court" in its ordinary sense. As bodies of various types and denominations exercising semijudicial functions came to be introduced, the writ was extended to these bodies also. There is a long line of decided cases showing that the writ of certiorari has been issued to rating authorities, licens- ing Justices, Electricity Commissioners, the Board of Educa- tion, the General Medical Council, the Inns of Court, Assessment Committees, the Commissioner of Taxation and various other authorities who could be regarded as perform- ing some sort of judicial or semi-judicial

function though they have no authority to try cases, or pass judgments in the proper sense of the word (1). It would be interesting to note that in King v. Postmaster General (2), a writ of certiorari was issued to quash a disablement certificate granted by the Chief Medical Officer of the Post Office on the ground that he was not the certifying surgeon under the Workmen's Compensation Act, 1925, and the granting of a certificate was held to be a judicial act. In Rex v. Boy- cott (3), one Russel Keasely moved on behalf of his infant son Stanley for an order of certiorari to remove and quash a medical certificate granted by the respondent to the effect that Stanley was incapable by reason of mental defect of receiving benefit from instruction in a special school under section 56 of the Education Act, and two other con- nected documents. The Court was of opinion that as doubts did arise as to whether the boy was ineducable, it was a proper case to be determined by the Board of Education under section 31. It was held in these circumstances that the three documents which were parts and parcel of one and the same transaction constituted the determination of a quasi- judicial authority, and "exhibited all the mischief which a writ of certiorari was intended and well fitted to correct." The result was that all the. three documents were directed to be brought up and (1) Vide Halsbury'sLaws of England (2nd Edition) Vol. 26, p.

284. (2) [1928] 1 K, B, 291, (3) [1939] 2 K.B.

651. quashed. Even a report made by a Chief Gas Examiner has been removed and quashed by a writ of certiorari C). In the words of Banks L.J. the course of development of law on the subject demonstrates what has been the boast of English Common Law that it will, whenever possible and where necessary, apply existing principles to new set of circum- stances (2); and it was in very general terms that opinion was expressed in Rex v. Inhabitants of Glamorganshire (3) that the Court would examine the proceedings of all juris- dictions erected by Acts of Parliament and if under pretence of such an Act they proceeded to encroach jurisdiction to themselves greater than the Act warrants, the Court would send a certiorari to them to have their proceedings returned to the Court to the end that the Court might see that they keep themselves within their jurisdiction, and if they exceed it, to restrain them.

The whole law on the subject relating to issuing of writs of certiorari was thus summed up by Atkin L.J. in Rex v. Electricity Commissioners (4):

> "Whenever any body or 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 juris- diction of the King's Bench Division exercised in these writs."

This statement of law has been affirmed and reiterated in various cases since then (5) and its correctness has never been questioned. But unexceptionable though the statement is, it does not by itself afford any assistance in solving the real difficulty that arises in cases of this description. It postulates existence of a duty in the authority to decide judicially but it does not enumerate or give any indication of the (1) R.v. London County Council, 11 T.LR. 337. (2) Vide Rex v. Electricity Commissioners, [1924] 1 K B. 171, at p. 192. (3) 1 Ld. Raym. 580. (4) [1924] 1 K.B. 171 at p. 205.

(5) VideR. v. North Worcestershire Assessment Committee, [1929] 2 K.B. 397 at p. 405-6; R.v. London County Council, [1931] K.B.215.

circumstances under which such duty shall be held to be imposed. It has been pointed out very rightly by my learned brother Das J. in a recent Calcutta case (1) that of the four elements involved in the proposition of law enunciated by Lord Atkin, three may be present in an administrative or executive act as well.

A valid executive act undoubtedly presupposes the exist- ence of a legal authority in the officer or department to do the act. Such executive acts may and in fact do affect the rights of subjects. Cases are also not infrequent where an executive authority transgresses the limits of its jurisdic- tion, and acts in excess of its powers. Yet, it is not disputed that no writ of certiorari can be issued to re- strain or invalidate such executive acts. As was observed by Lord Hewart C.J. in Rex v. Legislative Committee of the Church Assembly (2), "in order that a body may satisfy the required test, it is not enough that it should have legal authority to determine questions affecting the rights of subjects, there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially." The material points for consideration there- fore are what is the true criterion of a judicial act, and how it is to be ascertained whether an authority is bound to act judicially in a particular matter or not. It is said that one of the best definitions of a judi- cial act, as distinguished from an administrative act, is that given by May C.J. in the Irish case of Reg. v. Dublin Corporation (8). The question raised in that case was whether a borough rate levied by a Corporation was illegal or not. It was found that the borough fund of the Corpora- tion was otherwise sufficient for all legitimate purposes but it was rendered insufficient by reason of certain illegal payments made out of it. To make up the deficiency, the Corporation levied a borough rate, the legality of which was challenged and writ of certiorari was prayed for to quash all the orders and (1) In re Banwarilal, 48 G.W.N. 766.

(2) [1928] 1 K.B. 411 at 415.

(3) [1878] L.R.2 Ir.371.

resolutions of the Corporation in connection with the impo- sition of the rate. The writ was granted and May C.J. while discussing in his judgment the meaning of the expression 'judicial act' observed as follows:

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

This definition was approved by Palles C.B. in Re: Local Government Board, Expand Kensington Commissioners(1) and was quoted in extenso by Lord Atkinson in Frome United Breweries Company v. Bath Justices(s). In the passage quoted above, the learned Chief Justice really describes what may be called the judicial process. There cannot indeed be a judicial act which does not create rights or impose obligations; but an act, as has been already pointed out is not necessarily judicial because it affects the rights of subjects. Every judicial act presupposes the application of judicial process. There is a well marked distinction between forming a personal or private opinion about a matter, and determining it judicially. In the performance of an executive act, the authority has certainly to apply his mind to the materials before him; but the opinion he forms is a purely subjective matter which depends entirely upon his state of mind. It is of course necessary that he must act in good faith, and if it is established that he was not influenced by any extraneous consideration, there is nothing further to be said about it. In a judicial proceeding, on the other hand, the process or method of application is different. "The judicial process involves the application of a body of 16 L.R. Ir. 150, (2) [1926] A.C. 586, rules or principles by the technique of a particular psycho- logical method" (1). It involves a proposal and an opposi- tion, and arriving at a decision upon the same on considera- tion of facts and circumstances according to the rules of reason and justice(2). It is not necessary that the strict rules of evidence should be followed:the procedure for investigation of facts or for reception of evidence may vary according to the requirements of a particular case. There need not be any hard and fast rule on such matters, but the decision which the authority arrives at, must not be his 'subjective', 'personal' or 'private' opinion. It must be something which conforms to an objective standard or crite- rion laid down or recognised by law, and the soundness or otherwise of the determination must be capable of being tested by the same external standard.

This is the essence of a judicialfunctionwhich differen- tiates it from an administrative function; and whether an authority is required to exercise one kind of function or the other depends entirely upon the provisions of the par- ticular enactment. Where the statute itself is clear on this point, no difficulty is likely to arise, but where the language of the enactment does not indicate with precision what kind of function is to be exercised by an authority, considerable difficulties are hound to be experienced. There are numerous decided cases, which deal with questions of this character, and quite a number of them were cited to us by the learned counsel on both sides. As they relate to the powers and duties of various types of authorities under various statutes and war regulations, dealing with different subject-matters and not uniformly worded, they are of no direct assistance to us in the present case. 1 think howev- er that we can cull a few general principles from some of the pronouncements of the English Courts, which may throw light on the interpretation of the Ordinance before us. Generally speaking, where the language of a statute indi- cates with sufficient clearness that the personal (1) Robson's Justice and Administrative Law, p. 33. (2) Vide R. v, London County Council [1931] 2 K,B. 215 at p.

233. satisfaction of the authority on certain matters about which he has to form an opinion founds his jurisdiction to do certain acts or make certain orders, the function should be regarded as an executive function. The decision of the House of Lords in Liversidge v. Anderson C) is the leading illustration of this type of cases. Even Lord Atkin ob- served, in course of his dissenting judgment in this case, that when the discretion is left to the Minister or any other authority without qualification,

by use of expressions like the following: "A Secretary of State... if it appears to him necessary may order; if it appears to the Secretary of State that any person is concerned...; if the Secretary of State is satisfied that it is necessary or expedient,"

> the act cannot but be held to be an executive act. Lord Atkin was however inclined to hold that the words "if the Secretary of State has reasonable cause to believe,"

should be construed as meaning "if there is in fact reasona- ble cause for believing," and according to his Lordship' 'reasonable cause" for an action or belief is as much a positive fact for determination by a third party as any other objective condition. This view was not accepted by the majority of the House and it was held that the words meant no more than that the Secretary of' State had honestly to suppose that he had reasonable cause to believe the required thing. Provided there was good faith the maker of the order was the only possible Judge of the conditions of his own jurisdiction(2).

After the law was settled in this way by the House of Lords, a large number of cases came up before the Courts in England which involved consideration of the provisions contained in various other orders and regulations relating to taking control of business or requisition of property. The language of these orders was very similar to that of Regulation 18 (B) under which the detention order was made in Liversidge's case. In Point of Ayr Collieries Ltd. v. Lloyd George (3)the (1) [1942] A.C.-206.

(2) Vide observation of Lord Radcliffe in Nakudda All v, M.F. De S Jayaratna 54 G.W.N. 883, 888.

(3) [1943] 2 A.E. R. 546.

control of the appellant's undertaking was taken by the Ministry of Fuel and Power by an order made under the De- fence (General) Regulations, 1939, reg. 55 (4). The rele- vant provision of the regulation stood as follows:

> "If it appears to the competent authority that in the interest of the public safety, the defence of the realm or the efficient prosecution of the war or for maintaining of supplies and services essential to the life of the communi- ty, it is necessary to take control on behalf of His Majesty of the whole or any part of an existing undertaking .....the competent authority may by order authorise ..... "

The appellant's contention was that there were no ade- quate grounds upon which the Minister could find, as he stated, he had found, that it was necessary to take control in the interests of the realm or the efficient prosecution of war. It was held that there was no jurisdiction in the Court to interfere with what was an executive order passed bona fide.

In Carltona Ltd. v. Commissioners of Works and Others(1) which was decided near about the same time, the appellant's factory was requisitioned by the Commissioner of Works under the provisions of the Defence (General) Regulations, 1939, Reg. 51 (1). The requisition order was challenged inter alia on the ground that the requisitioning authority never brought their minds to bear upon the question and had. they done so, they could not possibly come to the conclusion to which in fact they

came. In this case the regulation was almost in the same language as that in the earlier case. The words were "If it appears to the competent authority to be necessary or expedient so tO do ..... "

> The Court held that the Parliament had committed to the executive the discretion of deciding when an order for the requisition of the premises should be made under the regula- tion, and with that discretion if bona fide exercised no Court could interfere.
>
> (1) [1943] 2 A.E.R. 560.

Even when the language of the statute is such that it con- fers an unlimited discretion on the executive, there are cases where a duty on the part of the authority to act judicially has been sought to be spelt out of the other provisions in the statute, particularly those which relate to the holding of public enquiries and consideration of objections by the authorities concerned.

Thus in Pheonix Association Company v. Minister of Town and Country Planning(1) an application was made to quash an order made under section 1 (1) of the Town and Country Planning Act, 1944, which empowered the Minister of Town and Country Planning to make an order declaring land in any area to be subject to compulsory purchase, if he was satisfied that it was requisite for the purpose of dealing satisfactorily with extensive wardamage in the area of a local Town Planning authority that such lands should be laid out afresh and redeveloped as a whole. It was held by Hem Collins J. that the matter was not so peculiarly within the administrative capacity of the Minister that it could be regarded as one of pure discretion. Reliance was placed on the fact that the statute was not a piece of temporary legislation like Regulation 18 (B), and the provisions relating to holding of public enquiry, and hearing of objec- tions, indicated according to the learned Judge that the function was of a quasijudicial character. There was no appeal against this judgment, but quite a contrary view was taken by the Court of Appeal in another case which involved considera- tion of the same provisions of the same Act. This was the case of Robinson and others v. Minister of Town and Country Planning (2) and it was held there that the order under section 1 (1) of the Town and Country Planning Act is made by the Minister as an executive authority and he is at liberty to base his opinion on what- ever he thinks proper. Stress was laid on the words "requisite" and "satisfactory" used in the (1)[1947] 1 A.E.R.454. (2) [1947] 1 A.E.R.851 section and these words indicated according to the learned Judges that the question was one of opinion and policy, matters which were peculiarly for the Minister himself to decide, and as to which, assuming always that he acted bona fide, he was the sole Judge. It was further observed that no objective test was here indicated and that different consid- erations might apply where a Minister could be shown to have overstepped the limits of his power, e.g., where the condi- tions in which they may be exercised were laid down in the statute and he purported to act in a case where the condi- tions did not exist.

In Errington and others v. Minister of Health (1) the question arose as to whether an order of the Minister of Health confirming a clearance order made by a local authori- ty under section 1 of the Housing Act of 1930 was an execu- tive or judicial order. It was held that if there was no objection raised to clearance order by persons interested in the property and it was confirmed by the Minister, there was no exercise by the latter of any judicial or quasi-judicial function. But the position becomes different if objections are raised. Then the Minister would have to hold a public local

enquiry as provided for by the Act and consider the report of the person who held the enquiry. In such circum- stances the decision to confirm the clearance order amounts to an exercise of quasi-judicial function. This was a case under the Housing Act of 1930. In Frank- lin v. Minister of Town and Country Planning (2) however, which was a case under the New Towns Act, 1946, and con- tained very similar provisions, it was held by the House of Lords that in considering the report of the person who held a public enquiry after objections have been made to an order under section 1 (1) of the New Towns Act, the Minister has no judicial or quasi-judicial duty imposed on him, so that considerations of bias in the execution of such duties were altogether irrelevant.

It would be seen from the cases referred to above that the distinction between judicial and executive (1) [1935] 1 K.B. 249. (2) [1948] A.C. 87, function often turns out to be a very fine one, and differ- ence of opinion amongst Judges is not uncommon on these matters even when they have got to construe provisions of Acts which employ language very similar to each other. Leaving aside the cases, where the existence of a duty to act judicially is sought to be inferred from the provisions of a statute relating to holding of enquiry or hearing of objections, the general rule that all the eases lay down is that if the foundation of the exercise of the powers by an authority is his personal satisfaction or subjective opinion about certain facts, the function is to be regarded as executive and not judicial. The facts may undoubtedly be and often are objective facts about which the authority has got to form his opinion. When a statute says that a Minister can requisition property or order compulsory purchase if he deems it expedient to do so in the interest of public safety or the defence of the realm, the condition precedent to the exercise of his powers is not the actual existence of na- tional interest, but his own opinion or belief that it exists. To quote the words of Lord Radcliffe "If the ques- tion whether the condition has been satisfied is to be conclusively decided by the man who wields the power the value of the intended restraint is in fact nothing (1)". On the other hand, if the statute imposes an objective condi- tion precedent of fact to the exercise of powers by an authority, and not merely his subjective opinion about it, the function would be prima facie judicial. The distinction is beautifully illustrated by Lord Atkin in his classic judgment in Liversidge's case (2). If it is a condition to the exercise of powers by A that X has a right of way or Y has a broken ankle, the authority is charged with determin- ing these facts and it must ascertain judicially whether the conditions are fulfilled or not. If, on the other hand, the condition is that the authority thinks or is of opinion that X has a right of way or Y has a broken ankle, the condition is a purely subjective condition (1) Vide Nakkuda Ali v. M.F. De S. Jayratne 54 G.W.N. 883, 888. (2) [1942] A.C. 206,207 and the act cannot be a judicial act, as the existence of the condition is incapable of being determined by a third party by application of any rule of law or procedure. One other question arises in this connection and that relates to the second and alternative contention raised by the learned Attorney-General. When the legislature delegates powers to an authority, and lays down that the powers could be exercised only if a certain state of facts exists, obvi- ously the authority cannot act if the condition is not fulfil/ed. If it wrongly holds or assumes that the condi- tion exists although it actually does not exist, its assump- tion of jurisdiction would be unsupportable, and could be removed by a writ of certiorari. The legislature however may entrust the authority with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists. In such cases even if the authority makes a wrong decision either of facts or law, it can be corrected by an appellate tribunal if there is any, but not by a writ of certiorari, as every authority if it acts within juris- diction is competent to decide both rightly or wrongly (1) Keeping in view the principles

mentioned above, I would now turn to the provisions of the Bombay Land Requisition Ordinance, 1947, and try to ascertain from the nature and scope of the provisions, whether the act of requisition which section 3 of the Ordinance contemplates is a judicial or a purely administrative order.

The title of the Ordinance shows that it was passed to provide for the requisition of land, for continuance of requisition already made and for other purposes. The first preamble sets out the fact that the GovernorGeneral in exercise of the powers conferred on him under section 104 of the Government of India Act, 1935, has empowered all provin- cial legislatures to enact laws with respect to requisition of land. The second preamble really gives the reason for passing of (1) Per Esher L.J. in Queen v. Commissioners for the Spe- cial Purposes of Income Tax, '21 Q.B.D. 313 at p. 319.

the Ordinance; it recites that the Bombay Legislature is not in session and the Governor of Bombay is satisfied that circumstances exist which render it necessary for him to take immediate action to enable the Provincial Government to make provisions for requisitioning of land and for continu- ance of requisition of lands already subject to requisition. Section 3 of the Ordinance is the most material section for our present purpose and it stands as follows :--

> "If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in writing requisition any land for any public purpose :"

There is a proviso added to the section which is worded thus:

> "Provided that no and used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section."

The language of the section taken along with the proviso indicates in my opinion, that whereas the act of requisi- tioning land is left to the executive discretion of the Provincial Government and the latter can requisition land whenever it considers necessary or expedient to do so, certain conditions have been laid down which are conditions precedent to. the exercise of the powers. The first condi- tion is specified in the section itself and it postulates the existence of a public purpose as an essential prerequisite to the taking of steps by the Provincial Government in the matter of requisitioning any property. Even where this condition is satisfied, there is another condition imposed by the proviso which is in the nature of an exception engrafted upon the entire section and which prevents the Provincial Government from exercising its powers at all if the land sought to be requisitioned is used for public religious worship or for any other purpose which the Provincial Government has specified in the Official Gazette.

In my opinion the existence of a public purpose as an objective fact, and not the subjective opinion of the Pro- vincial Government that such fact exists, has been made the essential preliminary which founds the jurisdiction of the Provincial Government to proceed with any act of requisi- tion.

This would be apparent from the collocation of words as they occur in section 3 and also from other provisions of the Ordinance which indicate the scheme which the framers of the Ordinance had in view.

Section 3 does not say that if in the opinion of the Provincial Government it is necessary or expedient to requi- sition land for any public purpose, it may do so by an order in writing. In that case it might be argued that it was left as a matter of subjective opinion to the Provincial Government to decide whether there was or not any public purpose justifying the requisition; and provided the author- ity acted in a bona fide manner, the Courts would have no say in the matter. The words "public purpose," it would be seen, have been placed at the end of the sentence, and this indicates that it is a thing collateral to, and not included in, the act which has been described before, and which has been left to the discretion of the executive. It is an independent fact, the existence of which enables the execu- tive to move in the matter of requisitioning property, but it is itself not dependent on the personal opinion of the executive. I agree entirely with Chagla C.J. that the words "to do so" refer to the act of requisition, that is to say, to the nature of the act and not to the purpose for which it is done. There is no indication here, as there is in var- ious statutes and regulations which I have referred to above that not merely the necessity or expediency of requisition- ing property, but the existence of a public purpose which gives occasion for exercising the powers of requisition, is also a matter of personal opinion of the executive. Reference was made in course of arguments to the lan- guage of section 4 of the Indian Land Acquisition Act, and similar provisions in other Land Acquisition enactments, where the expression 'public purpose' occurs. It will be seen at once that the language of these provi- sions is materially different from that of section 3 of the Ordinance.

In Wijeyesekera v. Festing(1) the Privy Council had to deal with a case under the Ceylon Acquisition of Land Ordinance. Section 4 of the Ordinance provides as follows:

> "Whenever it shall appear to the Governor that land in any locality is likely to be needed for any public purpose, it shall be lawful for the Governor to direct the Surveyor General or other officer ..... to examine such land and report whether the same is fitted for such purpose."
>
> "Section 6 then says:
>
> "The Surveyor General or other officer ..... shall make his report to the Governor Whether the possession of the land is needed for the purpose for which it appeared likely to be needed as aforesaid, and upon the receipt of such report it shall be lawful for the Governor with the advice of the Executive Council to direct the Government Agent to take order for the acquisition of the land."

The question raised was whether the decision of the Gover- nor that the land is wanted for public purpose is final, and the question was answered in the affirmative. It seems clear that on the language of the two sections referred to above no other answer was possible. It is not the existence of a public purpose which is a condition precedent to the exercise of powers by the Governor under the

Ceylon Ordi- nance. The Governor has been made the sole Judge of the existence of public purpose as well as of the necessity of acquiring land for that purpose. There is no condition limiting or restricting his powers in any way. The language of section 4 of the Land Acquisition Act of India is very much the same. The section begins with these words:

> (1) [1919] A.C. 646 "Whenever it appears to the local Government that land in any locality is needed or likely to be needed for any public purpose ..... "
>
> Moreover, under section 6 (3) of the Act, a declaration made by the Government that any land is needed for public purpose is conclusive evidence of the existence of such purpose.
>
> What exactly is the extent of powers conferred by the Legislature upon a body or tribunal is to be gathered from the language used by the Legislature. Mere similarity or even identity of objects cannot justify us in coming to the conclusion that the Legislature must have meant the same thing in one piece of legislation as it meant in 'another when the language is not identical. In cases of this de- scription utmost stress should be laid on the actual words used, for there is no presumption that the Legislature intended to confer one kind of power on the authority rather than another in cases of particular type. If there is any presumption at all it is in favour of the liberty of the subject, and any law which encroaches upon such liberty must be construed strictly and should not be carried beyond what the actual words used mean in their plain grammatical sense. It may be pertinent to point out in this connection that a similar provision in section 3 (1) of the West Bengal Prem- ises Requisition and Control Act, has been expressed in a different language and the actual existence of public pur- pose has not been made a condition precedent to the exercise of powers by the Provincial Government. The section is worded as follows:
>
> "Whenever it appears to the Provincial Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may by order in writing requisition such premises."

There has been a recent decision(1) of the Calcutta High Court on the above provision of the Bengal Act, but the particular point which has arisen for our consideration in this case, was not and could not be raised there. (1) A.C. Mahomed v. Sailendranath 54 C.W.N.. 642.

A conspectus of the whole of the Bombay Ordinance leaves a clear impression that it was not the intention of the framers of the Ordinance to give an unlimited and unfettered discretion to the Executive Government in the matter of requisitioning property. The powers are to be exercised within defined limits. Section 3 as stated above imposes a twofold restriction, one by postulating the objective exist- ence of public purpose as a pre-requisite to the exercise of discretionary powers, the other by excluding the powers altogether when the land is used for a public religious purpose. Thus the proviso which excepts the cases specified therein from the sphere of operation of the general provi- sion of the entire section has also set up an objective condition, the existence of which would

exclude the exercise of powers by the Provincial Government. Section 4 again deals with requisition of vacant premises and instead of leaving it to the executive to determine whether a premises is vacant or not, sub-clause (i) gives an elaborate descrip- tion of the circumstances under which vacancy would be deemed to arise in law. The power of requisitioning vacant premises can be made only if the conditions laid down in section 4 are fulfilled. Section 8 deals with powers of enquiry for purposes of payment of compensation as is pro- vided for in section 6 and is not material for our purpose. Section 10 makes a general provision and the Provincial Government under this section may, with a view to carry out any of the purposes of the Ordinance, by order, require any person to furnish any information in his possession relating to the land requisitioned or to be requisitioned. This is certainly an enabling provision and I am unable to say that this provision by itself indicates that the function exer- cisable by the Provincial Government is a judicial function. The duty to act judicially is, in my opinion, implicit in section 3 itself.

It must not be overlooked that the determination of the existence of ' public purpose' involves decision on ques- tions of both facts and law. As was observed by Lord Loreburn in Board of Education v. Rice(1), "compara- tively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining ques- tions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion involving no law. It will, I suppose, be usually of an administrative kind;but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the fact." This was held by his Lordship to be a clear index of a duty to act judicially.

It was suggested, in course of arguments that as admit- tedly the actual act of requisition is discretionary with the Provincial Government, no writ of certiorari can possi- bly be issued. There is not much substance in this argu- ment, for the very jurisdiction or authority to exercise discretion is dependent on a condition precedent which if unfulfilled would make the exercise of discretion void altogether. It is a commonplace feature of this class of legislation that an authority is often required to exercise both ministerial and quasijudicial functions. Whether he acts administratively throughout or is put at one stage in a quasi-judicial position has to be gathered from the provi- sions of the Act. The case of Errington v. Minister of Health(2) is a leading authority which holds that the same proceeding may be administrative at one stage and quasijudi- cial at another.

The position in my opinion may be summed up as follows:

> The Provincial Government has to satisfy itself that there is a public purpose before it proceeds to requisition any property. As this is an objective condition which has not been made dependent on the personal opinion of the Executive it has got to be determined judicially and whether a public purpose exists or not is itself a mixed question of facts and law which could (1) [1911] A.C. 179 at p, 182. (2) [1935] 1 K.B.
>
> 249.

be determined by, application of well established princi- ples of law to the circumstances of a particular case. There is undoubtedly a lis or point in controversy-or what is called a proposal and an opposition. On the one hand, there is the interest of the public, and on the other, the interest of the individual whose property is being requisi- tioned. No formal array of parties is necessary. It is enough that there is a point in issue which has got to be decided between parties having conflicting interests in respect to the same. The fact that the Provincial Government represents the interests of the public also is to my mind immaterial. If there is a duty to decide judicially it would be a judicial act, and it is not necessary that there must be two opposing parties other than the deciding author- ity appearing in a regular or formal My conclusion, therefore, is that on the first point the decision of the High Court is right, and the contentions raised by the learned Attorney-General must fail. The question now arises whether the Ordinance has con- ferred upon the Provincial Government the jurisdiction or authority to 'decide finally as a part of the requisition proceeding itself whether any public purpose exists or not. If it has, the error, if any, committed by the Provincial Government, may be an error of fact or law, but would not be one of jurisdiction, and whatever other remedy might be open to the aggrieved party, a writ of certiorari would not lie. As has been said already, it is clear from the language of section 3 of the Ordinance that the act of requisition itself, provided the condition precedent is fulfilled, is a pure executive act, in regard to which an untrammelled discretion has been left to the Provincial Government.. If the state of fact exists which entitles the Provincial Government to act, the function that the Provincial Govern- ment exercises is a purely administrative function, which does not involve performance of any judicial duty. In such circumstance the existence of public purpose is either a matter of personal opinion of the Provincial Government in Which case no question of exercising a judicial function at all arises, or it is wholly independent of and collateral to the executive act and is an objective condition which must be fulfilled before the Provincial Government can take any steps in the matter. As I have stated already, on a proper interpretation of section a of the Ordinance, the latter is the proper view to take. This being the position, whether or not a public purpose exists is a preliminary question which is collateral to the merits of the executive act which is to be performed by the Government under section 3 of the Ordinance.

Public purpose must exist as a fact, and the Provin- cial Government must satisfy itself as to its existence before it can take any steps in requisitioning property; but it is not for the Provincial Government to decide the matter finally or conclusively, and its decision on this prelimi- nary point would be open to enquiry by superior courts. These principles are laid down in Bunbury v. Fuller (1), Pease v. Chaytor (2) and Colonial Bank of Australasia v. Willan (3). By way of illustration of these principles reference may be made to two well-known English cases. In Rex v. Woodhouse (4) there was an application to bring up an order made by Licensing Justices under the Licensing Act referring an application for renewal of a licence to quarter sessions. One of the points raised in the case was whether or not the Justices were right in deciding that the applicants were qualified to apply for licence under the provisions of the Beer House Act, 1840, which required that the applicant should be the real resident holder and occupier of the dwelling house in which he should apply to be licensed. It was held by the majority of Judges in the Court of Appeal that the fact that the applicants were not the real resident holders of the Beer houses excluded them from the class to whom licences, whether absolute or conditional, could be granted and no erroneous decision on this (1) 9 Ex. Ch. 111. (8) [1874] 5 P.C. 417 at p.422.

(2) 3 B. & S. 620, (4) [1906] 2 K.B. 505 question of fact by the Magistrates could give them jurisdiction.

Reference was made by Fletcher Moulton L.J. to certain passages in Bunbury v. Fuller (1) and Peaso. v. Chaytor (2) and it was held that if the licensing Magistrates did decide these points of fact, it is the duty of the Court to review their decisions, and if it is erroneous, to quash the li- cences and references.

The other case is that of Rex v. Bedford (3), and it arose upon a rule for a certiorari to bring up an order of the Justices authorising the entry upon certain enclosed land for the purpose of taking materials for the repair of cer- tain roads under sections 53 and 54 of the Highways Act, 1835. Under sections 53 and 54 of the Highways Act, the Justices may license the Surveyor of Highways to take mate- rials for repair of the Highways "at such time or times as to such Justices may seem proper from the enclosed land of any person ....not being a park." On a licence being granted by the Justices to the Newton Abbot Rural District Council, authorising them by their Surveyor, to take materi- als for the repairs of the Highway from a place known as Grange Quarry in the said Parish, a rule was obtained for a writ of certiorari to bring up the order to be quashed, inter alia on the ground that it was made in respect of a land which was a park. It was held that the land was in fact a park, and the Justices cannot give themselves juris- diction by finding that it was not a park. The question whether the place is a park or not is a matter which is preliminary to exercise of the Justices' jurisdiction, and one which is not for the Justices to determine finally.

> "The enquiry is not in the course of exercise of jurisdic- tion but as a preliminary to it. The case therefore falls within the rule laid down in Bunbury v. Fuller (4) and the Justices' decision in the matter is subject to review. " It must be admitted that in both these cases there was no dispute that the Justices had to exercise (1) 9 Ex. Ch. 111. (2) 3 B. & S.620.
>
> (3) [1908] 1 K .B, 365, (4) 9 Ex. Ch. 111..
>
> quasi-judicial powers, and the only question was whether the facts upon which the exercise of jurisdiction was made to depend were preliminary matters collateral to the enquiry or were matters to be adjudicated upon as part of the en-

quiry itself. In the case before us the act of requisition, as said already, is an executive and not a judicial act, and to this extent therefore there is no similarity between the present case and those referred to above. But the princi- ples underlying these authorities can certainly be invoked for our present purpose. The act of requisition being an executive act, the determination of the existence of a public purpose upon which the exercise of powers is depend- ent is either a part of the executive act itself or is something collateral to it. I have attempted to show that it is a thing collateral and preliminary to the exercise of executive authority and not a part of it. That being so, the determination of this collateral matter by the executive authority which is, in my opinion, a judicial function cannot be regarded as final and if the determination is erroneous, it can be corrected and removed by a writ of certiorari.

It may be stated here that before the learned Judges of the appellate Bench in the High Court no attempt was made on behalf of the Government to establish that the premises in question were requisitioned for any public purpose. A public purpose involves some benefit to the community as a whole, as opposed to the personal gain or interest of par- ticular individuals. Housing of refugees may certainly be a public purpose, and under certain circumstances even secur- ing a house for an individual may be in the interests of the community, but it cannot be to the general interest of the community to requisition the property of one refugee for the benefit of another refugee.

The only other question that remains to be considered is whether a writ of certiorari lies against the Provincial Government?

On this point the contentions raised by the learned Attorney-General fall under two heads. The first branch of the argument is that the expression "Provincial Government" occurring in section a of the Ordinance means the same thing as the Governor of the Province. This being the position there is complete immunity enjoyed by the Provincial Government in respect of all judicial processes under section 306 (1) of the Constitution Act, and the powers of the High Court itself are restricted and limited in this respect by certain enactments.

The other branch of the contention is that under section 176 of the Constitution Act, no action of this character could be brought against the Province of Bombay, and in any view the expressions "sue or be sued" as used in section 176, do not include an application for a writ of certiorari. As regards the first branch of the argument it may may be pointed out at the outset that no definition of the term "Provincial Government" has been given in the Constitution Act, 1935. Part 1II of the Act deals with Governors' Provinces. Section 49 (1) which occurs in this Part pro- vides that "the executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him." Section 50 lays down that" there shall be a Council of Ministers to aid and advise the Governor in the exercise of his func- tions, except in so far as he is by or under this Act re- quired to exercise his functions or any of them in his discretion." Section 51 provides inter alia how the minis- ters are to be chosen and section 52 deals with the special responsibilities of the Governor. Section 59 (1)provides that "all executive action of the Government of a Province shall be expressed to be taken in the name of the Governor."The Governor is thus the executive head of a Province and all executive acts are done in his name. This does not mean that Government of a Province is vested solely in the Governor, or that the expressions "Governor" and "Provincial Government" have the same meaning and connota- tion in the Constitution Act.

It is only a form adopted for purpose of convenience that in a Governor's Province, all acts of the Provincial Government would be done in the name of the Governor, no matter wherever under the Constitution, the responsibility might actually lie. Section 3 (43) (a)of the General Clauses Act (as amended by the Adaptation Order Of 1947) which is relied upon in this connection does not in any way affect this position. It says that" as respects anything done or to be done after the establishment of the Dominion of India, 'Provincial Government' shall mean in the Governor's Prov- ince the Governor." This is a mere description as will be apparent from the 'fact that under the same clause, the expression" Provincial Government" used with reference to a Chief Commissioner's Province means the Central Government. Section 806 (1) of the Constitution Act however is based on an

absolutely different principle and it is not concerned with the acts of any Provincial Government no matter in whose name the acts are expressed to be taken. The section runs as follows:

> "No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General, against the Governor of a Province, or against the Secretary of State, whether in a personal capac- ity or otherwise, and, except with the sanction of His Majesty in Council, no proceedings whatsoever shall lie in any court in India against any person, who has been the Governor-General, the Governor of a Province, or the Secre- tary of State in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof:
>
> Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Federation, a Province, or the Secretary of State such proceedings as are mentioned in Chapter III of Part VII of this Act."

The language of the section is perfectly clear and indi- cates that its whole object is to grant personal immunity to the Governor-General, the Secretary of State or the Governor of a Province from all proceedings in or proc- esses from any court in India, both during the term of their office and afterwards. The protection is given in the interests of the administration itself, for it would really be productive of disastrous consequences if the Governor- General or the Governor of a Province could be hauled up before any court in India in respect of acts committed by them in their personal capacity or otherwise. That this protection is purely personal follows clearly from the latter part of the section which interdicts any proceeding against the Governor General, the Governor of a Province or the Secretary of State, after they have ceased to be in office, for any act of omission or commission during the term of their office. This part of the section would be wholly devoid of any meaning, if the Governor of a Province, is taken to be synonymous with the Provincial Government. The Governor of a Province is certainly a part of the Government of the Province and formally he is the mouthpiece of all executive acts done in the Province, but section 306 (1) does not purport to protect any of the official acts. It grants a personal exemption to the Gover- nor from any judicial processes in India, no matter whether they arise out of official or non-official acts committed by him, and this exemption continues even after he has ceased to be in office, except where His Majesty chooses to relax the rule. I agree with the learned Judges of the High Court in holding that even the possibility of a misconstruction of this section has been removed by the proviso engrafted on it, which lays down in clear terms that the provisions of the section shall not be construed as restricting in any way the right of any person to bring against the Federation, a Province, or the Secretary of State such proceedings as are mentioned in Chapter III of Part VII of the Act. The material provision in Chapter III of Part VII of the Act is that contained in section 176, and I will come to that presently; but before I do so, it would be convenient to dispose of the other point raised by the learned Attorney-General in connection with the first branch of his argument. The point raised is that apart from the protection afforded by section 306 (1) of the Constitution Act there is a limitation on the powers of the High Court, to grant processes against the Provincial Government and we have been referred in this connection to section 1 of the East India Company Act (21 George III, Ch. 17) and certain provisions in the Act of 1823 under which the Supreme Court was established

in Bombay. This contention again, in my opinion, would be of no avail, if as I have stated above, the Provincial Government is not identifiable. with the Governor personally. It may be mentioned here that the Supreme Court was established at Fort William in Bengal under the Statute (13 George III, Ch. 63) commonly known as the Regulating Act, and the Charter establishing the Court was issued by King George III on March 26,1774. It is a historical fact that there was conflict of an unseemly character between the Judges of the Supreme Court and the Executive Government headed by the Governor-General in Council. In view of this conflict an Act was passed in 1781 (21 George III, Ch. 17) section 1 of which provided that the Governor General in Council in Bengal "should not be subject to the jurisdiction of the Supreme Court for or by reason of any act or order or any other matter of thing whatsoever counselled or ordered or done by them in their public capac- ity only." Bombay got its Supreme Court in 1823, under Statute, 3 George IV, Ch. 71, and clause VII laid down "that it shall be lawful for His Majesty to establish a Supreme Court at Bombay, to be invested with 'such powers and au- thorities and privileges, limitations, restrictions and control ..... as the said Supreme Court of Judicature at Fort Wiliam in Bengal by virtue of any law, now in force .....is invested or subject to." The Charter expressly provided that "the Governor and Council at Bombay and the Governor-General and Council of Fort William shall enjoy the same exemptions and no other from the authority of the Supreme Court to be erected at Bombay as is enjoyed by the said Governor in Council at Fort William from the Judicature of the Supreme Court of Judicature there already established." Assuming that these powers and disabilities of the Supreme Court continued even after the establishment of High Courts by reason of section 9 of the High Courts Act, 186 1, and that these limitations were implicitly recognised in section 106 of the Government of India Act, 1915, and section 223 of the Act of 1935, it is quite clear from the language of the provisions set out above that they granted only a personal exemption to the Governor and Mem- bers of the Council. As the Governor in his personal capac- ity is different from the Provincial Government, these provisions are of no assistance to the appellant in the present case. It would be seen that these exempting provi- sions were substantially embodied in section 110 of the Government of India Act, 1915, and were later on placed in a much more comprehensive form in section 306 (1) of the Constitution Act. As the jurisdiction of the old Supreme Court was inherited by the Original Side of the three Presi- dency High Courts, section 110 of the Government of India Act, 1915, granted exemption to the Governor-General, the Governor and members of the Council from the Original Jurisdiction of High Courts both civil and criminal, the only exception being when there were charges of treason and felony against these officials. Section 306 (1) of the Act of 1935 is more comprehensive and includes proceedings and processes of any kind either civil or criminal, and started either in the Original Side of a High Court, or in any other Court in the mofusil. As there were no members of the Council under the Constitution Act of 1935, there is no mention of such members in section 306 (1) of the Act. The first branch of the contention advanced by the learned Attorney-General cannot therefore be supported.

As regards the other branch of the appellant's conten- tion the decision really hinges on the true construction of section 176 of the Constitution Act. Section 176 (1) stands as follows:

> "The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may, subject to any provisions

> which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers con- ferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed."

The first part of the sub-section relates to parties and procedure, and lays down in what form a suit is to be insti- tuted against Government in respect to matters relating to the Federation or Provinces of India. The latter part enacts that subject to any statutory provision that might be made, suits would lie against the Provincial Government in the name of the Province, and against the Federal Government in the name of the Federation of India, in relation to their respective affairs, where such suits would have laid against the Secretary of State in Council if the Act of 1935 had not been passed. The present proceeding which has been started against the Province of Bombay, would therefore be competent if such proceeding could have been instituted against the Secretary of State in Council under the law as it stood prior to the passing of the Constitution Act. The right and liability of the Secretary of State for India to sue or to be sued were created for the first time by section 65 of Act 21 and 22 Victoria, Ch. 106, which was passed in 1858 on the transfer of the Government of India from the East India Company to the Crown. The section runs as follows:

> "The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate, and all persons and bodies politic shall and may have and take the same suits, remedies and proceedings legal and equitable against the Secretary of State in Coun- cil of India, as they could have done against the said company."

The object of the Act was to transfer to Her Majesty the possession and government of the British territories in India which were then vested in the East India Company in trust for the Crown; but as the Queen could not be sued in her own court, it was provided that the Secretary of State in Council as a body corporate would have the same rights of suit as the East India Company had and would be subject to the same liability of being sued as previously attached to the East India Company.

This provision of the Act of 1858 was reproduced in section 32 of the Government of India Act, 1915, in the following terms:

> "(1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council as a body corporate.
>
> (2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company, if the Government of India Act, 1858, and this Act had not been passed."

The question therefore narrows down to this as to wheth- er an action of the character that has been brought against the Province of Bombay could have been brought against the East India Company prior to 1858. In my opinion the answer to this question must be given in the affirmative. All the relevant authorities on this point have been very carefully reviewed by the learned Judges of the

Bombay High Court, and I am in entire agreement with the reasons assigned by them in support of their conclusion. It is true that the East India Company was invested with powers and functions of a two-fold character. They had on the one hand powers to carry on trade as merchants; on the other hand they had delegated to them powers to acquire, retain and govern territories to raise and maintain armies and to make peace and war with native powers in India. But the liability of the East India Company to be sued was not restricted altogether to claims arising out of undertakings which might be carried on by private persons; but other claims if not arising out of acts of State could be entertained by civil courts, if the acts were done under sanction of municipal law and in exercise of powers conferred by such law. The law on this point was discussed very ably by the Madras High Court in Secretary of State v. Hari Bhanji (1). The learned Chief Justice in course of his judgment contrasted the decisions in Secretary of State v Kamachee Boye Saheba (2) with that in Forester v. Secretary of State(3). In the first of these cases, on the death of Raja Sivaji who enjoyed the status of a sover- eign the East India Company seized the whole of his property as an escheat to the Paramount Power. A bill was filed by the widow of the deceased to recover possession of the properties. It was held by the Privy Council that the suit was not maintainable.

Lord Kingsdown laid down that the real point for deter- mination in such cases was whether "it was seizure by arbitrary power on behalf of the Crown of the dominions and property of a neighbouring State, an act not affecting to justify itself on grounds of municipal law; or whether it was in whole or in part a possession taken by the Crown under colour of legal title of the property of the late Raja of Tanjore in trust for those who by law might be entitled to it on the death of the last possessor. On the facts of the case it was held that the seizure was an exercise of sovereign power effected at the arbitrary discretion of the company by the aid of military force and consequently the court had no jurisdiction to try the case. In the other case the Government had recovered the lands held by one Begum Sumaroo as a Jagirdar after her death and the plain- tiff filed a suit to recover the property, on the basis of a deed of will executed by (1) [1882] 5 Mad. 273. (2) [1859] 7 M.I.A. 461. [1871-72] I.A. Supplement Vol., p. 10.

her. It was held by the Privy Council that as Begum Sumaroo was not a Sovereign Princess and the act of resumption was done under colour of legal title of lands previously held from Government by a subject, it was not an act of State, and the suit was consequently triable by a civil court. As was observed by Lord Atkin in Eshugbayi Eleko v. Officer Administering the Government of Nigeria , "This phrase (act of State) is capable of being misunderstood. As applied to an act of the sovereign power directed against another sovereign power or the subjects of another sovereign power not owing temporary allegiance, in pursuance of sovereign rights of waging war or maintaining peace on the high seas or abroad, it may give rise to no legal remedy. But as applied to acts of the executive directed to subjects within the territorial jurisdiction it has no special meaning, and can give no immunity from the jurisdiction of the court to enquire into the legality of the Act."

Much importance, cannot in my opinion be attached to the observations of Sir B. Peacock in peninsular and Oriental Steam Navigation Company v. The Secretary of State (2). In that case the only point for consideration was whether in the case of a tort committed in the conduct of a business the Secretary of State for India could be sued. The ques- tion was answered in the affirmative. Whether he could be sued in cases not connected with the conduct of a business or commercial

undertaking was not really a question for the court to decide.

In the case before us the act of requisition which purports to have been done under the sanction of municipal law, and in exercise of powers conferred by such law cannot be an act of State. An action on the ground of the powers being illegally exercised could certainly have been brought against the Secretary of State, if the Constitution Act of 1935 had not been passed.

I am not much impressed by the argument of the learned Attorney-General that the expression "sue or (1)[1931] A.C. 662, 671. (2) [1861] 5 Bom. H.C.R. App,1.

be sued" occurring in section 176 does not include an appli- cation for a writ of certiorari. The expression 'sue' in its plain grammatical sense connotes the "enforcement of a claim or civil right by means of legal proceedings." The proceedings may be initiated by a plaint or by a petition of motion, and it cannot be said that what section 176 of the Constitution Act contemplates is a proceeding which must begin with a plaint and end in a decree as laid down in the Civil Procedure Code.

No argument can also in my opinion be rounded upon the fact that there was no express mention of prerogative writs in clause (13) of the Charter by which the Supreme Court was first established in Bengal. The Supreme Court was invested under clause (5) of the Charter with all the powers and privileges of the Court of King's Bench in England and these undoubtedly included the power of issuing certiorari and other prerogative writs. There are reported cases to show that the writs of mandamus were issued to the Directors of East India Company by the Court of King's Bench in England (1).

On the whole, it seems to me that the view taken by the learned Judges of the appeal Bench of the Bombay High Court is right, and this appeal should stand dismissed with costs. DAS J.--In my opinion this appeal should be allowed. As I have taken a view different from those of three eminent Judges of the Bombay High Court and some of my learned brethren of this Court, for all of whom I always have the highest respect, I consider it right to give the reasons for my conclusions in some detail.

This appeal is directed against the judgment and order of an appellate Bench of the Bombay High Court (Chagla C.J. and Tendolkar J.) affirming an order of Bhagwati J. sitting on the Original Side of that Court. The order appealed from is a mandate in the nature of (1) Vide The King v. The Directors of East India Company, 4 B. and Ad. 580; The King v. The Court of Directors of the East India Company, 4 M & S.279 a writ of certiorari quashing an order of requisition of a certain premises in Bombay made by the appellant in exercise of powers vested in it by Bombay Ordinance No. V of 1947. There is no substantial dispute as to the facts leading up to the proceedings out of which the present appeal has arisen. They have been sufficiently stated in the Judgments just delivered and need not be recapitulated by me. Learned Attorney-General appearing in support of the present appeal. has confined himself to two main points, namely, (i) that, having regard to the provisions of Bombay Ordinance V of 1947 under which the impugned order was made, a writ of certiorari does not lie at all, and (ii) that a writ of certiorari does not lie against the Province of Bombay. Mr. Seervai appearing for the respondents has, quite properly, not sought to raise any of the several subsidiary

points which were unsuccessfully canvassed before the Courts below and his endeavour has been to support the judgment under appeal on the two points men- tioned above and to reinforce them with fresh reasoning and rulings.

The writ of certiorari is a very well known ancient high prerogative writ that used to be issued by the Court of King's Bench to correct the errors of the inferior Courts strictly so called. It is with this writ that the Judges of the King's Bench used to exercise control over Courts of inferior jurisdiction where the latter acted without juris- diction or in excess of it or in violation of the principles of natural justice. Gradually the scope of these writs was enlarged so as to exercise control over various bodies which were not, strictly speaking, Courts at all, but which were by statute vested with powers and duties that resem- bled, those of the ordinary inferior Courts. These statutory bodies were called quasi-judicial bodies and their deci- sions were called quasi-judicial acts and the Court of King's Bench freely began to bring up the records of these quasi-judicial bodies, examine them and, if thought fit, quash them. The real reason for this extension of the scope of the writ of certiorari was the distrust with which the Judges looked upon the numerous statutory bodies that were being brought into existence and vested with large powers of affecting the rights of the subject and this extension was rounded on the plausible plea that these statutory bodies exercised quasi-judicial func- tions. The law is now well settled that a writ of certio- rari will lie to control a statutory body if it purports to act without jurisdiction or in excess of it or in violation of the principles of natural justice, provided that, on a true construction of the statute creating the body, it can be said to be a quasi-judicial body entrusted with quasiju- dicial functions. It is equally well settled that a certio- rari will not lie to correct the errors of a statutory body which is entrusted with purely administrative functions. It is, therefore, necessary, in order to determine the correct- ness of the order appealed from, to ascertain the true nature of the functions entrusted to, and exercised by, the Provincial Government under the Ordinance in question. The title of the Ordinance was "An Ordinance to provide for the requisition of land, for the continuance of requisi- tion of land and for certain other purposes." The second preamble recited that the Governor of Bombay was satisfied that circumstances existed which rendered it necessary for him to take immediate action to enable the Provincial Gov- ernment to make provision for requisition of land and for the continuance of the requisition of land already subject to requisition. The Bombay Legislature not being in session at the date of this Ordinance and the instructions of the Governor-General under the proviso to sub-section (1) of section 88 of the Act having been obtained. the Governor of Bombay had legislative power and authority and the Ordinance promulgated by him had; for the requisite period, the force of an Act of the legislature. The Ordinance has since been replaced by an Act but this appeal must be decided on the terms of the Ordinance which was in force at the material times. The preambles to the Ordinance clearly indicated that the Ordinance had been promulgated under circumstances of considerable urgency. This is a fact which should be borne in mind in interpreting the operative provisions of the Ordinance.

Section 3 of the Ordinance under which the order of requisition was made was in the terms following:

> "3. Requisition of land.--If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may, by order in writing, requisi-

tion any land for any public purpose:

Provided that no land used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section."

It is clear, and, indeed, there can be no dispute, that the words "If in the opinion of the Provincial Government"

governed the words "it is necessary or expedient to do so"

and that whatever those latter words might mean or imply had been left entirely to the opinion of the Provincial Govern- ment. What then, were the meaning and implication of the words "it is necessary or expedient to do so" ? The main section read as a whole clearly implied a close and intimate correlation between the two parts, namely, the power conferred on the Provincial Government by the opera- tive part and the formation of opinion as to the necessity or expediency for exercising that power under the earlier part of the section and this correlation was brought about by the use of the word "so" in conjunction with the words "to do." To my mind, the words "to do so" covered and in- cluded within their meaning whatever Provincial Government had been authorised to do. By the operative part of the section the Provincial Government had been empowered, not to requisition simpliciter but to requisition for a public purpose. The words "to do so" in the opening part of the sentence necessarily, therefore, referred to the act of requisitioning for a public purpose and it must follow, therefore, that the necessity or expediency for requisitioning for a public purpose was left to the opinion of the Provincial Govern- ment. Strictly, as a matter of construction of the section, both grammatically and according to the necessary intendment of the Ordinance, as it appears from its language, the conclusion is irresistible that the words "to do so" meant and stood for the words "to requisition any land for a public purpose." It is to avoid the repetition of the words "requisition any land for any public purpose" that the words "to do so" were used in the earlier part. It would have served the purpose equally well if in the earlier part of the sentence the words "to requisition any land for any public purpose" had been used instead of the words "to do so" and the words "do so" had been used at the end of the section instead of the words "requisition any land for any public purpose." It appears to me to be entirely fallacious to say that because the words "for a public purpose" were to be found at the end of the section, therefore, the existence of a public purpose must have been a collateral fact which could not come within the scope of the formation of the opinion. The truth is that the earlier part of the section by the use of the words "to do so" included the question of a public purpose and the entire composite matter, namely, the necessity or expediency for requisitioning land for a public purpose had been left to the subjective opinion of the Provincial Government.

Learned counsel for the respondents contends--and in this he has the judgments of the High Court in his favour--that although it had been left to the Provincial Government to form its own opinion as to the necessity or expediency of requisitioning land and to make an order of requisition rounded on that opinion, the existence of a public purpose was a condition precedent to the exercise of the power and the question of the fulfilment of the condi- tion precedent had not been left to the

subjective opinion of the Provincial Government but had to be determined as an objective fact by the Provincial Government before it proceeded to form its opinion and to make the order The words "to do so", according to learned counsel for the respondents, referred to the act of requisition only but not to the purpose of such requisition. I am unable to accept this line of argument which appears to me to be open to the following several objections:

(i) It overlooks the word "so" and gives no meaning to it.

(ii) If that interpretation were correct then the sec-

tion would have read as follows:

> "If in the opinion of the Provincial Government it is necessary or expedient to requisition any land, the Provin- cial Government may, by an order in writing, requisition any land for a public purpose."

So read, the section would mean that the Provincial Government would, in order of sequence, first have to form its opinion as to the necessity or expediency for requisitioning any land without reference to any purpose. On this interpretation it is clear that the Provincial Government could not act directly upon the opinion so formed, because the exercise of the power depended on the existence of a public purpose as an objective fact which had yet to be determined. If that were to be so then what was the neces- sity for the anterior formation of opinion by the Provincial Government ? A formation of opinion as to the necessity or expediency of a purposeless requisitioning would be an entirely useless, incomplete and futile mental exercise, for such formation of opinion would not have in any way helped the Provincial Government in making an order of requisition at all.

(iii) According to the respondents' interpretation the existence of a public purpose as an objective fact had to be determined first before the Provincial Government would form its opinion as to the necessity or expediency of requisi-

tioning a particular land. This argument amounts to reading the section upside down and in fact to recasting the section altogether. If that were the true intention of the Governor of Bombay in promulgating this Ordinance, then the section would have said--" If any land is needed for a public purpose and if in the opinion of the Provincial Government it is neces- sary or expedient to requisition any particular land for that purpose, the Provincial Government may, by an order in writing requisition such land." The section as enacted, however, did not say anything of the kind.

(iv) It is said that this section postulated a public purpose to exist and required the Provincial Government to form its opinion as to the necessity or expediency of requi- sitioning land for that public purpose. One can only arrive at the last mentioned proposition by interpreting the words "tO do so" in the way suggested by me and once that inter- pretation is adopted, the existence of a public purpose as well as the necessity or expediency of requisitioning land must both become the

subject-matter of the opinion of the Provincial Government.

(v) If the existence of a public purpose had to be determined as an objective fact and if that determination were liable to be subjected to the scrutiny of the Court in legal proceedings, then such a procedure would have quite effectively frustrated the very object set forth in the second preamble by preventing the Provincial Government, by means of protracted legal proceedings, from taking immediate action for making provision for requisition of land and for the continuance of the requisition of land already subject to requisition. In this very case, the order of requisition which had been made in February, 1948, is still in abeyance.

(vi) The result of the interpretation suggested by the respondents would be to hold that the Provincial Government had to determine judicially the existence of a public pur- pose as an objective fact before it proceeded to form its opinion as to the necessity or expediency of requisitioning any particular land. It is difficult to appreciate how the Provincial Government would have proceeded to decide this issue. To whom would the Provincial Government give notice that it proposed to decide this issue of the existence or otherwise of a public purpose? Who would be interested to deny the exist- ence of such a purpose at that stage ? None, for no particu- lar person's land was actually sought to be requisitioned at that stage. Indeed this issue could not arise until a person was actually threatened with a requisition order. An interpretation that leads to such an absurd and anomalous position cannot but be rejected.

(vii) If it is contended that the Provincial Govern- ment had to decide this issue as and when it sought to requisition any particular land belonging to a particular person, the result will be still more anomalous. in that case the Provincial Government would be called upon to decide the self same issue as to the existence of a public purpose as often and as many times as it would need any land, for the decision in one case will not bind the owner of a different land. There would have to be as many deci- sions as to the existence of a public purpose as there would be number of plots of land to be acquired. Can anything be more absurd than this ?

(viii) If the decision on the existence of a public purpose had to be made along with or simultaneously with the formation of opinion as to the necessity or expediency for requisitioning any particular land then it must be conceded that the two matters were correlated to each other and then it will be absurd to suggest that the intention of the Ordinance was to keep the two component parts in separate water-tight compartments, one being required to be decided as an objective fact and the other being left to the subjec- tive opinion of the Provincial Government. In the absence of specific provision in express language such an anomalous intention cannot be imputed to the legislative authority. The objections stated above quite definitely lead 'me to the conclusion that the interpretation suggested by the respondents cannot be adopted and they also fortify my view that the section must be construed in the manner I have mentioned. So constructed, it would read as follows:

> "If in the opinion of the Provincial Government it is necessary or expedient to requisition any land for a public purpose, the Provincial Government may, by an order in writing, requisition any land for a public purpose."

As soon as this construction is reached, there remains, on the authorities and on principle, no escape from the conclusion that what had been left to the subjective opinion of the Provincial Government was a composite matter, namely, the necessity or expediency for requisitioning land for a public purpose. The Provincial Government was authorised to form an opinion on the entire matter and every component part of it. In short the existence of a public purpose was left as much to the opinion of the Provincial Government as was the necessity or expediency for requisitioning any particular land. It seems clear to me that the legislative authority meant, not that there must be a public purpose as an objective fact to be determined judicially which determi- nation was to be subject to the scrutiny of the Court but, that the Provincial Government should be of opinion that a public purpose existed for the advancement of which it was necessary or expedient to requisition land. In my opinion, the words "if in the opinion of the Provincial Government"

> governed both the purpose and the necessity or expediency of making an order of requisition. The formation of opinion on the entire matter was purely subjective, and the order of requisition was to be rounded on this subjective opinion and as such was a purely administrative act. It will be useful, at this stage, to refer to some of the judicial decisions which, as I apprehend them, fully support my above conclu- sions.
>
> It is well established that if the legislature simply confides the power of doing an act to a particular body if in the opinion of that body it is necessary or expedient to do it, then the act is purely an administrative, i.e., an executive act as opposed to a judicial or quasi-judicial act, and, in the absence of proof of bad faith, the Court has no jurisdiction to interfere with it and certainly not by the high prerogative writ of certio- rari. Usually this discretion is confided by the use of expressions like "If it appears to,." "If in the opinion of"

or "If so and so is satisfied." In Mayor etc. of Westmin- ster v. London and NorthWestern Railway Company (1) Lord Halsbury L.C. observed:

> "Assuming the thing done to be within the discretion of the local authority, no Court has power to interfere with the mode in which it has exercised it. Where the Legislature has confided the power to a particular body, with a discre- tion how it is to be used, it is beyond the power of any Court to contest that discretion. Of course, this assumes that the thing done is the thing which the Legislature has authorised."

To the like effect are the following observations of Batty J. in Balvant Ramchandra Natu v. The Secretary of State (2):

> "No doubt when a power has been conferred in unambigu- ous language by Statute, the Courts cannot interfere with its exercise and substitute their own discretion for that of persons or bodies selected by the Legislature for the purpose."
>
> Sometimes the Legislature may entrust a power to a specified authority to do an act for a certain purpose. Even in such a case, the Legislature may, nevertheless, by

appropriate language, leave not only the determination of the necessity or expediency for doing the act but also the determination of the necessity or expediency for doing the act for that purpose as a composite matter to the opinion, satisfaction or discretion of that authority. In such a case what is a condition precedent for the doing of the act is not the actual existence of the particular purpose but the opinion of the specified authority that the purpose exists. In other words the authority is also made the sole judge of the existence of the purpose, for otherwise it cannot form its opinion as to the necessity or expediency of doing the act for that purpose.

(1) [1905] A.C. 426. (2) I.L.R. [1905] Bom. 480,

503.

In Wijeyesekera v. Festing(1) the Governor of Ceylon with the advice of his Executive Council made an order under the Acquisition of Land Ordinance, 1876, directing the Government agent to take order for the acquisition, under the provisions of the Ordinance, of part of the appellant's estate for a public purpose, namely, the making of a road. The whole point in the case was whether the decision of the Governor in Council was conclusive on the point that the land was wanted for a public purpose. The question turned on sections 4 and 6 of the Ordinance (No. a of 1876) rele- vant portions of which provided as follows:

"4. Whenever it shall appear to the Governor that land in any locality is likely to be needed for any public pur- pose, it shall be lawful for the Governor to direct the Surveyor-General or other officer generally or specially authorised by the Governor in this behalf, to examine such land and report whether the same is fitted for such purpose.

6. The Surveyor-General, or other officer so authorised as aforesaid, shall then make his report to the Governor wheth- er the possession of the land is needed for the purposes for which it appeared likely to be needed as aforesaid. And upon receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government Agent to take order for the acquisi- tion of the land. "

In delivering the judgment of the Board Lord Finlay approved of a previous decision of the Supreme Court of Ceylon and observed as follows:

"It appears to their Lordships that the decision of the Governor that the land is wanted for public purposes is final, and was intended to be final, and could not be ques- tioned in any Court. The nature of the objection is such that it would be obviously unsuitable for the District Court, which is concerned with questions of compensation which would arise if the land is to be taken. But the question might also be raised (1) [1919] A.C. 646.

in a preliminary way, as was suggested by Lord Wrenbury in the course of the argument. It might be raised by an appli- cation to the Court to stay the further proceedings on the ground that although the Governor in the Executive Council had made the order, it was not a case where the condition precedent of the Ordinance was really fulfilled, namely, that the land was wanted for a public purpose. In their Lordships' opinion no such proceeding would be competent in such a case, and the decision of the Governor in Council, making an order under the latter part of s. 6 of the Ordinance, is final and conclusive."

His Lordship concluded--

> "When you have an enactment of that kind it shows that it was intended that the decision of the Governor in Execu- tive Council on the point should be binding."

The decision in Point of Ayr Collieries Ltd. v. Lloyd George (1) which was a case of requisition of an undertaking turned on reg. 55 (4) of the Defence (General) Regulations--the relevant parts of which were as follows:

> "If it appears to a competent authority that in the interests of the public safety, the defence of the realm, or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the communi- ty, it is necessary to take control on behalf of His Majesty of the whole or any part. of an existing undertaking, and that, for the purpose of exercising such control, it is expedient that the undertaking or part should be carried on in pursuance of an order mader under this paragraph, the competent authority may by order authorise any person (hereinafter referred to as an "authorised controller") to exercise, with respect to the undertaking or any part there- of specified in the order, such functions of control on behalf of His Majesty as may be provided by the order..."

[1943] 2 All E.R. 546.

An order under the regulation having been made with respect to the appellant's undertaking, the appellant brought an action impugning it on the ground, inter alia, that there were no adequate grounds upon which the Minister could find, as he stated he had found, namely, that it was necessary to take control in the interests of the public safety, the defence of the realm, the efficient prosecution of the war or for maintaining supplies and services essen- tial to the community. Singleton J. having dismissed the action, the appellant went up to the appeal Court. If the reasonings and the conclusions of the judgments under appeal before us were sound and correct it could well have been held by the Court of Appeal in that case that the regulation postulated the existence of the interests of public safety etc. which had to be judicially determined as an objective fact and that what had been left to the subjec- tive opinion of the competent authority was only the neces- sity for taking control of the undertaking. This was, however, repelled and in dismissing the appeal Lord Greene M.R. with whom Goddard and du Parcq L. JJ. concurred ob- served as follows:

> "If one thing is settled beyond the possibility of dispute, it is that, in construing regulations of this character expressed in this particular form of language, it is for the competent authority, whatever Ministry that may be, to decide as to whether or not a case for the exer- cise of the powers has arisen it is for the competent au- thority to judge of the adequacy of the evidence before it. It is for the competent authority to judge of the credibili- ty of that evidence. It is for the competent authority to judge whether or not it is desirable or necessary to make further investigations before taking action. It is for the competent authority to decide whether the situation requires an immediate step, or whether some delay may be allowed for further investigation and perhaps negotiation. All these matters are placed by Parliament in the hands of the Minis- ter in the belief that the Minister will exercise his powers properly, and in the knowledge that, if he does not do so, he is liable to the criticism of Parliament. One thing is certain, and that is that those matters are not within the competence of this Court. It is the competent authority that is selected by Parliament to come to the decision, and if that decision is come to in good faith, this Court has no power to interfere, provided, of course, that the action is one which is within the four corners of the authority delegated to the Minister."

There is no substantial difference in the language of reg. 55 (4) and that of the Bombay Ordinance now before us if it is properly construed and read in the way I have indicated above. Even if it were possible, on an overmeticu- lous analysis, to detect any such difference, the position is put beyond doubt in the decision of the English Court of Appeal in Carltona Ltd. v. Commissioners of Works and Oth- ers(1). The decision turned on reg. 51 (1)of the Defence (General) Regulations which was in the following terms:

> "A competent authority, if it appears to that authority to be necessary or expedient so to do in the interests of the public safety, the defence of the realm or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may take possession of any land, and may give such directions as appear to the competent authority to be necessary or expedi- ent in connection with the taking of possession of that land."

There is no substantial difference at all between the language of this regulation and section 3 of the Bombay Ordinance as construed above. If the reasonings of Chagla C.J. and Tendolkar J. were correct, the words "so to do" in the above regulation would refer only to the act of taking of possession, for, according to them, the interests of the public safety etc. do not describe the nature or character of that act but constitute the purpose for which the compe- tent authority was to do the act of taking possession. On that line of reasoning the regulation could be equally said to postulate

(1) [1943] 2 A,E.R.560.

the existence of the interests of the public safety etc. as conditions precedent to the exercise of the power and it could be said that the fulfilment of those conditions prece- dent had to be determined quasi judicially so as to be subject to the scrutiny and interference of the Court. All this line of reasoning was rejected by Lord Greene M.R. with the concurrence of Goddard and du Parcq L. JJ. in

the fol- lowing words:

> "The last point that was taken was to this effect, that the circumstances were such that, if the requisitioning authorities had brought their minds to bear on the matter, they could not possibly have come to the conclusion to which they did come. That argument is one which, in the absence of an allegation of bad faith --and I may say that there is no such allegation here --is not open to this Court. It has been decided that, where a regulation of this kind commits to an executive authority the decision of what is necessary or expedient and that authority makes the decision, it is not competent to the Courts to investigate the grounds or the reasonableness of the decision in the absence of an allegation of bad faith. If it were not so, it would mean that the Courts would be made responsible for carrying on the executive Government of this country on these important matters. Parliament, which authorises this regulation, commits to the executive the discretion to decide and with that discretion if bona fide exercised no Court can inter- fere. All that the Court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the Legislature and to see that those powers are exercised in good faith. Apart from that, the Courts have no power at all to inquire into the reasonableness, the policy, the sense or any other aspect of the transaction."

Vedlapatla Suryanarayana v. Province of Madras (1) is a Full Bench decision of the Madras High Court. It discussed section 6 of the Land Acquisition Act and held that the decision of the Provincial Government (1) I.L.R,. [1946.] Mad. 153; A.I.R,. [1945] Mad. 394.

that the land was required for a public purpose was final. Robinson v. Minister of Town and Country Planning (1) is instructive. The provisions of the Town and Country Plan- ning Act, 1944, were considered in that case. The relevant portions of section 1 of that Act were as follows:

> "Where the Minister of Town and Country Planning (in this Act referred to as the Minister) is satisfied that it is requisite, for the purpose of dealing satisfactorily with extensive war damage in the area of a local planning author- ity, that a part or parts of their area, consisting of land shown to his satisfaction to have sustained war damage or of such land together with other land contiguous or adjacent thereto, should be laid out afresh and redeveloped as a whole, an order declaring all or any of the land in such a part of their area to be land subject to compulsory purchase for dealing with war damage may be made by the Minister if an application in that behalf is made by the authority to him before the expiration of five years from such date as the Minister may by order appoint as being the date v:hen the making of such applications has become practicable."

It will be noticed that the power to make the order was subject to the satisfaction of the Minister not only that it was requisite that lands should be laid out afresh but that it was requisite "for the purpose of dealing satisfactorily etc." which unquestionably was a question of fact and could be said to be subject to objective determination yet, it was held by the appeal Court, overruling an earlier

decision of Henn Collins J. in another case that the entire matter, namely, the necessity for laying out the lands afresh as well as the purpose of dealing was for the satisfaction of the Minister, that he was the sole judge, that no objective test was possible and that the decision of the Minister was an administrative act.

Franklin v. Minister for Town and Country planning (2) was concerned with section 1 (1) of the New (1) [1947] 1 A.E,R. 851. (2) [1947] 2 A.E.R. 289; [1948] A.C.87 Towns Act. 1946, the relevant portions of which ran as follows:

> "If the minister is satisfied, after consulting with any local authorities who appear to him to be concerned, that it is expedient in the national interest that any area of land should be developed as a new town by a Corporation estab- lished under this Act, he may make an order designating that area as the site of the proposed new town."

Here what was left to the satisfaction of the Minister was not only whether it was expedient that any area, should be developed as a new town but whether it was expedient in the national interest that any area should be so developed. If the present arguments were sound it could be held in that case that the section postulated the existence of national interest to be determined judicially as an objective fact and that it was a condition precedent to the making of the order. It was, however, held by the House of Lords that no judicial or quasi-judicial duty was imposed on the Minister in the discharge of his statutory duties, those duties being purely administrative.

The case of Hubli Electricity Co. Ltd. v. Province of Bombay (1) may also be referred to. Relevant portions of section 4, sub-section (1) of the Indian Electricity Act, 1910, provided:

> "The Provincial Government may, if in its opinion the public interests require, revoke a license in the following cases, namely:
>
> (a) Where the licensee, in the opinion of the Provincial Government makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act."

Could anything be more objective than the requirements of public interest or the wilful and unreasonably prolonged default ? And yet in construing the section their Lordships of the Privy Council observed:

> "Their Lordships are unable to see that there is any- thing in the language of the sub-section or in the (1) (1948) L.R. 76 I.A. 57;A.I.R. 1949 P. C. 136, subject-matter to which it relates on which to found the suggestion that the opinion of the Government is to be subject to objective tests. In terms the relevant matter is the opinion of the Government--not the grounds on which the opinion is based. The language leaves no room for the relevance of a judicial examination as to the sufficiency of the grounds on which the Government acted in forming an opinion. Further, the question on which the opinion of the Government is relevant is not whether a default has been

> wilful and unreasonably prolonged but whether there has been a wilful and unreasonably prolonged default. On that point the opinion is the determining matter, and--if it is not for good cause displaced as a relevant opinion-it is conclusive."

The recent case of A.C. Mohamed v. Sailendra Nath Mitra (1) may also be referred to. It was concerned with an order of requisition of certain premises except the ground floor made under section a (1) of the West Bengal Requisition and Control (Temporary Provisions) Act, 1947, which runs as follows:

> "Whenever it appears to the Provincial Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing, requisition such premises, Provided that no premises exclu- sively used for the purpose of religious worship shall be requisitioned under this section."

I find no difference between the language of this sec- tion and that of section 3 of the Bombay Ordinance as con- strued by me. It is quite clear that what was left to the opinion of the Provincial Government was not the need of the premises simpliciter but the need of any premises for a public purpose as a composite matter. If the present argu- ments were sound, it could be held that the section postu- lated the existence of a public purpose and that what was left to the opinion of the Provincial Government was the need of the premises for that public purpose. It was, however, held by a Division Bench of the Calcutta High Court (1) (1950] 54 c.w.N. 642.

--and I think quite rightly--that it sufficed for the exer- cise of the power that the local Government was satisfied as to the existence of the condition precedent to the exercise of its powers.

To summarise: It is abundantly clear from the authori- ties cited above that questions of fact such as the exist- ence of a public purpose or the interest of the public safety or the defence of the realm or the efficient prosecu- tion of the war, or the maintenance of essential supplies and the like may well be and, indeed, are often left to the subjective opinion or satisfaction of the executive authori- ty. Merely because such a matter involves a question of fact it does not follow at all that it must always, and irrespective of the language of the particular enact- ment, be determined judicially as an objective fact. When the Legislature leaves it to an executive authority to form an opinion on or to be satisfied about such a matter as a condition for the exercise of any power conferred on it, and to act upon such opinion, what is condition precedent is, not the actual existence of the matter but, the subjec- tive opinion or satisfaction of the executive authority that it exists. The cases referred to above clearly establish this much that when the Legislature leaves it to the opinion or satisfaction of the executive authority as to whether it is necessary or expedient to requisition any land for a public purpose the executive authority is constituted the sole judge of the composite matter, that is to say of the existence of the public purpose as well as the necessity or expediency for requisitioning the land for that public purpose, call it a condition precedent or an objective fact or what you will. On a proper construction of section 3 of the Bombay Ordinance (No. V of 1947) there can be no doubt that that section left it to the Provincial Government to form its own opinion on the entire matter, namely, whether it was necessary or expedient to requisition any land for a public purpose and to act upon that opinion. So construed, the formation of opinion on the whole matter and the act

founded thereon was nothing but a purely administrative, (i.e., executive) act. If the acts were done in good faith and within the four corners of the Ordinance, the Court cannot interfere with it in any proceeding and far less by the prerogative writs of certiorari or prohibition. If there be any hard- ship the appeal of the subject must be to the Legislature and not to the Court. The first and the major head of the arguments advanced on behalf of the respondents must, there- fore, fail.

It will be convenient to dispose of at once two ancil- lary points. In the petition a bald suggestion was made, verified only as true to information and belief and unsup- ported by any legal evidence, that the Provincial Government had made the order mala fide and for a collateral purpose. The petitioner gave evidence in Court. There is nothing in the evidence which may support any plea of bad faith on the part of the Provincial Government or its officers. All that was said was that Mrs. C. Dayaram to whom the requisitioned premises had been allotted was the wife of an advocate from Karachi, and was a refugee and that the petitioner did not know whether her husband had also migrated from Karachi. At an adjourned hearing the question was put as to whether Mrs. Daygram was concerned in any manner whatever with the administration of Government of Bombay or was a public servant. The purpose of the question was perhaps to estab- lish that she was in a position to influence the Government officers. The petitioner in fairness replied that he was not aware if she were. In the evidence there is nothing from which it can be taken as proved that the Provincial Government and its officers had acted in bad faith. Second- ly, it was suggested that the Provincial Government had not acted within the four corners of the Ordinance in that, on its own showing, there was no public purpose at all for which the order was made. Bhagwati J. expressed the view that the requisitioning of a flat for a particular or indi- vidual refugee was not a public purpose, for there was no question of serving the general interests of the community. On appeal Chagla C.J. disagreed with the above view. In his opinion the housing of a refugee might certainly be a public purpose, for securing a house for an individual refugee might itself confer a bene- fit on the community as a whole. In this opinion the learned Chief Justice was manifestly right. But the learned Chief Justice went on to say that choosing one refugee as against another without any ostensible cause would not constitute a public purpose for which the flat in question could be requisitioned. This conclusion, with great respect to the learned Chief Justice, appears to be founded on a slight confusion of ideas. It has to be remembered that this was not a solitary order of requisition made by the Government for the public purpose of housing refugees. The petitioner's Solicitors' letter dated February 27, 1948, clearly stated that there were "similar orders" issued by the Government. The impugned order itself shows ex facie that the order was made generally for "public purpose housing." It was not in terms made for the benefit of any particular individual refugee. The allotment of the flat to Mrs. C. Daygram was the next step and as such the allot- ment of the flat already requisitioned to a particular refugee cannot possibly vitiate the preceding order of requisition. To say that seeing that the allotment was made to her, the order of requisition must have been made in her interest is to act on suspicion which is not permissi- ble. The flat had to be allotted to a refugee for purposes of his or her housing. The fact that the petitioner himself was a refugee has been stressed before us and it has been said that it was a novel way of solving the refugee problem by ousting one refugee and putting in another. There is no evidence as to the relative circumstances of the petitioner and Mrs. C. Daygram. For all we know she may have been a more deserving person whose needs were more urgent than those of the petitioner. The point is that it lies heavily on the person who challenges the bona fides of a public authority or who contends that

the authority had acted outside its powers to establish his case on cogent legal evidence. He cannot succeed by leaving the matter in the air and to the ingenuity of his counsel in creating an atmosphere of mere suspicion, which falls far short of legal proof.

I now pass on to the second head of argument which is based on the assumption that the existence of a public purpose had not been left to the subjective opinion of the Provincial Government but was an objective fact which was a condition precedent to the exercise of the power of requisi- tion. What consequences follow from this assumption ? The contention of the respondents is that the fulfilment of this condition as an objective fact had to be determined by the Provincial Government judicially and that being thus charged with a quasi-judicial function the Provincial Government became amenable to the high prerogative writ of certiorari in case it acted without jurisdiction or in excess of it or in violation of the principles of.natural justice. The question, therefore, arises as to what are the tests for ascertaining whether the act of a statutory body is a quasi-judicial act or an administrative act. As to what is a quasi-judicial act there have been many judicial pronouncements. May C.J. in Queen v. Dublin Corpo- ration (1) described a quasi-judicial act as follows:

> "In this connection the term judicial does not neces- sarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for purpose of this question, a judicial act seems to be an act done by compe- tent 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 would seem to me that the acts of such a body involving such consequence would be judicial acts."

Lord Atkinson in Frome United Breweries v. Bath Justices (2) approved of this definition as one of the best defini- tions. The definition that now holds the (1) (1878) 2 Ir.R. 371. (2) [1926] A.C. 586, field is that of Atkin L.J. as he then was, in Rex v. Elec- tricity Commissioners (1). It runs 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 juris- diction of the King's Bench Division exercised in these writs."

This definition was accepted as correct in Rex v. London County Council (2) and by many learned Judges in subsequent cases including the latest decision of the Privy Council in Nakkuda Ali v.M.F. De S. Jayaratne (3). In Banwarilal's case (4) I had occasion to analyse tile essential character- istics of a quasi-judicial act as opposed to an administra- tive act. I stand by what I said on this point on that occasion. As I pointed out there, the two kinds of acts have many common features. Thus a person entrusted to do an administrative act has often to determine questions of fact to enable him to exercise his power. He has to consider facts and circumstances and to weigh pros and cons in his mind before he makes up his mind to exercise his power just as a person exercising a judicial or quasi-judicial func- tion has to do. Both have to act in good faith. A good and valid administrative or executive act binds the subject and affects his rights or imposes liability on him just as effectively as a quasi-judicial act does. The exercise of an administrative or executive act may well be and is fre-

quently made dependent by the Legislature upon a condition or contingency which may involve a question of fact, but the question of fulfilment of which may, nevertheless, be left to the subjective opinion or satisfaction of the executive authority, as was done in the several Ordinances, regulations and enactments considered and construed in the several cases referred to above. The first two items of the defini- tion given by Atkin L.J. may be equally applicable to an (1) [1924] 1 K.B. 171. (4) (1943) 48 CW.N. 766 at (2) [1931] 2K.B. 215. pp. 799-801.

(3)(1950) 54 c.w.N. 883.

administrative act. The real test which distinguishes a quasi-judicial act from an administrative act is the third item in Atkin L.J.'s definition, namely, the duty to act judicially. As was said by Lord Hewart C. J. in R. v. Legis- lative Committee of the Church Assembly(1):

> "In order that a body may satisfy the required test it is not enough that it should have legal authority to deter- mine questions affecting the rights of subjects; there must be superadded to that characteristic the further character- istic that the body has the duty to act judicially."

The above passage was quoted with approval by Lord Radcliffe in delivering the judgment of the Privy Council in Nakkuda Ali's case (2). Therefore, in considering 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 the duty to act judi- cially. When and under what circumstances then can a statu- tory body be said to be under a duty to act judicially ? An examination of the decided cases shows that in many of them 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 statute and some parties opposing such claim and the statutory authority was empowered to adjudicate upon the matters in issue between the parties and to grant or refuse the claim. Thus in The Queen v. The Local Government Board (3) the contesting parties were the County Council of Wex- ford on one side and Webster & Leary on the other side and the Local Government Board was the statutory authority to decide whether the latter were entitled to higher salary. In Rex v. Woodhouse (4) the contest was between the appli- cants. for renewal of licence and certain brewers and the Justices of Leeds were to decide whether the licence should or should not be renewed. Reference may also be made to the cases of Rex v. Post (1) [1928] 1 K.B. 411 at p. 415. (3) (1902) L. R. 2 Ir. 349. (2) (1950) 54 C.W.N. 883. (4) [1906] 2 K,B. 501.

master General (1), Rex v. London County Council (2) and Rex v. Hendon District Council(3). Even in Rex v. Boycott (4) it may be said that the Statute there contemplated a contest between the Local Education Society and the boy who was alleged to be imbecile and whose father was entitled to notice under the regulations before a certificate was issued against the boy. It is not necessary to multiply instances. The point to note is that in each of these cases there was a lis--a proposition and an opposition--and the statutory authority was authorised to decide the question and in each of these cases the decision was regarded as a quasi-judicial decision. Indeed in some of the cases the necessity of a lis between two or more parties has been referred to or even insisted upon. Thus on Errington & others v. Minister of Health Maugham L.J., as he then was said:

> "In determining whether the position of the Minister is that which I have described as being quasi-judicial, I think it is necessary to appreciate that under a clearance area scheme, to which objections are made by the owners of the property in the area, there is a true contest as between the owners of the property and the local authority; in other words, there are two sides as between whom the Minister has to come to a determination after consideration".

The following passage from the judgment of Greet L.J. in that case quoted with approval by Swift J. in Frost & others v. Minister of Health (6) takes the matter a little further in that line:

> "In so far as the Minister deals with the matter of confirmation of a closing order in the absence of objection by the owners, it is clear to me, and I think to my breth- ren, that he would be acting in a ministerial or administra- tive capacity, and would be entitled to make such enquiries as he thinks necessary to enable him to make up his mind whether it was in the public interest that order should be made. But the position, in (1) [1928] 1 K.B. 291. (4) [1939] 2 KB. 651.
>
> (2) [1931] 2 K.B. 215. (5) [1939] 2 K.B. 249, 271. (3) [1933] 2 K.B. 696. (6) [1935] 1 K.B. 286, pp.292-3 my judgment, is different where objections are taken by those interested in the properties which will be affected by the order if confirmed and carried out. It seems to me that in deciding whether a closing order be made in spite of the objections which have been raised by the owners, it seems to me reasonable that the Minister should be regarded as exer-

cising quasijudicial functions".

Swift J. in accepting the above statement added:

> "I accept that from the moment an objection is made the Minister is exercising quasi-judicial functions, but it seems to me to be clearly recognised by the Court of Appeal that up to the time of objection being made the Minister acts in an administrative, and not a judicial, capacity."

Under the Housing Act, 1930, the local authority submits a clearing order to the Minister. If no objection is raised by the owners of the property the Minister considers the matter and either confirms or modifies the order of the local authority. In the absence of objection the Minister, according to those two decisions, acts in an administrative capacity. Why ? Because there is no lis in the sense of two opposing parties. There is only a proposal by the local authority. But if objection is raised by the owner, the Minister, according to these cases, in deciding the matter, acts judicially. Why ? Because there is a lis between two contending parties, namely, the local authority and the owner which has to be decided by the Minister. It is true that in Franklin v. Minister of Town and Country Planning (1) the House of Lords held that under the Statute the Minister at no stage acted judicially, and, therefore, the actual decisions in these two cases cannot be sustained. But, nevertheless, I have quoted the above passages only to illustrate the reasons and the principle on

which the act of a statutory body empowered to decide disputes between two contesting parties was held to be quasijudicial. The Report of the Ministers' Powers Committee in defining the words 'judicial' and (1) [1947] 2 A.E.R. 289; [1948] A.C. 87:(1947) 176 L.T. 312,

816. quasi-judicial' which definition was accepted by Scott L.J. as correct in Cooper v. Wilson (1) stated:

> "A true judicial decision pre-supposes an existing dispute between two or more parties and then involves four requisites ..... A quasi-judicial decision equally pre-supposes an existing dispute between two or more parties and involves ..... "

This definition of a quasi-judicial decision clearly suggests that there must be two or more contesting parties and an outside authority to decide those disputes. The following observations of my Lord the Chief Justice then sitting as a Single Judge in the Bombay High Court, in Kai Khushroo Sorabjee v. The Cormmissioner of Police (2) in which an order made under the Defence of India Rules was under consideration, are relevant on this point:

> "It appears to me that unless the authority invested with the power to pass an order had to act judicially, i.e., to weigh a question from two sides and decide on the matter, no question of quasi-judicial act can arise. The two sides cannot include himself as he is the deciding authority."

In Franklin v. Minister of Town and Country Planning (3), while it was before the Appeal Court, Lord Oaksey L.J. said:

> "In all the authorities which have been referred to as showing that at an enquiry there must be an examination of the case of both sides, there was what has been called a lis: that is to say, there were two parties contesting and the Minister as an outside authority, was deciding the case."

In the very recent case of Patri Shaw v.R.N. Roy(4) a Division Bench of the Calcutta High Court dissented from this very Bombay case (5) which is now before us and empha- sised the necessity of a lis between two parties for making the decision of the authority a quasi-judicial act. (1) [1937] 2K,B.309, 340.

(2)(1947) Bom. L.R. 717; A.I.R. 1947 Born, 153. (3) (1947) 176 L,T..312, 316.

(4) (1950) 54 C.W N. 855. (5) (1949) 51 Bom. L.R, 342.

On the other hand there are many cases where the act of a statutory authority has been accepted as a quasi-judicial act although there were not two opposing parties over whose disputes the authority was to sit in judgment. In those cases it was the authority who made a proposal and another person objected to it and the authority itself was entrusted to hear the objection and give a decision on it. In short the authority which was the proposer was the judge in its own cause. The only ground on

which the decision of such an authority, placed in such situation as I have just mentioned, was regarded as a quasi-judicial act was that the authority was empowered to affect the rights of or impose a liability on others and was required by the very law which constituted it to act judicially. To take a few illustrative cases: The Queen v. Corporation of Dublin was the case before May C.J. for quashing a borough rate by certiorari. Here the contest was between the Corporation on one side and the ratepayers on the other. It was the Corpo- ration which, under the Act, was empowered, after considera- tion of facts and circumstances, to impose a borough rate, a liability of the ratepayers. The provisions of the relevant statutes are not set out in the report and it is difficult to say precisely what duties had been imposed on the Corpo- ration before it could impose liability on ratepayers. I, therefore, pass on to the case of Rex v. Electricity Commis- sioners (2) in which we find the celebrated definition of Atkin L.J. It will be noticed that in this case also there were not two parties apart from the Commissioners. Indeed the Commissioners themselves proposed the scheme and the companies took objection to it and the Commissioners after holding the local enquiry and hearing the objections had to make the final order. It will also be noticed that the local enquiry was to be held by the Commissioners them- selves. The only principle on which this decision rests is that the Commissioners had power to do something which affected the rights of others and that they were required (1) (1878) 2 L.R. Ir. 371. (2) [1924] 1 K.B. 171.

by the statute itself to hold an enquiry, hear objections and evidence in support thereof and make their final deci- sion after considering all facts and circumstances. Take the case of Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust (1). The contest was between the appel- lant as owner and the respondent Trust as the authority making an adverse declaration with respect to the appel- lant's building. By the very provisions of the statute the respondent Trust was made the judge in its own cause. It was, however, directed to entertain objections, hear evidence and then decide the issue. It is this last men- tioned circumstance on which this decision rests. It is needless to multiply instances, for, I think, these cases sufficiently illustrate the position.

What are the principles to be deduced from the two lines. of cases I have referred to ? The principles, as I apprehend them, are:

> (i) 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.

In other words, while the presence of two parties be- sides the deciding authority will prima facie and in the absence of any other factor impose upon the (1) [1937] 3 A.E. R. 327 (P.C.).

authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the au- thority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially.

Mr. Seervai relied on two cases, namely, Rex v. Hendon Rural District Council (1) and Rex v. London County Council (2) as establishing that although the statute itself may not require an inquiry yet the decision of the authority may be a quasi-judicial act. In the second case although there were no express provisions for inquiry in the statute itself, the rules framed by the Theatre and Music Hall Committee had made elaborate provisions for notice, advertisement, opposi- tion and hearing in public and liberty to examine and cross-examine witnesses. In the first case notice was actually given, objections were invited and the parties had appeared. In any case, in both the cases, as I have already pointed out, there was a lis between two contending parties apart from the deciding authority and the decision of the authority affected the rights of the parties and can, there- fore, be well supported as a quasi-judicial act on the principle first enunciated.

The question I have now to consider is whether the act of the Provincial Government under the Bombay Ordinance satisfied either of the two tests. In the case before us there were not two parties so as to make up a lis in the usual sense. Here the Provincial Government had been autho- rised to requisition land for a public purpose and the respondent's father whose interests were prejudicially affected opposed the requisition. The case, therefore, did not satisfy the test of a quasi-judicial act based on the presence of two parties apart from the Provincial Govern- ment. Chagla C.J. obviously felt the difficulty and tried to get over it by introducing the State as a party, as if, under the Government of India Act, 1935, the State was a legal entity apart from the Provincial Government. This introduction of a fiction is wholly unconvincing and cannot be supported. The Ordinance under review (1) [1933] 2 K.B. 696. (2) [1931] 2 K.B. 215.

did not contemplate or permit such a fiction. The bald fact has to be faced that in this case there was an absence of two contending parties apart from the Provincial Government which was the deciding authority. This, as I have said, is, however, not decisive, for it has yet to be enquired whether the case satisfied the second test, that is to say, whether the Ordinance required the Provincial Government to act judicially.

Turning now to the provisions of the Ordinance, it is contended that it is implicit in section 3 that the exist- ence of a public purpose must be determined judicially. The argument may be summed up thus: The existence of a public purpose as an objective fact was, under the main body of section 3, a condition precedent to the exercise of the power of requisition, just as the non-user of land for any of the purposes mentioned in the proviso to section 3 or the vacancy of the premises under section 4 were conditions precedent. This condition precedent being an objective fact, it had of necessity to be determined by the Provincial Government in a quasi-judicial manner. The first part of the argument wholly overlooks the difference in the language used in the main body of section 3 and that used in the proviso to that section and that used in section 4 of the Ordinance. The proviso to section 3

placed certain lands outside the ambit of the power conferred on the Provin- cial Government by the main body of that section. If the Provincial Government purported to exercise its power of requisition with respect to land which fell within the proviso on an erroneous belief that it did not, then the Provincial Government overstepped the limits of its powers and the order of requisition would not bind anybody and could be challenged by suit as wholly without jurisdiction. Likewise, under section 4 the Provincial Government's power of requisition had been confined in its range to vacant premises and if the Provincial Government purported to requisition premises as vacant premises which in fact were not vacant premises then also the Provincial Government entered the forbidden field and went beyond its power and its decision would not bind anybody and could be challenged by a suit. This would be the position in the two cases I have mentioned, because there was nothing in the proviso to section 3 or in section 4 which could suggest that the question of the fulfilment of the condition precedent, namely, the non-user of the land for any of the purposes mentioned in the proviso to section 3 or the vacancy of the premises under section 4, had in any manner been left to the subjective opinion of the Provincial Government. But, as I have already stated, the main body of section 3, on a cor- rect construction of it, expressly left the question of the existence of the public purpose along with the question of the necessity or expediency of requisitioning land to the subjective opinion of the Provincial Government, and, there- fore, its decision, if made in good faith, could not be questioned at all. The circumstance that the fulfilment of the condition precedent laid down in the proviso to section 3 or in section 4 had not been left to the opinion of the Provincial Government could not affect the question of construction of the language used in the main body of sec- tion 3 or alter the nature or character of the act under that section. The first part of the argument overlooks this aspect of the matter. The second part of the argument proceeds on the assumption that an objective fact can never be left to the subjective opinion of a specified authority and must always be determined judicially. The cases already referred to in connection with the first head of arguments clearly show that the question of the existence of a public purpose or the interests of the State and the like may well be, and, indeed, often are, left to the subjective opinion or satisfaction of the specified authority and in such cases its decision, in the absence of bad faith, cannot be chal- lenged in any proceeding. Even if the matter be not left to its subjective opinion, nevertheless, as already pointed out, an administrative authority has frequently to come to a decision in its own mind as to the objective facts such as the existence of a public purpose or the like as a step in the process of the exercise of its administrative powers. That decision, if erroneous, will not bind anybody and may be questioned in an action. See the observations of Palles C.B. in The Queen v. Local Government Board(1). The mere fact that the existence of a public purpose is a condition precedent to the exercise of the power of requi- sition will not necessarily make the decision as to its existence a quasijudicial act. There is no warrant for saying that the fulfilment of the condition precedent to the exercise of an administrative power must necessarily and always be determined judicially by the authority invested with the power. The authority decides it for its own pur- pose and in case of dispute the final decision rests with the Court --a circumstance which also supports the view that the authority has no duty to decide it judicially. In my opinion, even on the assumption that the question of the existence of a public purpose had not been left to the subjective opinion of the Provincial Government, and that the question had to be determined by the Provincial Govern- ment, there was nothing in section 3 to suggest that such determination had to be made judicially at all. The obser- vations of Lord Radcliffe in Nakkuda Ali's case(2) at p. 887 are also instructive and helpful on this point. Mr. Seervai then

draws our attention to sections 10 and 12 of the Ordinance on which he strongly relies in support of his contention. It should be borne in mind that Mr. Seervai has not contended that the order for requisition by itself was a quasi-judicial act. His contention has been that this power to make the order was subject to a condition precedent, namely, the existence of a public purpose which alone had to be established judicially as an objective fact. It will, therefore, have to be seen whether the sections relied on have any bearing on the question of the determina- tion of the existence in fact of a public purpose. The sections ran as follows:

> "10. Power to obtain information--(1) The Provincial Government may, with a view to carrying out the purposes of this Ordinance, by order require any (1) [1902] L.R. 2 Ir. 349. (2) (1950) 54 C.W.N. 883.

person to furnish to such authority as may be specified in the order such information in his possession relating to any land which is requisitioned or is continued under requisi- tion or is intended to be requisitioned or continued under requisition.

Every person required to furnish such information as is referred to in sub-section (1) shall be deemed to be legally bound to do so within the meaning of sections 176 and 177 of the Indian Penal Code (XLV of 1860).

12. Power to enter and inspect land.--Without preju- dice to any powers otherwise conferred by this Ordinance any officer or person empowered in this behalf by the Provincial Government by general or special order may enter and inspect any land for the purpose of determining whether, and, if so, in what manner, an order under this Ordinance should be made in relation to such land or with a view to securing compliance with any order made under this Ordinnace. "

> In considering and construing the above sections it has to be borne in mind that a mere provision for an enquiry as a preliminary step to coming to a decision will not neces- sarily make the decision a quasi-judicial act, for the purpose of the enquiry may only be to enable the deciding authority to make up its mind to do what may be a purely administrative act. Take the case of Robinson v. Minister of Town and Country Planning (1) to which reference has already been made where the act of the Minister was held to be an administrative act. Lord Greene M.R. said at p. 859:
>
> " As an example of the difference to be found in the subject-matter dealt with in different statutes I may point out that this case is different from a case where a Minister is given the duty of hearing an appeal from an order such as a closing order made by a local authority. This is not the case of an appeal. It is the case of an original order to be made by the Minister as an executive authority who is at liberty to base his (1) [1947] 1 A. E ,R. 851, opinion on whatever material he thinks fit, whether obtained in the ordinary course of his executive functions or derived from what is brought out at a public enquiry if there is one. To say that, in coming' to his decision, he is in any sense acting in a quasi-judicial capacity is to misunder-

stand the nature of the process altogether. I am not concerned to dispute that the enquiry itself must be con- ducted on what may be described as quasi-judicial princi- ples, but this is quite a different thing from saying that any such principles are applicable to the doing of the executive act itself, i.e., the making of the order. The enquiry is only a step in the process which leads to the result, and there is, in my opinion, no justification for saying that the executive decision to make the order can be controlled by the Courts by reference to the evidence or lack of evidence at the inquiry which is here relied on Such a theory treats the executive act as though it were a judicial decision (or, if the phrase is preferred,a quasi- judicial decision) which it most emphatically is not." In Franklin v. Minister of Town and Country Planning (1), to which also reference has already been made, Lord Thankerton at p. 295-296 said:

> "In my opinion, no judicial or quasi-judicial duty was imposed on the respondent, and any reference to judicial duty or bias is irrelevant, in the present case. The re- spondent's duties under section 1 of the Act and Schedule I thereto are, in my opinion, purely administrative, but the Act prescribes certain methods of, or steps in, the dis- charge of that duty. It is obvious that, before making the draft order, which must contain a definite proposal to designate the area concerned as the site of a new town, the respondent must have made elaborate inquiry into the matter, and have consulted any local authorities who appear to him to be concerned, and, obviously, other departments of the Government, such as the Ministry of Health, would naturally require to be consulted. It would seem, accordingly, that the respondent was required to satisfy (1) [1947] 2 A.E.R, '289; [1948] A.C. 87, himself that it was a sound scheme before he took the seri-

ous step of issuing a draft order. It seems clear also, that the purpose of inviting objections, and, where they are not withdrawn, of having a public inquiry, to be held by some one other than the respondent, to whom that person reports, was for the further information of the respondent, in order to the final consideration of the soundness of the scheme of the designation, and it is important to note that the development of the site, after the order is made, is primarily the duty of the development Corporation estab- lished under s. 2 of the Act. I am of opinion that no judicial duty is laid on the respondent in discharge of these statutory duties, and that the only question is wheth- er he has complied with the statutory directions to appoint a person to hold the public inquiry, and to consider that person's report."

Keeping these weighty observations in view I now proceed to analyse the provisions of the two sections. It will be noticed that the powers given to the Provin- cial Government under both the sections are only enabling and in terms are not compulsory. The Court below has con- strued the word 'may' as 'must' on the hypothesis that a right implies a corresponding duty and the Provincial Gov- ernment is, therefore, under an obligation to exercise the power and consequently an enquiry is compulsory. I am unable to accept this line of reasoning. The authorities show that in construing a power the Court will read the word 'may' as 'must' when the exercise of the power will be in furtherance of the interest of a third person for securing which the power was given. Enabling words are always poten- tial and never in themselves significant of any obligation. They are read as compulsory where they are words to effectu- ate a legal right. See Julius v. Lord Bishop of Oxford(1).

Here the power was given to enable the Provincial Government to obtain information to carry out the purposes of the Ordinance. It was not given for the (1) (1880) 5 App. cas.214.

benefit of any other person including the owner of the land sought to be requisitioned. when a power is given to one person, here the Provincial Government, for his own benefit, couched in enabling words making its exercise optional, there is no principle or authority that I know of which enables the Court to make the exercise of the power compul- sory by reading the word 'may' as 'must'. Assuming, however, that 'may' in these sections means 'must,' what follows ? It is true that the information could be obtained under section 10 with a view to carrying out the purposes of the Act but what was the nature of the information that might be gathered under the section ? It was only information relat- ing to the land requisitioned or to be requisitioned that could be obtained. Information relating to the land would certainly be useful in enabling the Provincial Government to consider the necessity or expediency of requisitioning that land. Such information would also be useful to the officer determining the question of compensation. But how could any information relating to any particular land have any bearing on the question of the existence of a public purpose which was the only matter under section 3, which, according to Mr. Seervai, had to be judicially determined by the Provincial Government ? I fail to perceive any. As I have said, information relating to land certainly had a bearing on the question whether it was necessary or expedi- ent to acquire that particular land which admittedly was a purely administrative act. Finally, section 10 enabled the Provincial Government to require 'any person' to furnish information relating to the land. The Ordinance did not think fit even to mention the owner or other persons inter- ested in the land as a specific source of information. Assuming that the Provincial Government was obliged to make any enquiry, the owner of the land had no special right to be consulted apart from the general right of "any person." No provision was made for giving notice of the intended requisition by special notice or by advertisement or for enabling any aggrieved person to lodge any objection and nobody was designated as authority on whom was cast any duty to hear the objections. Further, it will be noticed that under the section the information was to be furnished to such authority as might be specified, which means that the infor- mation was not to be communicated to the Provincial Gov- ernment direct. Therefore, the information was nothing more than the information obtained for the Minister by somebody appointed by him to hold a public enquiry under the statutes which were considered in Robinson v. Minister of Town and Country Planning C) and Franklin v. Minister of Town and Country Planning (2). The circumstance that by sub-section (2) of that section a legal obligation, on pain of criminal penalty, was imposed on persons to furnish information, so strongly relied on by Mr. Seervai, appears to me to have no bearing on the character or scope of the inquiry envisaged by sub-section (1). The provisions of section 12 also carried the matter no further. This section was also an enabling section. The inspection was in terms for the purpose of determining whether, and, if so, in what manner an order should be made. It can have no possible bearing on the question of the existence of a public purpose which is an independent question having no necessary relation to any particular land. Further, presumably, a number of premises might have to be requisitioned and, if the contention of the respondent were correct, there would have to be as many quasi-judicial determinations of the existence of the same public purpose as there might be the number of houses to be acquired--a proposition impracticable and absurd on the face of it. Finally, compare the provisions of sections 10 and 12 with those of section 6. The determination of the ques- tion of compensation and the apportionment thereof were certainly judicial or quasijudicial acts.

There was a provision for appeal also. Section 16 provided for making rules for holding the inquiry under sub-sections (1) and (3) of section 6. The circumstance that the Ordinance provided for judicial or quasi-judicial inquiry for the purposes of section 6 (1) [1947] 1 A.E. R. 851. (2) [1948] A.C. 87.

but was silent as regards section 3 cannot be overlooked. In my judgment, the Ordinance did not require the Pro- vincial Government to act judicially at all in the matter of making a requisition order under section 3. The provisions for obtaining information and for getting inspection under sections 10 and 12 respectively cannot be read as provisions for a judicial or quasijudicial inquiry, nor was such so called inquiry obligatory at all. Those sections served and were intended to serve the purpose of obtaining information which would enable the Provincial Government to exercise its administrative, i.e., executive function of making an order for requisition. The conclusions I have arrived at are (i) that on a true construction of section 3 of the Ordinance the determination of the existence of a public purpose and the necessity or expediency for requisitioning any particular land for that purpose was a purely administra- tive act, for the entire composite matter was left to the opinion of the Provincial Government, and its decision, if made in good faith, could not be questioned; (ii) that, apart from the question of construction and assuming that the matter had not been left to its opinion, the determi- nation of the existence of a public purpose or the necessity or expediency for making the order could not be regarded as a quasi-judicial act, because (a)there was no lis in the sense of dispute between two contesting parties to be decided by the Provincial Government; and (b) the Provincial Government was not required by the Ordinance to hold any judicial inquiry or to act judicially and that the determination of the existence of a public purpose was only a step in the process of the exercise of the adminis- trative power and, if erroneous the decision could at best be challenged by an action, but a certiorari would be a wholly inappropriate remedy. The second head of argument must therefore, be rejected.

There is the last head of argument which requires con- sideration before I conclude. The argument is that the existence of a public purpose was a condition precedent to the exercise of the power and, therefore, the fulfilment of the condition precedent had to be determined judicially by the Provincial Government as an objective fact but the provincial Government could not, by wrongly deciding the preliminary point, assume jurisdiction to exercise the power.

In Bunbury v. Fuller (1) Coleridge J. laid down:

> "Now it is a general rule, that no Court of limited jurisdiction can give itself jurisdiction by a wrong deci- sion on a point collateral to the merits of the case upon which the limit to its jurisdiction depends and however its decisions may be final on all particulars making up together that subject matter which, if true, is within its jurisdic- tion, and however necessary in many cases it may be for it to make a preliminary inquiry whether some collateral matter be or be not within the limits, yet upon these preliminary questions, its decision must always be open to enquiry in the superior Court."

This was cited by Blackburn J. in Pease v. Chaytor (2). The same principle was also laid down by the Privy Council in Colonial Bank of Australia v. Willan (3). The principle is quite plain but as Lord Esher M.R. pointed out in Reg. v. Commissioner of Income-tax (4) "its application is often misleading." The learned Master of the Rolls clas- sified the cases in two categories thus:

> "When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first estab- lished by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists (1) 9 Ex. 111 at p- 140. (3) [1874] L.R. 5 P.C. 417. (2) 3 B. & S. 620. (4) (1888) 21 Q.B.D. 313.

and, if they exercise the jurisdiction without its exist- ence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the prelimi- nary state of facts exists, as well as the jurisdiction, on finding that it does exist, to proceed further or do something more.When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their deci- sions, for otherwise there will be none. In the second of the two cases I have mentioned it is erroneous application of the formula to say that the tribunal cannot give them- selves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction." Mr. Seervai contends that the present case falls within the first class of cases and strongly relies on Rex v. Woodhouse (1) and Rex v. Bradford (2) as establishing that a certiorari lies to correct the error of the Provincial Government. There are two answers to this argument. In the first place, it is not disputed that the formation of opin- ion as to the necessity or expediency of requisitioning any land is a purely subjective matter and that the order of requisition founded on that opinion is an administrative act. What is contended is that the existence of a public purpose must be judicially determined by the Provincial Government before it could proceed to exercise its adminis- trative powers. In short qua that issue only the Provincial Government was to act judicially. The consequence of this argument is that the decision of the Provincial Govern- ment on this issue was not a decision [1906] 2 K.B. 501. (2) [1908] 1 K.B. 365, on a collateral matter but a decision on the issue itself which, according to the argument, had been left within the jurisdiction of the provincial Government to decide. It must, therefore, follow that the case fell within the second class of cases mentioned by Lord Esher M.R. The fact that there is no right of appeal from this decision, although the Ordinance provided for an appeal under section 6, is also significant. Before coming to the decision on this issue the Government had sent an Inspector to gather information under section 10 and the Respondent's father, the original applicant, furnished all necessary information and produced the original Deed of Assignment on which he founded his title and gave a written statement. The requirements of the Statute had been complied with and the petitioner had his say. The decision of the Provincial Government that a public purpose existed given in such

circumstances became, in the absence of bad faith, binding and, in the absence of any right of appeal, was conclusive, however erroneous the decision might have been. The second answer to Mr. Seer- vai's contention is that, assuming that the case fell within the first class of cases and the erroneous decision could be corrected, it might have been corrected by an action but certainly not by certiorari. The two cases relied on by Mr. Seervai, when properly understood, can have no application to the facts of the case before us. In Rex v. Woodhouse (1) the Court of Appeal accepted the position that the licensing Justices in granting or refusing to grant the licence had to perform a quasi-judicial act, for they had to decide the matter as between two contending parties, namely, the applicant for licence and the persons opposing the grant. There the Justices granted a provisional licence and referred the matter to Quarter Sessions. Three points were taken, namely, (i) that the Justices did not apply their mind to the issue and failed to decide the matter judicially but made the order in pursuance of a pre-existing agreement between them and the Corporation, (ii) that the Justices were biased and (iii) that (1) [1906] 2 K.B. 501.

the power of the Justices being limited to granting licen ces to persons who had some specified qualifications, they could not, by wrongly deciding that the applicants had the necessary qualifications, assume jurisdiction to do the quasi-judicial act of granting the licence. This decision of the Court of Appeal was reversed by the House of Lords in Lord Mayor etc. of Leeds v. Ryder (1) on the ground that the Justices had to act according to their own discretion and that they were not guilty of any bad faith in doing what they did. The point to note, however, is that the decision of the Court of Appeal proceeded on the footing that the Justices were a quasi-judicial body and that by wrongly deciding a preliminary fact they assumed to discharge their quasi-judicial function of granting the licence and it was the quasi-judicial act of granting the licence that was brought up and quashed by certiorari. The case of Rex v. Bradford(2) also proceeded on the footing that in granting the licence to the District Council to take away stones etc. the Justices were exercising a quasi-judicial function and they assumed jurisdiction to exercise that quasi-judicial function by wrongly deciding the collateral fact that the land in question was not a park. The same remarks apply to Rex (Greenaway) v. Justices of Armagh (3). All these cases in the appeal Court were cases where a quasijudicial body purported to assume jurisdiction to discharge its quasi-judicial function by an erroneous deci- sion of a collateral fact and, therefore, certiorari was granted to correct the error of jurisdiction by quashing the order itself which was a quasi-judicial act. In the case now before us the Provincial Government was function- ing as an administrative body doing an administrative act, namely, forming its opinion as to the necessity or expedien- cy of requisitioning land and making an order of requisition based on that opinion. If the existence of a public purpose was a collateral fact, then at best it was a case of an (1) [1907] A.C. 420. (2) [1908] 1 K.B. 365. (3) {1934] 2, Ir. R. 55.

administrative body assuming jurisdiction to perform its administrative powers by erroneously deciding the collateral fact as to the existence of a public purpose. In such cir- cumstances the two cases relied on by Mr. Seervai can have no possible application. Assuming that this case fell within the first class mentioned by Lord Esher M.R. this erroneous assumption of jurisdiction to do an administrative act might have been corrected by an action but certiorari cannot possibly be the appropriate remedy. It is said that in deciding the collateral fact the Provincial Govern- ment was acting judicially and, therefore, certiorari might go. The argument will take the respondents

nowhere, for, assuming that the decision on the question of existence of a public purpose was a quasi-judicial act, that decision, at the most, might be quashed but the administrative act, namely, the formation of opinion and the order based thereon would remain unaffected, for certiorari would not affect it. The passage I have quoted from the judgment of Lord Greene M.R. in Robinson v. Minister of Town and Country Planning, clearly establishes that although the preliminary enquiry had to be done in a quasijudicial manner, that fact could not alter the nature or character of the ultimate adminis- trative act. That administrative act would remain an admin- istrative act and could not be touched by certiorari. The third head of arguments advanced on behalf of the respond- ents must, therefore, also fail.

In my judgment the first of the two points raised by the learned Attorney-General on behalf of the appellant must prevail for reasons stated above. This is sufficient to dispose of this appeal and the second point, namely, whether a writ of this nature can lie against the Provincial Govern- ment, does not arise. In view of the fact that the Govern- ment of India Act, 1935, has been repealed and the provi- sions of our Constitution on this point are different from those of the Government of India Act, the question has also become academic for future purposes and I express no opinion on it.

I, therefore, agree with my Lord the Chief Justice that this appeal should be allowed and the judgments and orders of the Courts below should be set aside and the petition should stand dismissed. I also agree to the order for costs made by my Lord the Chief Justice.

Appeal allowed.

Agent for the appellant: Ranjit Singh Narula. Agent for the respondents Nos. 1 (a) and 1 (b) :

Rajinder Narain.