Avadhesh Pratap Singh vs State Of Uttar Pradesh And Ors. on 20 March, 1951

Equivalent citations: AIR1952ALL63, AIR 1952 ALLAHABAD 63

JUDGMENT

Agarwala, J.

1. This is an application for the issue of a writ of certiorari and mandamus or any other suitable prerogative writ which might be deemed fit and appropriate against the opposite parties quashing the declaration dated 10-12-1949 whereby the applicant was declared in-capable of managing his estate under Section 8 (1) (d), U. P. Court of Wards Act IV [4] of 1912. The facts which are not disputed are as follows.

2. The applicant Shri Avadhesh Pratap Singh is a taluqdar of the estate known as Khajurahat, Pargana Paschim Rath, district Faizabad, of which the Government revenue is about RS. 32000. It is entered at No. 136 of list 1 and No. 62 of list 3 of the Oudh Estates Act. The devolution of the estate is governed by the rule of lineal primogeniture. The applicant came in possession of the estate on or about 12-5-1940, when his father, the previous Taluqdar, died. There are some members of the family of the applicant who, according to the applicant, are merely entitled to maintenance out of the estate, but who, on the other hand, claim to be co-sharers with the applicant. It appears that there was some dispute between the applicant and these Guzaredars or co-sharers and certain suits were brought by them against the applicant for profits. The applicant disputed their claim to co-sharership and the right to claim profits in those suits.

3. Certain notices under the U. P. Court of Wards Act, No. IV [4] of 1912, were issued to the applicant by the State of Uttar Pradesh, the result of which was that the applicant was dispossessed from the management of his own estate and the same was to be taken over by the U. P. Court of Wards. It is necessary at this stage to understand the provisions of the Court of Wards Act under which the notices were issued.

4. Chapter in of the Act consisting of Sections 8 to 16, both inclusive, deals with the assumption of superintendence of persons and property of disqualified proprietors. Section 8 (1) defines the circumstances in which the proprietors will be deemed to be disqualified to manage their own property. These fall under four categories--(a) minors; (b) females declared by the local Government to be incapable of managing their own property; (c) persons adjudged by a competent civil Court to be of unsound mind and incapable of managing their own property and (d) persons declared by the local Government to be incapable of managing or unfit to manage their own property.

5. Persons falling under Clauses (b) and (d) are, therefore, persons about whom a declaration has to be made by the local Government. In the case of persons falling under Clauses (a) and (c) the local Government does not make any such declaration. In the cases falling under Clause (d) the local Government can make a declaration for any one of five reasons. The first four reasons are as follows : (i) Physical or mental defect or infirmity unfitting them for the management of their own property; (ii) Conviction of a non-bailable offence and unfitness by vicious habits or bad character; (iii) Entering upon a course of extravagance and (iv) Failure without sufficient reason to discharge the debts and liabilities due by them.

6. These four reasons were in the original Act as it was passed. By the U. P Court of Wards (Amendment), Act No. XVI [161 of 1947, a fifth reason was also added--(v) Such mismanagement as has caused "general discontent among the tenants." A declaration under this clause, however, was not to remain in force for more than two years.

7. Section 8 (1) contains a proviso to the following effect :

> "Provided that no such declaration (under Clause (d) of Section 8(1)) shall be made under Sub-clauses (iii) or (iv) unless the local Government is satisfied :
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> (a) that the aggregate annual interest payable at the contractual rate on the debts and liabilities due by the proprietor exceeds 1/3rd of the gross annual profits of the property; and
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> (b) that such extravagance or failure to discharge debts and liabilities is likely to lead to the dissipation of the property."

8. Section 8(2) provides as follows :

> "No declaration under Clause (d) of Sub-section (1) shall be made until the proprietor has been furnished with a detailed statement of the grounds on which it is proposed to disqualify him and has had an opportunity of showing cause why such declaration should not be made."

9. Section 9 provides for an enquiry to be made by the Local Government into the circumstances of any proprietor and the extent of his indebtedness.

10. Section 10 deals with a case under which a proprietor may himself wish to have his property placed under the superintendence of the Court of Wards. The section provides that the Court of Wards may, on being satisfied that it is expedient to undertake the management of the property for which purpose a proprietor has made an application to the Collector for making a declaration, accede to his request.

11. Section 11 bars the jurisdiction of civil Courts:

"No declaration made by the local Government under Section 8 or by the Court of Wards under Section 10 shall be questioned in any civil Court."

12. Section 12 deals with the power to assume superintendence.

13. Section as lays down that when the Court of Wards' right of superintendence ia disputed, the case shall be reported to the local Government whose orders thereon shall be final and shall not be questioned in any civil Court.

14. Section 14 deals with protection of person and property of a successor on the death of the proprietor.

15. Section 15 deals with notification of assumption of superintendence.

16. Section 16 deals with the date from which the entire moveable and immoveable property of the ward is to be deemed to be under the superintendence of the Court of Wards. In cases of minors and persons of unsound mind falling under Clauses (a) and (c) of Section 8(1) the property shall be under the Court of Wards when it assumes superintendence thereof. But in the case of persons in regard to whom a declaration has been made under Clauses (b) and (d) of Section 8 (1) or under Section 10 the property is to be deemed to be under the Court of Wards from the date of the declaration.

17. On 9-10-1946 a notice was issued under Section 8 (1) (d) (iv) of the Act by the Deputy Commissioner of Faizabad stating that the applicant had failed to discharge the debts and liabilities due by him, alleging that such failure was likely to lead to the dissipation of the property and informing the applicant that it was proposed to take over his property under the superintendence of the Court of Wards requiring him to show cause within 15 days from the date of the receipt of the notice why action should not be taken as proposed. It will be seen that this notice was under Clause (iv) of 3. 8 (1) (d) which deals with failure without sufficient reason to discharge the debts and liabilities due by the proprietor. The applicant showed cause and the matter was dropped for the time being.

18. A year later on 2-11-1947 a second notice was issued to the applicant. This time it was under Section 8 (1) (d) (v), that is, on account of such mismanagement as has caused discontent among the tenants. The notice was a short one. It gave no details as required by Section 8 (2) of the grounds on which it was proposed to disqualify him beyond the bare allegation that there was mis-management in the Khajurahat Estate which had led to "general discontent among the tenants."

19. The applicant showed cause against the notice by means of a reply dated 10-11-1947 that the notice was ambiguous and was lacking in details, asserting that there was no mismanagement and no discontent among the tenants and suggesting that the maintenance holders who claimed to be co-sharers in the estate were creating trouble for the applicant.

20. It appears that one Shri Ratneshwar Pra-tap Singh who was, according to the applicant, a person entitled to maintenance but who claimed to be a co-sharer, complained to the Government against the applicant's management of the estate on 10-11-1947. On 16-11-1948 a Sub-Divisional Officer issued notice to the applicant informing him that the Section D. O. was going to hold an enquiry on the allegations made by Shri Ratne-shwar Pratap Singh and others against the management of the Khajurahat Estate and that the enquiry would be held on 21-2-1948. The points on which the enquiry was to be made were specified.

21. A note was added that the enquiry would be a private one and that no lawyer would be allowed to appear on anybody's behalf. The date of the enquiry was fixed as 21-2-1948, that is, five days after the issue of the notice. It is not clear from the record on what date the notice was served on the applicant. There is no proof on the record that any tenant made any complaint about the management by the applicant of his estate leading to discontent among the tenants.

22. On 21.2-1948 the applicant's agent appeared before the S. D. O. and the applicant swears in his affidavit that his agent was told by the S.D.O. that the witnesses produced before him did not make out any case of mismanagement and as such, it was unnecessary for the agent to produce any evidence and further that, on this assurance being given by the S. D. O., the applicant's agent refrained from producing evidence in support of the prudent and efficient management of the estate. No counter, affidavit has been filed before us to challenge the accuracy of this statement. This enquiry was a preliminary enquiry which the Government is entitled to make under Section 9 of the Act. It does not fall under Section 8 (2) as was expressly admitted by the Government in their letter No. 2330/I-A-227-1947 dated 18.7 1948.

23. About four months later, that is, on 17-6-1948, a notice was issued to the applicant as well as to 9 other persons, who were described as the applicant's co-sharers under Section 8 (2) of the Act. These were the persons whose title the applicant did not admit. The notice called upon the applicant under Section 8 (2) to show cause why he should not be declared to be incapable of managing his own property under Section 8 (1)(d) (v), Court of Wards Act. His explanation was to be submitted to the Deputy Commissioner, Faizabad, within a fortnight of the date of service of the notice upon him. No date, time or place was fixed for the appearance of the applicant to show cause, The last para, of the notice suggests that the applicant was merely required to- submit a written explanation within a fortnight from the date of the service of the notice. No copy of the complaint or the report of the S. D. O. upon the enquiry made in pursuance of the notice dated 16-2-1948 was supplied to the applicant. The applicant submitted a written explanation (as desired in the notice of 17-6-1948) in which he denied the allegations made in the notice, and requested the Government to hold a public enquiry wherein he should be heard and given an opportunity to test the materials against him before he was declared to be unfit to manage his estate. This request was not acceded to by the Government.

24. Nine or ten months later, that is, on 4-4-1949 a fresh notice under Section 8 (1)(d)(v) was issued by the Government. This was a notice again under Section 8 (2) of the Act. The same old allegations as had been made in the earlier notice of 17-6-1948, wore repeated with the addition of two new allegations. The applicant was directed to "show cause why he should not be declared to be

incapable of managing his own property under Section 8 (1) (d)(v), Court of Wards Act." His explanation was to be submitted to the Deputy Commissioner, Faizabad, within a week of the date of service of the notice upon him. The same remarks apply to this notice as have been made with regard to the notice of 17-6-1948, namely, that merely an explanation was required to be submitted and no opportunity to the applicant to show cause or to lead evidence against the allegations and to appear personally and explain matters, was intended to be given. The applicant again denied the allegations made against him, repudiated the charges and reiterated his demand for an open enquiry wherein he should be permitted to test the allegations made against him by cross examinations and rebut the same by producing his defence evidence. No opportunity was given to the applicant.

25. The other persons to whom notice was given and who alleged to be co-sharers of the applicant now seem to have put aside their dispute with the applicant for the time being and made common cause with him in applying to the Government that they had made up their differences and that their property should not be taken over under the superintendence of the Court of Wards. Nothing further happened for another 8 months.

26. On 10-12-1949, a notification was published in the Official Gazette declaring the applicant and the persons alleged to be his co-sharers "to he incapable of managing the estate". This was under Section 8 (1) (d) of the Act. The applicant and the other persons concerned applied to the Government praying for the cancellation of the declaration. The applicant was rejected in March 1950.

27. On or about 9-1-1950, the applicant filed a suit for perpetual injunction against the opposite parties, namely, the State of Uttar Pradesh, the Deputy Commissioner of Faizabad and the Assistant Manager, Court of Wards, Faizabad, from taking actual possession of the estate in pursuance of the aforesaid notification of 10-12-1949. He also made an application for the issue of an interim injunction restraining the opposite parties from taking possession of the applicant's estate. This application was dismissed on the ground that the declaration amounted to actual possession. The suit also was later on dismissed.

28. The applicant challenges the validity of the declaration upon 3 grounds (1) that the Government did not give him an opportunity of showing cause as required by the mandatory provisions of Section 8 (2) and that the Government did not act in a judicial manner & in conformity with the elementary principles of natural justice; (2) that Clause (v) of Section 8 (1)(d) introduced by the U. P. Court of Wards (Amendment) Act, No. XVI [16] of 1947, was void being in conflict with the fundamental rights of the applicant to acquire, hold and dispose of his property as laid down in Article 19(f) of the Constitution; and (3) that the declaration constitutes an infringement of the fundamental rights guaranteed under Article 31 of the Constitution.

29. In a supplementary affidavit on behalf of the applicant, it was stated that the applicant did not receive a single penny from the Court of Wards on account of maintenance allowance.

30. As already stated, no counter-affidavit has been filed. But it has been urged in arguments that this is not a fit case in which the power to issue a writ of certiorari can or should be exercised and

that in issuing the impugned declaration the Government has not acted in excess of its jurisdiction or in contravention of the provisions of the Act. It is further urged that Clause (v) of Section 8 (1) (d) does not conflict with either Article 19(f) or Article 31 of the Constitution.

31. The circumstances in which a writ of certiorari or prohibition can be issued are well defined. As was stated by Atkin L. J. (as he then was).

> "Both writs are of great antiquity, forming part of the process by which the King's Courts restrained courts of inferior jurisdiction from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; certiorari requires the record or the order of the Court to be sent up to the King's Bench Division, to have its legality inquired into, and, if necessary, to have the order quashed. It is to be noted that both writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exculsively with the jurisdiction of what is described in ordinary parlance as a Court of Justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, Courts of Justice. 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." Rex v. Electricity Commissioners, (1924) 1 K. B. 171 at pp. 204 and 205.

32. In the King v. London County Council, (1931) 2 K. E. 215 at p. 243 Slesser L. J. analysed the conditions laid down by Atkin L. J. as follows : (1) that the tribunal or body of persons should be vested with legal authority; (2) that the authority should determine questions affecting rights of persons (3), that in determining these questions the tribunal should be under a duty to act judicially and (4) that in determining those questions there should be excess of jurisdiction.

The observations of Lord Atkin, quoted above, make it perfectly clear that a writ can be issued not only against an inferior Court of Justice but also against statutory bodies or tribunals, It follows, therefore, that by the phrase "acting judicially" what is meant is pot merely strictly judicial acting but also quasi-judicial acting or, in other words, an acting analogous to judicial acting. That under the Court of Wards Act, the State Government and the Court of Wards are bodies of persons vested with legal authority to determine questions affecting the rights of other persons can admit of no doubt. The only questions that remain to be determined are whether the State Government in issuing the notification was under a duty to act quasi-judicially and whether it exceeded its jurisdiction or legal authority in doing so. Before entering upon this enquiry, however, it must be determined "what is acting judicially or quasi-judicially?"

33. In Huddart, Parkar & Co. v. Moorehead 8 C.L. R. 330, Griffith C. J. defined judicial power as "the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action." This

definition of judicial power was approved by the Judicial Committee where Lord Sankey L. C. said that this was one of the best definitions of judicial power, vide Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation, 1931 A C 275 at p. 295. But this is a definition of judicial power strictly socalled and not of a quasi-judicial power.

34. In the Report of the Ministers' Powers Committee (Command Paper 4060 of 1932), p. 73 Section III, para. 3) an attempt was made to define the words "judicial" and "quasi-judicial."

> "A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites : (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of tie fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties; and (i) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice."

Vide Cooper v. Wilson, (1937) 2 K. b. 309 at pp. 340 and 341.

35. At one time it used to be considered that whenever a statutory tribunal or body of persons was empowered to impose a liability or affect the rights of others, it was bound to act judicially or quasi-judicially.

36. In Cooper v. Board of Works for the Wandsworth District, (1863) 14 C. B. (N. S.) 180 the Board of Works ordered that the house of the plaintiff Cooper may be pulled down because it contravened certain provisions of the Metropolis Local Management Act, 1855. The order was made without giving any notice to the plaintiff to show cause. It was held that there was a well established principle that no man shall be deprived of his property without giving an opportunity of being heard and that since the order of demolition was an order in the nature of depriving a man of his property, the Board could not order, demolition without giving an opportunity so the plaintiff of being heard. Wills J. observed:

> "I apprehend that a tribunal which is by law in-vested with power to affect the property of one of Her Majesty's subjects, is bound to give such subject an opportunity of being heard before it proceeds; and that that rule is of universal application, and founded upon the plainest principles of justice."

87. In Regina (John M' Evoy) v. Dublin Corporation, (1878) 2 L. R. Ir. 371 at p. 376, May C. J. in dealing with the question observed as follows:

> "It is establishes 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 consideration of facts and circumstances and imposing liability or affecting the rights of others."

38. There is, however, an important limitation to the principles above enunciated and it is that the legislature may by express language or by necessary implication vest an absolute discretion in a tribunal or a body which may not be bound to act judicially or quasi-judicially even though it may affect the rights and property of others.

39. This was made clear in Hophins v. Smethwick Local Board of Health, (1890) 24 Q. B. d. 712. In that case under the provisions of the Public Health Act, 1875, the Public Health authorities ordered that the plaintiff's building be pulled down without giving notice to the plaintiff to show cause against the proposed order. There was nothing in the Act regarding the procedure to be followed by the Public Health authorities before they ordered the demolition of a person's building. Wills J. observed:

> "A judicial act is as much implied as in fining him 51.; and as the local board ia the only tribunal that can make such an order its act must be a judicial act, and the party to be affected should have a notice given him, and there is no notice, unless notice is given of time when, and place at which the party may appear and show cause ..... The language of an Act of Parliament may, it is true, be so strong as to show that the act is not a judicial act : Cheetham v. Manchester Corporation, (1875) 10 C. P. 249, is an authority to that effect; there the act might be done without notice, presentment, or any other formality, and it was held that the presumption of its being a judicial act wag set aside, and that the decision in Cooper v. Wandsworth District Board of Works, (1863) 14 C. B. (N. S.) 180, was inapplicable. But in the present ease there is nothing in the Act of Parliament to limit the natural inference as to the nature of the act."

40. In Board of Education v. Rice, (1911) A. C. 179, Lord Loreburn in interpreting Section 7 (3), Education Act, 1902, which ran as follows :

> "If any question arises under this section between the local education authority and the managers of a school not provided by the authority, that question shall be determined by the Board of Education."

observed, "Comparatively 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 questions 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, usually be of an

administrative kind; but sometimes it will involve matter of law as well as matter of fact, of 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 facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information In any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view. Provided this is done, there is no appeal from the determination of the Board under Section 7, Sub-section 3, of this Act, The Board have, of course, no jurisdiction to decide abstract questions of law, but only to determine actual concrete differences that may arise, and as they arise, between the managers and the local education authority. The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

41. In P. V. Rao v. Khushaldas S. Advani, A.I. R. (36) 1949 Bom. 277, Ohagla, C. J. summed up, what in his opinion was a judicial or quasi-judicial act as distinguished from a purely administrative or executive act, thus :

> "In the first place, & duty must be cast by the Legislature upon the person or persons who is empowered to act to determine or decide some fact or facts. There mast 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."

42. The above case went up in appeal to the Supreme Court & is reported in Province of Bombay v. Khushaldas S. Advani, A. I. R. (37) 1950 S. C. 222. Kania C. J. defined judicial act as "When the law under which the authority is making a decision, itself requires a judicial approach the decision will be quasi-judicial. Prescribed forms of procedure are act necessary to make an inquiry judicial, provided in coming to the decision the well recognised principles of approach are required to be followed."

Fazl Ali J. observed:

> "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 authorised to act as if he was a Court or a Judge. To act as a Court or a Judge necessarily involves giving an opportunity 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."
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> Patanjali Sastri J. agreed with the learned Chief Justice.

43. Dass, J. laid down the following principles:

> "(i) That if a statute empowers an authority, not being is 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
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> (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."

44. It is not necessary to analyse all the cases bearing upon the point. Upon a consideration of the whole matter, it appears to me that a quasi-judicial act requires that a decision is to be given not arbitrarily or in the mere discretion of an authority, but according to the facts and circumstances of the case, as determined upon an enquiry held by the authority after giving an opportunity to the party to be affected of being heard and whenever necessary leading evidence in support of his contentions. Whenever the authority is bound to make a decision in this way, it acts judicially or quasi-judicially. The essential difference between an administrative or executive act on the one hand and a judicial and quasi-judicial act on the other is that while in the former case, the authority vested with the power to give a decision affecting the rights of others, may be bound to enter upon an enquiry, he is not bound to give a decision as a result of the enquiry, but may act in his discretion, in utter disregard of the result of the enquiry, in the latter case, such authority is bound by law to act on the facts and circumstances, as determined upon the enquiry, in which a person to be affected is given full opportunity to place his case before the authority even though the decision of such authority, whether right or wrong, may be final and may not be liable to be challenged in a Court of law.

45. In order to determine whether a body is required to act quasi-judicially, the whole statute has to be considered and the decision has to be based upon a consideration of all the relevant provisions. When the right to be affected is a natural or common law right of a person, there is a presumption that an authority vested with the power to affect such right must act quasi-judicially. (Cooper v. Board of Works, (1863) 14 C. B. (N. S.) 180). But this presumption may be rebutted by an examination of the provisions of the statute. When the right to be affected is a creation of the statute

itself, no such presumption arises at all.

46. In the present case, since the right to be affected is a natural or common law right of the applicant, there would be a presumption that the Govt. must act quasi-judicially. But apart from that there is an express provision in the U. P. Court of Wards Act under Section 8 (2) which makes it the duty of the Govt. to act quasi-judicially. That provision requires the local Govt. to give to the proprietor concerned a detailed statement of the grounds on which it is proposed to disqualify him & further to give him an opportunity of showing cause why such a declaration should not be made. It may fairly be presumed that the Local Govt. has to act in accordance with the result of the enquiry so held although its final decision if the above procedure is followed, may not be liable to be challenged in a Court of law as provided in Section 11 of the Act, These requirements are the essence of a judicial approach & therefore, the local Govt. is bound to act judicially.

47. Did the local Govt. act quasi judicially in making the declaration dated 10-12-1949 in the present case ? As already stated, the Govt. did indeed furnish a detailed statement of the grounds, but ia my opinion, did not give him an adequate opportunity "of showing cause why such a declaration should not be made." Where an opportunity is required to be given of showing cause the opportunity must be adequate. In the present case, all that the Govt. did was to ask for a mere representation from the applicant within a certain time. Enabling a mere representation to be made is not the same thing as giving an opportunity of showing cause. The expression "showing cause" connotes an opportunity of leading evidence in support of one s allegations & in controverting such allegations as are made against one. This was not allowed to be done in the present case.

48. Learned counsel for the Govt. has relief upon a case of Local Govt. Board v. Arlidge, 1915 A. c. 120. In that case the question was as to whether an appeal had been validly disposed of by the local Govt. Board under the provisions of Section 17, Housing & Town Planning Act, 1909. The rules made thereunder provided for a public local enquiry in which a party interested may appear & state his case orally, but did not provide for any subsequent hearing before the Board analogous to that before a Court of law. It was held that an oral hearing, before the Board after a public enquiry had been held in which the party had every opportunity of arguing his case & leading evidence in support of it, was unnecessary. This case bas no bearing upon the controversy to be decided in the present petition. In the present case, the statute requires that the appellant shall have an opportunity of showing cause. He demanded a public enquiry almost in every representation that he had to make to the Govt. from time to time. It may be that he was not entitled to a public enquiry, bat I cannot agree that he was not even entitled to have an opportunity of leading evidence for proving his assertions.

49. Reference was also made to the case of Bhagwan Bux Singh v. Secretary of State, A. I. R. (27) 1940 P. C. 82. The question in that case was whether the local Govt. was right in interpreting the phrase "gross annual profits" as used in proviso (a) to Section 8 (i) of the Act. It was held that the fact that the Govt. had interpreted the phrase wrongly did not authorise the Court to make the declaration ultra vires in view of the provisions of Section 11, Court of Wards Act, which prevented a civil Court from questioning the declaration made by the local Govt. under Section 8 & by the Court of Wards under Section 10. This limitation on the power of a civil Court to quash the declaration made by the local Govt. has now been partially removed by the Constitution & now the High Courts

& the Supreme Court have been empowered to issue writs, directions or orders for the enforcement of any rights conferred by Part III of the Constitution & for any other purpose. The provisions of Section 11 do not bar the High Court from issuing a writ, direction or order under Article 226 if it finds that the Govt. has contravened the provisions of the statute which empowered it to act in infringement of the rights of a citizen.

50. In my judgment, the local Govt. failed in this case to follow the procedure laid down by law & as it failed to follow that procedure, it exceeded its jurisdiction in making the declaration.

51. In this view of the matter, it is not necessary to enter into the other two questions raised by the applicant.

52. I would allow this application, quash the declaration made by the local Govt. on 10-12-1949 & direct that the petitioner be put in possession of his property.

Sankar Saran, J.

53. I agree.

54. By the Court.--We allow this application, quash the declaration made by the local Govt. on 10-12 1949, & direct that the petitioner be put in possession of his property. The applicant will have his costs as certified by his counsel.