**GUJARAT HIGH COURT**

Patel Gandalal Somnath

Vs.

State of Gujarat

Special Civil Appln. No. 111 of 1961

(K.T Desai, C.J. and P.N. Bhagwati, J.)

22.03.1962

**JUDGMENT**

**Bhagwati, J.**

1. This case once again raises the much debated question as to when an inquiry by a statutory body can be said to be a quasi-judicial inquiry as opposed to an administrative inquiry. The question arises in regard to an inquiry under section 5-A of the Land Acquisition Act, 1894, and surprisingly enough barring a decision of the High Court of Allahabad, there is no authority in which the question appears to have been considered. The decision of the High Court of Allahabad treats the inquiry as a quasi-judicial inquiry but there is hardly any discussion of the reasons leading upto the conclusion and the conclusion seems to rest merely upon the ipse dixit of the Court. With respect, we do not agree with the decision of the High Court of Allahabad and take the view that the inquiry is an administrative inquiry and not a quasi-judicial inquiry; but inasmuch as the question is one of considerable importance and consequence and since we have had the advantage of hearing very able arguments on both sides, we think it right to give our reasons in some detail.

2. It is necessary to set out briefly the facts giving rise to the present litigation in order to appreciate the contentions which have been urged before us. The first petitioner is the owner of F. P. No. 61 in Ellis Bridge Town Planning Scheme No. 5, Osmanpura, Ahmedabad. The first petitioner has four sons and two daughters. The first petitioner wanted to construct four bungalows, three for his sons and one for himself and he, therefore, sub-divided this plot into ten sub-plots so that he could sell off six sub-plots and from the sale proceeds find monies for the construction of bungalows on the remaining four sub-plots. The first petitioner submitted a plan showing the lay out of the various sub-plots to the Municipal Corporation of Ahmedabad and the same was sanctioned by the Municipal Corporation of Ahmedabad on 29th Octcber 1959. The first petitioner also obtained permission of the City Deputy Collector, Ahmedabad, for non-

agricultural use of the entire plot. This permission was granted by the City Deputy Collector, Ahmedabad, on 6th October, 1959. The first petitioner thereafter sold sub-plots Nos. 1 and 2 to the second petitioner by a deed of sale dated 29th December 1959. Sub-plot No. 3 was sold by the first petitioner to the third petitioner by a deed of sale dated 20th February, 1960 and sub-plot No. 9 was also sold by the first petitioner to the fourth and fifth petitioners jointly by a deed of sale executed on the same day. The first petitioner also negotiated for sale of sub-plot No. 4 with one Himatlal Ganpatram and the negotiations were finalized; but before the sale could be completed, Himatlal Ganpatram died in a motor accident and the completion of the sale was, therefore, delayed. The sixth petitioner also agreed to purchase sub-plot No. 5 from the first petitioner for the purpose of constructing a bungalow thereon but before the sale could be completed the Government of Gujarat issued the notification challenged in the present proceedings. This notification was issued by the Government of Gujarat on 14th September 1960 under section 4 of the Land Acquisition Act, 1894, and it was stated in this notification that whereas it appeared to the Government of Gujarat that F. P. No. 61 was likely to be needed for the construction of houses for the third respondent-Society, it was notified under section 4 of the Land Acquisition Act, 1894, that this plot was likely to be needed for the said purpose, namely, construction of houses for the third respondent Society. Public notice of the substance of this notification was given at convenient places in the locality and individual notices were also given to the petitioners intimating to them that if they had any objections to the acquisition of F. P. No. 61 they should communicate the same in writing to the second respondent. The petitioners accordingly filed their objections pointing out that they themselves wished to construct residential houses on various sub-plots comprised in F. P. No. 61 and that the land sought to be acquired was not at all required for the existing members of the third respondent-Society. The third respondent-Society was registered as a Co-operative Housing Society on 15th February 1956 with seventeen members and immediately after its registration the third respondent-Society purchased F. P. No. 62 adjoining F. P. No. 61 belonging to the petitioners and constructed on the said plot seventeen bungalows for its original seventeen members. The third respondent-Society did not, therefore, require any more land for its original seventeen members. The third respondent-Society, however, alleged that in addition to the original seventeen members for whom bungalows had been constructed on F. P. No. 62, the third respondent-Society had enrolled ten other members for whom the third respondent-Society required F. P. No. 61. The third respondent-Society accordingly resolved at the meeting of the Managing Committee held on 6th September 1959 to apply to the Government for the acquisition of F. P. No. 61 and an application was accordingly made by the third respondent-Society to the Government on 12th September 1959. The additional ten members enrolled by the third respondent-Society did not have - so alleged the third respondent-Society - any residential houses in the City of Ahmadabad or the Ahmadabad District and F. P. No. 61 was, therefore, required by the third respondent-Society for construction of houses for the additional ten members. The petitioners, however, challenged the requirement of the third respondent-Society and contended that the acquisition was mala fide and was calculated to enable a group of ten individual persons to obtain at a nominal price various sub-plots comprised in F. P. No. 61 which were required by the petitioners for construction of

their own residential bungalows. The petitioners objected to the acquisition on the ground that the purpose for which the acquisition was sought to be made was not a public purpose and that the land comprised in F. P. No. 61 could not, therefore, be acquired by the Government. The petitioners also raised various other objections to the acquisition of the land comprised in F. P. No. 61. We are not concerned in this case with the actual objections made by the petitioners but suffice it to state that objections were made by the petitioners to the acquisition of the land comprised in F. P. No. 61 on various grounds available to the petitioners. On the objections being received from the petitioners, the second respondent held an inquiry under section 5-A of the Land Acquisition Act, 1894, for the purpose of hearing such objections. In the course of the inquiry the first petitioner made an application to the second respondent on 19th November 1960 demanding various particulars from the third respondent-Society such as the constitution of the third-respondent-Society, the names and addresses of the original members of the third respondent-Society, and the names and addresses of the new members alleged to have been admitted by the third respondent-Society along with the respective dates of their enrolment and their relations with the original members of the third respondent-Society. The first petitioner also claimed an opportunity to cross-examine the additional members of the third respondent-Society for whom the land comprised in F. P. No. 61 was sought to be acquired. The second respondent in consequence of the application directed the third respondent-Society to supply to the first petitioner the constitution of the third respondent-Society as also the names of the original as well as new members of the third respondent-Society. The second respondent, however, did not pass any specific orders as regards the ether reliefs claimed by the first petitioner. The first petitioner, therefore, once again moved the second respondent by a more specific application dated 24th January, 1961. The first petitioner pointed out in this application that the inquiry which was being held by the second respondent under section 5-A of the Land Acquisition Act, 1894, was a judicial and in any event a quasi-judicial inquiry and that the various objections raised by the petitioners were required to be decided in a judicial manner and that the petitioners, were, therefore, entitled to cross-examine the members of the third respondent-Society for whose benefit or at whose instance the land comprised in F. P. No. 61 was proposed to be acquired for the purpose of testing the *bona fides* of the proposed acquisition. The first petitioner also stated in this application that the petitioners wanted to know whether the new members of the third respondent-Society had residential houses in Ahmedabad District either in their own names or in their fathers' names or in the names of any of their family members and that this information was necessary for the purpose of the inquiry which was being held by the second respondent. The second respondent rejected this application by an order dated 24th January 1961 on the view that the inquiry before him was a limited one and that the petitioners were not entitled to have the members of the third respondent-Society presented for cross-examination. The second respondent also refused to call for the further particulars demanded by the petitioners from the third respondent-Society. Curiously enough though the order was made by the second respondent on 24th January 1961 rejecting this application, the third respondent-Society was allowed to file its objections to this application on 9th February 1961.

3. The petitioners thereupon filed the present petition challenging the validity of the notification and the inquiry on various grounds set out in the petition. They need not be set out here in detail. We shall be referring to them when we examine the arguments urged on behalf of the petitioners and we shall do so in the order in which they were presented and with necessary factual details. Suffice it to state for the present that the main controversy between the parties centered round the question whether the inquiry was a quasi-judicial inquiry or an administrative inquiry and a major part of the argument advanced before us turned on this question. Apart from the contentions bearing on this question two other contentions were urged on behalf of the petitioners. One contention was that the object of the proposed acquisition was not a public purpose and that even if the proposed acquisition was sought to be made for the third respondent-Society simpliciter the requirements of Part VII of the Act were not satisfied and that the Government was, therefore, not entitled to acquire the land comprised in F. P. No. 61. The other contention though argued faintly was that the proposed acquisition was mala fide and was calculated to benefit the ten additional members of the third respondent-Society by enabling them to acquire at the ridiculously low prices prevailing on 1st January 1948 the land comprised in F. P. No. 61 even though the same was required by the petitioners for construction of their own residential bungalows and was, therefore, bad. These two latter contentions were, however, in our opinion, for reasons which we shall presently give, premature and we did not, therefore, permit Mr. I. M. Nanavaty, learned advocate appearing on behalf of the petitioners, to advance any arguments in support of these contentions. We shall now proceed to examine the validity of the various contentions urged on behalf of the petitioners in support of the petition.

4. Before, however, we do so, it is necessary to set out at this stage the relevant sections of the Land Acquisition Act, 1894, and the relevant rules made by the Government of Bombay under section 55 of the said Act. The following are the relevant sections of the said Act which have a bearing on the determination of the question raised before us

> "4. Publication of preliminary notification, and powers of officers thereupon : (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.
> (2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen, -
> to enter upon and survey and take levels of any land in such locality;
> to dig or bore into the sub-soil;
> to do all other acts necessary to ascertain whether the land is adapted for such purpose;
> to set out the boundaries of the land proposed to be taken and the intended line of the work (it any) proposed to be made thereon;
> to mark such levels, boundaries and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries

and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so."

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"5-A. Hearing of objections : (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

6. Declaration that land is required for a public purpose : (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a secretary to such Government or of some officer duly authorized to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

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40. Previous enquiry: (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under section 5-A, sub-section (2), or by an enquiry held as hereinafter provided, -

> (a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or
> (b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.
> (2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.
> (3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure (14 of 1882) in the case of a Civil Court."

Section 55 of the said Act authorizes the appropriate Government to make rules consistent with the said Act for the guidance of officers in all matters connected with its enforcement, and from time to time to alter and add to the rules so made and provides that all such rules, alterations and additions shall be published in the Official Gazette, and shall thereupon have the force of law. The Government of Bombay has in exercise of this power conferred by section 55 of the said Act made certain rules for the guidance of officers in dealing with objections lodged under section 5-A of the said Act and Rules 1 to 5 are as follows :

> "1. Whenever any notification under section 4 of the Act has been published but the provisions of section 17 have not been applied and the Collector has under the provision of section 4 (1) issued notices to the parties interested; and on or before the last day fixed by the Collector in those notices in this behalf any objection is lodged under section 5-A (2), firstly, the Collector shall record the objection in his proceedings, secondly, the Collector shall consider whether the objection is admissible according to these rules.
> 2. To be admissible (a) an objection must be presented in writing by a party interested in the notified land and must be presented within thirty days after the date of publication of the notification under section 4 or within such period as may be fixed by the Collector; (b) it must allege some specific objections, such as these :
> (i) the notified purpose is not genuinely or properly a public purpose; (ii) the land notified is not suitable for the purpose for which it is notified;
> (iii) the land is not so well suited as other land; (iv) the area proposed is excessive; (v) the objector's land has been selected maliciously or vexatiously;
> (vi) the acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort; will take away important public rights of way or other conveniences or will desecrate religious buildings, graveyard and the like.

3. After admitting an objection and after having given the objector an opportunity of being heard either in person or by pleader, the Collector shall decide whether it is desirable to hear oral or documentary evidence, which under section 14 or section 40 of the Act, he has power to call for. If evidence tendered by the objector is admitted, the Collector shall also afford the other party an opportunity of rebutting it by other evidence or of cross-examining the witnesses.

If he admits evidence, he will fix a time and place of hearing it; and will hear and record it in his proceedings.

4. Agents, other than pleaders, will not be allowed to appear on behalf of persons interested in any enquiry under section 5-A of the Act.

5. After completing the record of evidence, the Collector shall submit his report and recommendations as to each objection, whether inadmissible or admissible for the orders of Government under section 5-A (2) of the Act."

5. The first contention on behalf of the petitioners was that the object of the proposed acquisition was not a public purpose inasmuch as the proposed acquisition was for the benefit of ten additional members of the third respondent-Society and the need of ten additional members of the third respondent-Society to construct residential bungalows for themselves could not be said to be a public purpose justifying the proposed acquisition particularly when the petitioners themselves wanted to construct their own residential bungalows on the land sought to be acquired. This contention of the petitioners was founded on the allegation contained in the petition that the petitioners had already taken steps in the direction of constructing residential bungalows on various sub-plots comprised in F. P. No. 61 and that but for the impugned notification the petitioners would have already started construction on the various subplots. The petitioners also alleged in the petition in support of this contention that they were prepared to give an undertaking that they would construct residential bungalows on the various sub-plots belonging to them within such time as the Government might prescribe so that if any public purpose was intended to be achieved by the construction of residential bungalows on F. P. No. 61, such public purpose would be achieved without the acquisition of F. P. No. 61. The petitioners also alleged in the petition that the ten additional members of the third respondent-society for whose benefit the proposed acquisition was sought to be made had residential houses and were in any event not in need of residential accommodation so as to compel them to construct residential bungalows and the proposed acquisition for their benefit could not, therefore, be said to be an acquisition for a public purpose. These allegations were denied in the affidavit filed on behalf of the third respondent-Society. The third respondent-Society alleged that the ten additional members enrolled by the third respondent-Society did not have any residential houses in the City of Ahmedabad or the Ahmedabad District and that the proposed acquisition for the purpose of construction of residential bungalows for them was, therefore, an acquisition for a public purpose. The

third respondent-Society also set out in its affidavit various facts with a view to showing that it was only after the third respondent-Society made an application to the Government for acquiring the land comprised in F. P. No. 61 that the first petitioner woke up for the first time and started making preparations to create an appearance as if he wanted to construct residential bungalows on a part of the land comprised in F. P. No. 61 and that he had to sell the remaining part of the land comprised in F. P. No. 61 for the purpose of finding monies for the construction of such residential bungalows and that the real object of the first petitioner in doing various things set out in the petition was only to save the land comprised in F. P. No. 61 from the intended acquisition. The petitioners in their turn of course denied these allegations in the various affidavits filed by them in rejoinder to the affidavit filed on behalf of the third respondent-Society. These allegations and counter-allegations between the petitioners and the third respondent-Society were made only for the purpose of showing on the side of the petitioners that there was no public purpose and on the side of the third respondent-Society that there was a public purpose for which the land comprised in F. P. No. 61 could be validly acquired by the Government. It is not, however, necessary for us to consider these allegations and counter-allegations since we are of the view that the contention that the object of the proposed acquisition was not a public purpose is prematurely taken. We shall briefly indicate our reasons for taking this view.

6. The present petition was filed when only the notification under Section 4 was issued and the purpose of the acquisition was still at the inquiry stage. The result, therefore, is that the facts of the case have not yet been fully investigated and the inquiry under Section 5A is still in progress. It is not at all unlikely that the Government may ultimately after full inquiry and investigation not at all issue the notification under Section 6 for acquiring the land. The petitioners objected to the acquisition on various grounds and the possibility cannot be ruled out that the Government after considering the objections made by the petitioners may not ultimately be satisfied that the land is needed for a public purpose or for the third respondent-Society in which event the Government would not issue the notification under Section 6. Even if the Government ultimately decides to acquire the land, we do not know whether the Government would acquire it on the ground that the land is needed for a public purpose or on the ground that the land is needed for the third respondent-Society. If the Government is ultimately satisfied after considering the objections of the petitioners that the purpose for which the acquisition is intended to be made is not a public purpose, the Government may not acquire the land for a public purpose but the Government may yet acquire the land on the ground that it is needed for the third respondent-Society and in such an event the inquiry by the Court into the validity of the contention that the object of the proposed acquisition is not a public purpose would be futile. This contention is, therefore, obviously premature.

7. But apart from the question whether this contention is premature, it is to our mind clear that it is not within the competence of the Court to entertain this contention or to examine its propriety or validity. The language of Section 6 on its true construction leaves the

entire matter namely whether any particular land is needed for a public purpose to the subjective satisfaction of the Government. The Government has to be satisfied on the entire matter and every component part of it before it can issue the notification under Section 6 acquiring a particular land for a public purpose. The existence of a public purpose is left as much to the satisfaction of the Government as is the need for acquisition of any particular land and the Government is made the sole Judge both in regard to the need for acquisition of the particular land as also in regard to the existence of the public purpose. It is, therefore, for the Government to decide in its subjective satisfaction that there exists a public purpose for which any particular land is needed to be acquired and it is only when the Government is satisfied that a public purpose exists for the advancement of which any particular land is needed to be required that the Government can issue the notification under Section 6 acquiring the land for such public purpose. The notification under Section 6 declaring that any particular land is needed for a public purpose is also made conclusive evidence that such land is needed for a public purpose. It is, therefore, clear that the question whether the purpose for which the acquisition is made is a public purpose is left to the subjective determination of the Government and the Government is made the sole arbiter of that question. It is not competent to the Court to consider the question whether the purpose of the acquisition is a public purpose for the discretion to decide this question is committed by the Legislature to the Government. The Government is the competent authority selected by the Legislature to come to the decision and that if that decision is come to in good faith, the 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 Government. We shall examine this aspect of the matter in some detail when we consider the true nature of the functions entrusted to and exercised by the Government under Section 6. But suffice it to state for the present that under Section 6 the Legislature has entrusted to the subjective satisfaction of the Government not only the determination of the need for acquisition of any particular land but also the determination of the existence of the public purpose for the advancement of which the particular land is needed to be acquired. It is, therefore, not competent to the Court to entertain the question whether the purpose for which the acquisition is sought to be made is a public purpose. The determination of such question by the Court would be irrelevant and futile for what is made a condition precedent to the exercise of the power to issue the notification under Section 6 is not the actual existence of the public purpose but the satisfaction of the Government that the public purpose exists and that the particular land is needed for such public purpose. We are, therefore, of the opinion that not only is the contention of the petitioners that the object of the proposed acquisition is not a public purpose premature but on a true construction of the language of Section 6 it is not open to the Court to entertain this contention or to examine its validity or correctness.

8. We may mention at this stage that another contention of a similar nature was also advanced before us on behalf of the petitioners and it would be convenient to dispose of the same before we examine the main controversy between the parties as regards the

question whether the inquiry under Section 5-A is a quasi judicial inquiry or an administrative inquiry. The contention was based on the provisions of Part VII of the Act and attacked the validity of the acquisition proceedings on the ground that even if the acquisiton was for the third respondent-Society simpliciter, the requirements of Part VII were not fulfilled and the acquisition could not, therefore, be made for the third respondent-Society. The argument was that the acquisition for the third respondent-Society under the provisions of Part VII could be made only if, as provided by Section 40, the purpose of the acquisition was to obtain land for the erection of dwelling houses for workmen employed by the third respondent-Society or for the provision of amenities directly connected therewith or the acquisition was needed for the construction of some work, and such work was likely to prove useful to the public. If the purpose of the acquisition was the construction of residential houses for the third respondent-Society as appearing from the notification under Section 4 - so the argument proceeded - the acquisition, could not be said to be for the purpose of obtaining land for the erection of dwelling houses for workmen employed by the third respondent-Society or for the provision of amenities directly connected therewith nor could it be said that such acquisition was needed for the construction of some work likely to prove useful to the public, for the residential houses for the third respondent-Society for the construction of which the acquisition was needed could not be said to fall within the scope and meaning of the words "some work . . . likely to prove useful to the public" in Section 40. The contention, therefore, was that the acquisition for the construction of residential houses for the third respondent-Society could not be made under Part VII and that the acquisition proceedings were accordingly liable to be quashed. Now however attractive the contention might appear to be, we could not permit the petitioners to urge it before us since it was not pleaded in the petition as a ground of attack against the validity of the acquisition proceedings. But even apart from the absence of any plea in the petition supporting the contention, there was nothing to show that the Government intended to proceed under the provisions of Part VII. The petitioners rushed to the Court while the inquiry under Section 5A was in progress and it was too early to say whether the Government might at all issue the notification under Section 6 or even if the Government issued such notification whether the Government might acquire the land for a public purpose or whether the Government might acquire the land for the third respondent-Society by following the provisions of Part VII. The contention that the acquisition was not justified under the provisions of Part VII was, therefore, not only unfounded in the petition but was also premature. After the hearing of the petition was concluded and before we could deliver our judgment, the Supreme Court pronounced its decision in *R.L. Arora v. State of Uttar Pradesh*[1], The Supreme Court was concerned in this decision with the question of the true interpretation of the words "some work .. . . likely to prove useful to the public" occurring in Section 40. Reading Section 40 with Sections 41 and 42 the Supreme Court came to the conclusion that when the Legislature provided in Section 40 that land could be acquired for a Company under the provisions of Part VII if the

Government was satisfied that such acquisition was needed for construction of some work likely to prove useful to the public, the intention of the Legislature was that land should be acquired only when the work to be constructed was directly useful to the public and the public would be entitled to use the work as such for its own benefit in accordance with the terms of the agreement which under Section 42 would have the same effect as if they formed part of the Act. On this decision being pronounced by the Supreme Court, the petitioners applied that the petition be placed on Board for further hearing and the petition was accordingly brought on for further hearing at the request of the petitioners. At the further hearing the petitioners relying on this decision of the Supreme Court reiterated the same contention which was urged by them at the time of the first hearing of the petition, namely, that the acquisition could not be made for the third respondent-Society under the provisions of Part VII since the purpose of the acquisition was not to obtain land for the erection of dwelling houses for the workmen employed by the third respondent-Society or for the provision of amenities directly connected therewith nor was the acquisition needed for the construction of "some work . . . . likely to prove useful to the public" within the meaning of that expression as interpreted by the Supreme Court and applied for leave to amend the petition so as to incorporate this contention as a ground of attack against the validity of the acquisition proceedings. We rejected the application and for two reasons. Firstly, the application was made at a very late stage of the proceedings after the arguments were concluded and the judgment was reserved and that too in a petition for the issuance of high prerogative writs of mandamus and certiorari and secondly, the contention, even if permitted by way of an amendment, would, for the reasons stated by us, be premature, and more so after this decision of the Supreme Court for having regard to this decision it is quite probable that the Government might not acquire the land for the third respondent-Society under the provisions of Part VII.

9. The next contention urged on behalf of the petitioners was that the proposed acquisition was mala fide and was calculated to benefit the ten additional members of the third respondent-Society by enabling them to acquire the land at the ridiculously low prices prevailing on 1st January 1948 even though the same was required by the petitioners *bona fide* for construction of their own residential bungalows. This contention was founded on the Land Acquisition (Bombay Amendment) Act, 1948, under which land could be acquired by the Government

[1] Civil Appeal No. 446 of 1959

for the purpose of a housing scheme within the meaning of the definition of those words contained in Section 2 (1) of that Act without having to pay the market value of such land at the date of the acquisition, the only compensation payable being the market value of such land on 1st January 1948. Apart from the legal validity of this provision with which we are not concerned for the purpose of the present petition, it does appear to us rather doubtful whether this provision was intended to enable land to be acquired for Co-operative Housing Societies such as the third respondent-Society on payment only of the market value prevailing on 1st January 1948 irrespective of the market value at the date of

the acquisition. The words "housing scheme" are defined in Section 2 (1) of the Land Acquisition (Bombay Amendment) Act, 1948, to mean any housing scheme which the Government may from time to time undertake for the purpose of increasing accommodation for housing persons and also includes any such scheme undertaken from time to time with the previous sanction of the Government by a local authority or a Company. This definition, therefore, clearly contemplates a "housing scheme" for the purpose of increasing accommodation for housing persons which might be undertaken by the Government or by a local authority or Company with the previous sanction of the Government. It is no doubt true that a Company includes a Co-operative Housing Society and that a Co-operative Housing Society may, therefore, with the previous sanction of the Government undertake a housing scheme for the purpose of increasing accommodation for housing persons and in that event land may be acquired for the purpose of such housing scheme by the Government on payment of market value prevailing on 1st January 1948 even though the market value at the date of the acquisition might be much higher. But as the language clearly suggests this provision can be invoked only in case of acquisition for a housing scheme for the purpose of increasing accommodation for housing persons when such housing scheme is undertaken either by the Government or by a local authority or Company with the previous sanction of the Government. This provision enabling the Government to acquire land only on payment of the market value prevailing on 1st January 1948 irrespective of the market value on the date of acquisition is certainly a harsh provision and can be justified only on ground of paramount public interest and that is why its operation is confined to acquisition for the purpose of a housing scheme which may be undertaken by the Government or with the previous sanction of the Government by a local authority or Company for the purpose of increasing accommodation for housing persons. The Government would ordinarily undertake a housing scheme not for the benefit of a few defined individuals but for the benefit of the public or a section of the public such as Government servants, refugees, industrial workers etcetera and such housing scheme would, therefore, not only advance public interest but also serve a social necessity and the Legislature might have, therefore, provided that for achieving such a paramount public purpose, the Government might acquire land on payment only of the market value prevailing on 1st January 1948 regardless of the higher market value prevailing on the date of the acquisition. Such housing scheme might also be undertaken by a local authority or a Company but it is not in every case where such housing scheme is undertaken by a local authority or a Company that land for the purpose of such housing scheme can be acquired on payment only of the market value prevailing on 1st January 1948. Such housing scheme, the law requires, must be undertaken by the local authority or the Company with the previous sanction of the Government. This is a healthy check for it is only when the Government feels that the housing scheme which a local authority or a Company proposes to undertake is a matter of such paramount public interest that in the interests of public weal and welfare the owner should be deprived of his land on payment only of the market

value prevailing on 1st January 1948 irrespective of the market value prevailing on the date of the acquisition, that the Government would give sanction to the local authority or the Company for undertaking such housing scheme. Though we are not called upon to decide this question, we have grave doubts whether the construction of residential bungalows for the ten additional members of the third respondent-Society can be said to be a housing scheme contemplated by Section 2(i) of the Land Acquisition (Bombay Amendment) Act, 1948. But even if it is there is nothing to show that the Government has given sanction to the third respondent-Society for undertaking such housing scheme and we have no reason to believe that the Government would give such sanction to the third respondent-Society when such housing scheme is only for the benefit of the ten additional members of the third respondent-Society. The premise on which the present contention is based is, therefore, wanting. There is nothing to show that the Government has made up its mind to issue notification under Section 6 for acquisition of the land and it cannot be said to be impossible that the Government might ultimately decide not to acquire the land. Even it the Government ultimately decides to acquire the land, the Government might not - and as pointed out above we have no reason to believe that the Government would - give sanction to the third respondent-Society for the construction of residential bungalows for its ten additional members so as to make the provisions of the Land Acquisition (Bombay Amendment) Act, 1948, applicable to such acquisition. It is, therefore, in our opinion, premature to say that the acquisition is mala fide or is calculated only to benefit ten additional members of the third respondent-Society by enabling them to acquire land at the considerably low prices prevailing on 1st January 1948 even though the petitioners require the same *bona fide* for construction of their own residential bungalows.

10. We now pass on to the last head of the argument urged on behalf of the petitioners which has evoked the greatest controversy between the parties. The question which arises under this head of argument is whether the inquiry under Section 5A is a quasi judicial inquiry or an administrative inquiry. The question becomes relevant because the contention of the petitioners that they are entitled to obtain the further information required by them from the third respondent-Society as also to cross-examine the members of the third respondent-Society for whose benefit or at whose instance the land is sought to be acquired was founded on the application of the principles of natural justice and this in its turn depended upon the premise that the inquiry is a quasi judicial inquiry. The argument on behalf of the petitioners on this part of the case was developed in the following form. The inquiry, argued the petitioners, is a quasi judicial inquiry and the second respondent is, therefore, bound to follow the principles of natural justice. If the principles of natural justice are applicable to the inquiry - the argument proceeded - the refusal of the second respondent to call for the further information required by the petitioners from the third respondent-Society as also to permit the petitioners to cross-examine the members of the third respondent-Society amounts to violation of the principles of natural justice and that the inquiry which is thus being conducted in violation of the principles of natural justice should, therefore, be quashed. Now for reasons which

we shall presently state, we are of the opinion that the inquiry is not a quasi judicial inquiry but is an administrative inquiry. But even if the inquiry is a quasi judicial inquiry as opposed to an administrative inquiry, we do not think that the content of the principles of natural justice applicable to the inquiry is so wide as to entitle the petitioners to obtain the further information required by them from the third respondent-Society or to cross-examine any members of the third respondent-Society who have not given evidence in the inquiry. The question as to what are the rights accorded by the priniples of natural justice in a particular case is always a question of some difficulty and the subject though well worn is one replete with impediments to orderly generalization. These rights have been defined in varying language in a large number of cases covering a wide field. We do not propose to review these authorities at length but would observe that the question whether the requirements of natural justice have been met by the procedure adopted in a particular case must depend to a great extent on the facts and circumstances of the case in point. The requirements of natural justice are not such as can be reduced to any formula exclusive or inclusive which can have universal application to every kind of inquiry for a good deal may depend on the subject-matter, the nature of the inquiry itself, the nature and constitution of the tribunal or authority which holds the inquiry and the rules under which the inquiry is held. As Tucker, L. J., said in *Russell v. Duke of Norfolk*[2],

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

Viscount Haldane, L. C., said much to the same effect in *Local Government Board v. Arlidge*[3], when he said :

"My Lord, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same."

Lord Shaw in his speech in the same case made the following observations which are very relevant :

"The judgments of the majority of the Court below appear to me, if I may say so with respect, to be dominated by the idea that the analogy of judicial methods or procedure should apply to departmental action. Judicial methods may, in many

[2](1949) 1 All England Reporter 109

[3](1915) AC 120

> points of administration, be entirely unsuitable, and produce delays, expense, and public and private injury. The department must obey the statute."

He further observed a little later in the course of his speech as follows :

> "And the assumption that the methods of natural justice are ex necessitate those of Courts of justice is wholly unfounded. This is expressly applicable to steps of procedure or forms of pleading. In so far as the term 'natural justice' means that a result or process should be just, it is a harmless though it may be a high sounding expression; in so far as it attempts to reflect the old jus naturale it is confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is resorted to for other purposes, it is vacuous."

Lord Parmoor in his speech also reiterated the principles governing the procedure of quasi judicial tribunal in these words :

> "Where, however, the question of the propriety of procedure is raised in a hearing before some tribunal other than a Court of law there is no obligation to adopt the regular forms of legal procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice."

It would thus be seen that the procedure dictated by the rules of natural justice is not one uniform procedure applicable to all statutory tribunals but is bound to vary from tribunal to tribunal according to the nature of the tribunal, the scope of the inquiry before it and the statutory rules of procedure laid down by the law for carrying out the objectives of the statute. The procedure also need not be analogous to judicial procedure or procedure of Courts of justice but would depend upon the subject-matter, the nature of the inquiry, the constitution of the tribunal and the requirements of the law as laid down in the statute and the rules framed under the statute. As observed by Sinha, J., as he then was, in *Nagendra Nath v. Commissioner of Hills Division*[4],:-

> "In this connection, the High Court has made reference to the several affidavits filed on either side, and the order in which they had been filed, and the use made of those affidavits or counter-affidavits. As already indicated, the rules make no provisions for the reception of evidence oral or documentary, or the hearing of oral arguments, or even for the issue of notice of the hearing to the parties concerned. The entire proceedings are marked by a complete lack of formality. The several authorities have been left to their own resources to make the Best selection. In this connection, reference may be made to the observations of this Court in the case of *New Prakash Transport Co. Ltd. v. New Suwarna Transport Co., Ltd*[5]., In that case, this Court has laid down that the rules of natural justice vary with the varying constitution of statutory bodies and the rules

prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened, should be decided not under any preconceived notions, but in the

[4] AIR 1958 SC 398

[5]1957 SCR 98 : AIR 1957 SC 232

light of the statutory rules and provisions." While these observations underline the futility of general definitions in this branch of the law, it appears to us that Lord Loreburn's much quoted statement in *Board of Education v. Rice*[6], lays down the basic principles to which those who hold any quasi judicial inquiry must conform and still affords as good a general definition as any of the nature of and limits on the requirements of natural justice. Its effect is conveniently stated in this passage from the speech of Viscount Haldane, L. C., in 1915 AC 120 (supra), where he cites it with approval in the following words :

"I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In (1911) AC 179 he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view."

The following statement from the judgment of the Privy Council in *De Verteuil v. Knaggs*[7], is also illuminating since it correctly and succinctly summarizes the law as to the requirements of natural justice :

"Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice."

The last general statement as to the requirements of natural justice to which we would like to refer is that of Harman, J., in *Byrne v. Kinematograph Renters Society, Ltd.*[8], , where the learned Judge said :-

"What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more."

The conclusion we reach from this discussion is that there are certain basic principles relating to the requirements of natural justice which must be followed in all cases by those who hold any judicial inquiry unless of course the statute in express terms or by necessary implication absolves them from the obligation to do so. Very broadly expressed, the first principle is that the party to the controversy must know with

[6](1911) A.C. 179 (182)
[7](1918) AC 557
[8](1958) 2 All England Reporter 579

reasonable certainty the nature of the case against him. Secondly, he should be given a fair and proper opportunity to meet the case against him and to state his own case. According to this principle he should have a fair and proper opportunity to make any relevant statement which he may desire to bring forward and to correct or controvert any relevant statement prejudicial to his view. Lastly the tribunal must conduct the inquiry and reach its conclusion in good faith. The procedure to be followed by the tribunal in the observance of these principles need not, as we have pointed out above, conform to any recognized methods of judicial procedure nor need the procedure of every such tribunal be the same. Whilst giving effect to these principles the procedure is bound to vary from tribunal to tribunal depending in each case upon the subject, the nature of the inquiry, the nature and constitution of the tribunal and the statutory rules of procedure laid down by the law under which the inquiry is held. We must, therefore, examine the present question in the light of the statutory rules and provisions and see whether the procedure prescribed by the statutory provisions and rules entitles the petitioners to obtain the further information required by them from the third respondent-Society or to cross-examine the members of the third respondent-Society even though they have not given evidence in the inquiry. Now all that Section 5A provides is that the objector shall be given an opportunity of being heard either in person or by pleader. It is not necessary for us to decide in the present case as to what is the content of the right to be heard in the context of the statutory provisions contained in Section 5A but howsoever large the content, it is clear that it cannot include any right in the objector to call for any information from the Company for whose benefit land is proposed to be acquired or to cross-examine any members of such Company even though they have not given evidence in the inquiry. It may be mentioned that this latter right to cress-examine the members of such Company even though they have not given evidence in the inquiry would not ordinarily be available even in a regular action in a Court of law and it is indeed a long step in the argument to say that such a right is a necessary concomitant of the right to be heard conferred on the objector under Section 5A. Turning to the rules made under Section 55 we find that under Rule 3 it is for the Collector holding the inquiry to decide whether it is desirable to hear oral or documentary evidence and it would, therefore, seem that under this rule it would be open to the Collector to refuse to hear oral or documentary evidence if in his opinion it is not desirable to do so. Whether this rule entitling the Collector to decide whether or not to hear oral or documentary evidence enacts a valid provision is a matter with which we are not concerned in the present petition. It may be argued that the right to be heard includes the right to lead oral as

well as documentary evidence and that this rule, therefore, in so far as it empowers the Collector to decline to take oral or documentary evidence if he thinks that it is not desirable to do so derogates from the right to be heard and is consequently ultra vires Section 5A. How far such an argument is a valid argument may have to be decided when an appropriate occasion arises but even if such an argument is correct and it is not open to the Collector holding the inquiry to refuse to take oral or documentary evidence tendered by the objector, it does not help the petitioners on this part of the case, for even on that view there is nothing in the rules which would entitle the petitioners to obtain the further information required by them from the third respondent-Society or to cross-examine any members of the third respondent-Society even though they have not given evidence in the inquiry. Nor is there anything in the basic requirements of natural justice which can lead to any such conclusion. It any members of the third respondent-Society had given evidence before the second respondent - though there is no provision in the rules for taking such evidence at the instance of the Company for whose benefit land is proposed to be acquired - it could conceivably have been contended on behalf of the petitioners that according to the principles of natural justice they are entitled to cross-examine such members of the third respondent-Society. But in the present case none of the members of the third respondent-Society has given evidence and we do not, therefore, see how under these circumstances the petitioners can claim to be entitled to the right to cross-examine the members of the third respondent-Society. The second respondent, was therefore, in our opinion right in rejecting the application of the first petitioner and even if the inquiry which is being held by him were a quasi judicial inquiry, it is clear that nothing done by the second respondent in the inquiry amounted to violation of the principles of natural justice. This being the position, it is apparent that if the only question were whether the second respondent was right or wrong in rejecting the application of the first petitioner to call for further information from the third respondent-Society and to require the members of the third respondent-Society to be presented for cross-examination by the petitioners, we would not have considered it necessary to consider the further question whether the inquiry is a quasi judicial inquiry or an administrative inquiry. But the question whether the inquiry is a, quasi judicial inquiry or an administrative inquiry assumes importance because of the nature of the approach of the second respondent. If the inquiry is a quasi judicial inquiry the approach of the second respondent would have to be necessarily a judicial approach which would not be so if the inquiry is an administrative inquiry. The petitioners alleged in the petition that the inquiry is a quasi judicial inquiry whereas the second respondent who is holding the inquiry asserted in clear and unequivocal terms in the affidavit filed by him in reply to the petition that the inquiry is an administrative inquiry. The petitioners, therefore, applied for leave to amend the petition by introducing an additional prayer praying for a writ of mandamus or any other appropriate writ, direction or order directing the first and the second respondents to hold the inquiry and to dispose of the objections of the petitioners under Section 5A in a quasi judicial manner. The amendment was granted by us and on the amendment the question directly arose for decision whether the inquiry is a quasi judicial inquiry or an administrative inquiry.

11. Now in order to determine the question whether the inquiry is a quasi judicial inquiry or an

administrative inquiry, it is necessary to examine the scheme as appearing from the various provisions of the Act. The long title of the Act shows that it is an Act to amend the law for the acquisition of land for public purposes and for Companies. The preamble to the Act also makes it clear that it is an amending Act enacted for the purpose of "acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition". The Act nowhere defines the expression "public purpose" beyond stating in Section 3(f) that the said expression includes the provision of village-sites in districts in which the appropriate Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision. It may be mentioned here that so far as the application of the Act to the State of Gujarat is concerned, the inclusive definition of the expression given in Section 3 (f) has been amended by the Land Acquisition (Bombay Amendment) Act, 1948 so as to include within the scope and meaning of the said expression a housing scheme as defined in the Land Acquisition (Bombay Amendment) Act, 1948. It may also be mentioned that the expression "Company" is defined in Section 3(e) and under that Section the expression "Company" includes a Co-operative Housing Society registered under the Bombay Co-operative Societies Act, 1925. Then comes Section 4 which provides for the issue of a notification whenever it appears to the Government that land in any locality is needed or is likely to be needed for any public purpose. On the issue of the notification under Section 4 steps are taken to enter upon and survey the land and take all other action necessary to decide whether the land is fit for the purpose for which it is needed and in that connection Section 5A provides that any person interested in the land may within thirty days after the issue of such notification, object to the acquisition of the land. Every objection under Section 5A is required to be made to the Collector in writing, and that Section enacts that "the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections" and the decision of the Government on the objections shall be final. Section 6 then provides for the issue of a notification declaring that the land is needed for a public purpose or for a Company. The notification under Section 6 is issued only when the Government is satisfied after considering the report if any made under Section 5A that the land is needed for a public purpose or for a Company. The opening words of Section 6, however, make it clear that where the land is to be acquired for a Company, no notification under Section 6 can be issued till the provisions of Part VII are complied with, for action under Section 6 for acquiring land for a Company is expressly made subject to the provisions of Part VII. This is made further clear by Section 39 which lays down that "the provisions of Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned". Before, therefore, the machinery provided for acquisition of land under Sections 6 to 37 (both inclusive) of the Act is put into force for acquiring land for a Company, two conditions precedent must be fulfilled, namely (i) the previous consent of the Government must be obtained and (ii) an

agreement in the terms of Section 41 must be executed by the Company. *Babu Barkya Thakur v. State of Bombay*[9], Section 40 imposes a further limitation and prescribes that the Government shall not give its consent for bringing into operation the machinery provided in Sections 6 to 37 for acquisition of land for a Company unless it is satisfied, either on the report of the Collector under Section 5A or by an enquiry held as provided in that Section, (a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or (b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public. It is only if these conditions precedent are fulfilled, that the Government can issue a notification under Section 6 for acquiring land for a Company. The notification under Section 6 is made conclusive evidence that the land is needed for a public purpose or for a company, as the case may be, and after such notification the Government can proceed to acquire the land in the manner set out in the remaining Sections. Before we proceed further with the discussion, we may point out what appears to be at first sight an inconsistency between the provisions of Section 4 and Section 6. Section 6 speaks of an acquisition for a public purpose or for a Company whereas Section 4 speaks only of an acquisition for a public purpose and does not in express terms speak

[9] AIR 1960 SC 1203

of an acquisition for a Company. The inconsistency appears to be heightened when we turn to the provisions of Section 5A by which it is enacted that any person interested in any land which has been notified under Section 4 as being needed or likely to be needed for a public purpose or for a Company may object to the acquisition of the land. But the inconsistency is more apparent than real and can be easily resolved if only we bear in mind that acquisition for a Company is also acquisition for a public purpose. Though it may appear on the words of Section 6 that acquisition for a Company may or may not be for a public purpose, the provisions of Part VII make it clear that the Government cannot bring into operation the effective machinery of acquisition unless it is satisfied that the purpose of acquisition is to enable the Company to erect dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith or that the land is needed for construction of some work which is likely to prove useful to the public. These requirements indicate that acquisition for a Company is also in substance acquisition for a public purpose for it cannot be seriously contended that constructing dwelling houses and providing amenities for the benefit of the workmen employed by the Company and construction of some work likely to prove useful to the public do not serve a public purpose. Hence even when the acquisition is for a Company under Section 6 the acquisition is for a public purpose in the restricted sense in accordance with Section 40 and the notification under Section 4 stating that it appears to the Government that land is needed or is likely to be needed for a public purpose would, therefore, correctly and legitimately cover such a case. Whether the acquisition under Section 6 is for a public purpose or for a Company, the notification under Section 4 would equally cover both cases and there is, therefore, no real inconsistency between the provisions of Section 4 and Section 6.

12. Now it is clear from the discussion of the various provisions of the Act that the notification under Section 4 is merely an introductory measure. It is tentative in its nature and there is no finality or immutability about it. It is of an exploratory character and it does not proprio motu result in acquisition. As observed by the Supreme Court in AIR 1960 Supreme Court 1203 (supra) :

> "The purpose of the notification under Section 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under Section 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal under Section 4 becomes the subject matter of a definite proceeding for acquisition under the Act."

The notification under Section 4 has, therefore, no consequence beyond initiating a proposal for acquisition of land in any particular locality. The proposal for acquisition of land in any particular locality ripens into a definite proceeding for acquisition of a particular land where the Government is satisfied that the particular land is needed for a public purpose or for a Company, subject of course to the provisions of part VII in case of acquisition of land for a Company. Before the Government can be so satisfied there is a provision made in Section 5A for the making of objections by persons interested in the land and for hearing of such objections at an inquiry to be held by the Collector. Before "what was a mere proposal under Section 4 becomes the subject matter of a definite proceeding for acquisition" under Section 6, persons interested in the land are given an opportunity of putting forward their objections to the acquisition and the objections so made are required to be heard in the manner prescribed by Section 5A. Now the question immediately arises : What is the nature and object of the inquiry to be held by the Collector when persons interested in the land make their objections to the acquisition of the land? The answer to this question must necessarily go a long way to resolving the problem before us namely, whether the inquiry is a quasi judicial inquiry or an administrative inquiry. It is obvious from what is stated above that the inquiry is provided in order to serve a two-fold purpose. It is intended to instruct the mind of the Government so that the Government would be in a position to decide whether any particular land is needed for a public purpose or for a Company. It is also meant to act as a safeguard against any ill-informed action on the part of the Government. Since it is left to the subjective satisfaction of the Government to decide whether any particular land is needed for a public purpose or for a Company, the law has provided the safeguard of an inquiry so that there may be proper and adequate material before the Government, before the Government can arrive at a satisfaction one way or the other and at the same time persons interested in the land who would be prejudicially affected by the acquisition of the land in the sense that they would be deprived of the land, though not without compensation, would have an opportunity of placing proper and adequate material before the Government, to combat the proposal for acquisition initiated by the Government by issue of the notification under Section 4.

If the inquiry were not provided, there is a possibility that proper and adequate material bearing on the subject in regard to which the Government has to arrive at a satisfaction may not come to the knowledge of the Government and the satisfaction of the Government may be based on incorrect and insufficient material and a notification may be issued by the Government under Section 6 acquiring the land for a public purpose or for a Company which the Government would not have made if the entire matter bearing on the subject had been brought to its notice. The notification under Section 6 is expropriatory in character and has serious consequences on persons interested in the land since they would be deprived of their interest in the land without their consent and against their will. Before such serious consequences can be visited upon persons interested in the land it is necessary that the Government should fully inform itself about the matter in regard to which it has to arrive at a satisfaction before issuing the notification entailing such serious consequences. This is achieved, by the provision of an inquiry under Section 5A for hearing objections to the acquisition made by persons interested in the land. The other equally important purpose which the inquiry is intended to serve is to give an opportunity to persons interested in the land to put forward their point of view supported by such material as they like showing that the land is not needed for a public purpose or for a Company and that the proposal for acquisition initiated by the Government by issue of the notification under Section 4 should not culminate into any definite proceeding for acquisition of the land but should be dropped. It is only fair and just that before persons interested in the land are deprived of their interest in the land they should have an opportunity of showing that the land is not needed for public purpose or for a Company and that notification under Section 6 should not be issued for the acquisition of the land. The inquiry under Section 5A affords such an opportunity to persons interested in the land. If there were no provision for an inquiry and the notification under Section 6 could be issued without an inquiry merely on the basis of the subjective satisfaction of the Government, persons interested in the land would not have an opportunity as of right to place before the Government their point of view supported by such materials as they can produce relating to the matter in respect of which the Government has to arrive at a satisfaction and without such point of view being brought to the notice of the Government and such material being placed before the Government, it is possible that the Government might wrongly arrive at the satisfaction that the land is needed for a public purpose or for a Company and issue the notification under Section 6 entailing deprivation of the property to the petitioners, which the Government would not have done if all the material facts had come to its knowledge. The Legislature, therefore, provided a safeguard in the shape of an inquiry under Section 5A enabling persons interested in the land to make objections to the acquisition and providing for hearing of such objections at the inquiry so that persons interested in the land can place before the Government their point of view regarding the matter on which the Government has to arrive at a satisfaction together with such material as they like in support of their point of view in order that the Government may be apprised of all the facts and circumstances relating to such matter and the Government may not erroneously arrive at a satisfaction leading to the issue of the notification under Section 6 for the acquisition of the land. These two purposes which an inquiry under Section 5A is intended to serve are complementary as well as supplementary to each other.

The Government cannot fully and fairly inform itself about the matter in regard to which it has to arrive at a satisfaction unless persons interested in the land sought to be acquired are given an opportunity of placing all relevant material before the Government for combating the proposed acquisition. Equally any private inquiry by the Government is bound to be one-sided and imperfect and not likely to bring out all material and relevant facts and circumstances bearing upon the matter in regard to which the Government has to arrive at a satisfaction and such private inquiry may not achieve the purpose of fully and fairly instructing the mind of the Government as regards the matter on which the Government has to arrive at a satisfaction before issuing a notification under Section 6 for the acquisition of the land. If this two-fold purpose of an inquiry under Section 5A is borne in mind, it is really not difficult to arrive at a solution of the problem whether the inquiry is a quasi judicial inquiry or an administrative inquiry.

13. It is also important in this connection to examine the true nature of the power conferred on the Government to issue the notification under Section 6 for the acquisition of the land, for the inquiry under Section 5A is as pointed out above but a step in the process of the exercise of such power by the Government. The inquiry is a preliminary step to coming to a decision whether any particular land is needed for a public purpose or for a Company so that a notification can be issued for the acquisition of the land if the Government is satisfied that the land is needed for a public purpose or for a Company. The nature of the inquiry must, therefore, receive colour from the nature of the ultimate power for the exercise of which the inquiry is provided. If the purpose of the inquiry is only to enable the Government to make up its mind to do what is purely an administrative act, the inquiry would in the absence of any other factors be prima facie an administrative inquiry rather than a quasi judicial inquiry; but if the act to be done by the Government is a quasi judicial act, the inquiry preceding the act would necessarily be a quasi judicial inquiry. We must, therefore, proceed to consider what is the true nature of the function entrusted to and exercised by the Government under Section 6. Is the act of acquisition by the Government under Section 6 a quasi judicial act or an administrative act?

14. As to what is a quasi judicial act there have been many judicial pronouncements, but the most celebrated definition is that of Atkin L.J., as he then was in *Rex v. Electricity Commissioners*[10], 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 jurisdiction of the King's Bench Division exercised in these writs." This definition was accepted as correct in *Rex v. London County Council*[11], and by many learned Judges in subsequent cases including the latest decision of the Privy Council in *Nakkuda Ali v. M. F. De S. Jayaratna*[12], Das J., pointed out very rightly that of the three elements involved in the definition given by Atkin L. J., two may be present in an administrative act as well. 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 function has to do. Both have to act in good faith. A good and valid administrative act binds the subject and affects his rights or imposes liability on him just as effectively as a quasi judical act does. The first two items of the definition given by Atkin L. J., may thus be equally applicable to an administrative act. The real test, however, 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 observed by Lord Hewart C. J., in *Rex v. Legislative Committee of the Church Assembly, Ex parte Haynes*[13], at page 415 :

"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 above passage was quoted with approval by Lord Radcliffe delivering the judgment of the Privy Council in Nakkuda Ali's case, 1951 AC 66 (supra). The material consideration, therefore, for determining whether a particular act of a statutory authority is a quasi judicial act or a mere administrative act is whether the statutory authority has the duty to act judicially. When and under what circumstances then can a statutory body be said to be under a duty to act judicially and how is it to be ascertained whether a statutory body is bound to act judicially in a particular matter or not?

15. This question was considered in some detail after examining a large number of decisions in England and India, Das J., as he then was by the Supreme Court in *Province of Bombay v. Khushaldas*[14], and culled out the following general principles which may be set out in his own words :

"What are the principles to be deduced from the two lines of cases I have referred to? The principles, as 1 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

[10](1924) 1 KB 171 [12]1951 AC 66. In In re Banwarilal 48 Cal WN 766 [14] AIR 1950 SC 222
[11](1931) 2 KB 215 [13](1928) 1 KB 411

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 parries 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 besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to

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

In the first class of cases where there is a lis between two parties and the statutory authority is an outside authority empowered to decide the lis, there would be prima facie, and in the absence of any other factor, a duty on the statutory authority to act judicially. But even in this class of cases the provisions of the statute under which the statutory authority is empowered to decide the lis between the parties may clearly negative the existence of a duty to act judicially and in such a case the act of the statutory authority would not be a quasi judicial act but would be merely an administrative act. The second class consists of cases where there are no two parties apart from the statutory authority and the contest is between the statutory authority proposing to do the act and the subject opposing it and in this class of cases the terms of the statute must be examined in order to determine whether in any particular case a duty to act judicially is cast on the statutory authority.

16. Now the duty to act judicially may arise in widely differing circumstances which it would be impossible and indeed inadvisable to attempt to define exhaustively. The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case and the construction of the provisions of the particular statute creating the statutory authority. But there is one general principle which is well settled and beyond dispute and it is that where the language of a statute indicates with sufficient clearness that the personal satisfaction of the statutory authority on certain matters about which he has to form an opinion founds his jurisdiction to do a certain act or to make a certain order, the function should be regarded as an administrative function as opposed to a quasi judicial function and in the absence of proof of bad faith, the Court would have no jurisdiction to interfere with the act or order of the statutory authority. As observed by Das, J., as he then was in AIR 1950 Supreme Court 222 (supra) :

"It is well established that if the Legislature simply confides the power of doing an act to a particular body it 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 certiorari. 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 *Westminster Corporation v. L. and N. W. Rly. Co*[15]*.,* 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 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 authorized."

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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." The decision of the House of Lords in *Liversidge v. Anderson*[16], is the leading illustration of this type of cases. The words which came up for consideration in this case were "if the Secretary of State has reasonable cause to believe," and the majority of the House took the view that these words meant no more than that the Secretary of State had honestly to suppose that he had reasonable cause to believe the required thing. According to the majority view, provided there was good faith the Secretary of State was the only possible Judge of the conditions of his own jurisdiction and if the Secretary of State made an order reciting that he had reasonable cause to believe the required thing, it was not open to the Court to inquire whether he had in fact reasonable grounds for his belief. Lord Atkin in a judgment which has now become classical and which stands for all time to come as a reminder to the Judges to be alert to repel all illegal encroachments by the executive on the liberty of the subject, strongly dissented from the majority view and held that the words "it the Secretary of State had reasonable cause to believe" should be construed as meaning "if there is in fact reasonable cause for believing", and observed that "reasonable cause" for an action or belief is as much a positive fact for determination by a third party as any other objective condition. But even he agreed in the course of his famous dissent that if 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 administrative act.

17. 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

[15](1905) AC 426
[16](1942) AC 206

requisition of property. The language of these orders and regulations was very similar to that of Regulation 18 (B) under which the detention order was made in *Liversidge's case, 1942*

*AC 206* (supra). In Point of *Ayr Collieries Ltd. v. Lloyd George*[17], the control of the appellant's undertaking was taken by the Ministry of Fuel and Power by an order made under the Defiance (General) Regulations, 1939, Regulation 55 (4) - the relevant part of which was as follows :

> "If it appears to the competent authority that in the interest of the public safety, the defense of the realm or the efficient prosecution of the war or for maintaining of supplies and services essential to the life of the community, 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 authorize....."

The appellant brought an action challenging the order 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 or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community. Singleton, J., having dismissed the action, the appellant went up to the Court of Appeal but the appeal was dismissed and in dismissing the appeal, Lord Greene M. R., with whom Goddard and du Parcq, L. JJ., concurred observed 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 exercise of the powers has arisen. It is for the competent authority to judge of the adequacy of the evidence before it. It is for the competent authority to judge of the credibility 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 Minister 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."

It was thus held by the Court of Appeal that there was no jurisdiction in the Court to interfere with what was an executive order passed *bona fide* by the Minister.

18. In *Carltona Ltd. v. Commissioners of Works*[18],

[17](1943) 2 All England Reporter 546 [18](1943) 2 All England Reporter 560

which was decided near about the same time, the appellant's factory was requisitioned by the

Commissioner of Works under the provisions of the Defiance (General) Regulations, 1939, Regulation 51 (1), 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 defense 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 expedient in connection with the taking of possession of that land."

The requisition order was challenged inter alia on the ground that the requisitioning authority never brought his mind to bear upon the question and had he done so, he could not possibly have come to the conclusion to which in fact he came. This challenge was repelled by the Court of Appeal consisting of Lord Greene, M. R., Goddard, L. J., and du Parcq, L. J., in the following 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 interfere. All that the Court can do is to see that the power which it is claimed to exercise is one which fails 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."

These observations clearly show that the act of the requisitioning authority was considered by the Court of Appeal as an administrative act and not as a quasi-judicial act, for if it were a quasi-judicial act, it would have been subject to the scrutiny and interference of the Court which the Court of Appeal held it was not.

19. A similar view was also taken by the Court of Appeal in *Robinson v. Minister of Town and Country Planning*[19], In this case the question arose under the Town and Country Planning Act, 1944. An order called "City of Plymouth (City Centre) Declaratory Order, 1946" was made by

the Minister of Town and Country Planning on the application of the City Council of Plymouth as the local planning authority under sub-section (1) of section 1 of the Town and Country Planning Act, 1944, which ran as

[19](1947) 1 All England Reporter 851

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 authority, 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.....may be made by the Minister....."

The order was challenged by the owners of certain houses on the ground that at the time of the Order, the Minister did not have before him evidence sufficient in law to entitle him to be satisfied as regards the requirements of the section and that the Minister could not, therefore, in law be satisfied that it was requisite to lay out the area afresh or redevelop it. This contention was, however, rejected by the Court of Appeal consisting of Lord Greene, M. R., Somervell and Wrottesley, L. JJ. The Master of Rolls as well as the Lord Justices took the view that the entire matter, namely, the necessity for laying out the lands afresh and redeveloping them as a whole 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 and not a quasi-judicial act.

20. The last English case to which we must refer is *Franklin v. Minister of Town and Country Planning*[20], As strong reliance was placed on this decision on behalf of the respondents it is necessary to consider the same in some detail. The New Towns Act, 1946, received the Royal Assent and came into force on 1st August, 1946. Section 1 provided in sub-section (1) that if the Minister is satisfied, after consultation 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 established under the Act, he may make an order designating that area as the site of the proposed new town, and in sub-section (2) that the provisions of the First Schedule to the Act shall have effect with respect to the procedure to be followed in connection with the making of orders under the section. The First Schedule so far as relevant provided that where the Minister proposes to make an order, he shall prepare a draft of the order with details as required by the Schedule; before making the order the Minister shall publish in the London Gazette, in one or more newspapers circulating in the locality in which the proposed new town will be situated, a notice specifying certain particulars including the manner in which objections may be made, and serve a like notice on the council of the county or any local authority concerned; if any objection is made, the Minister shall cause a public local inquiry to be held with respect thereto, and shall consider the report of the person by whom the inquiry was held;

and subject to the provisions last mentioned, the Minister may make the order either in terms of the draft or subject to such modifications as he thinks fit. On 3rd August 1946, immediately after the coming into force of the Act, the Minister prepared the draft Stevenage New Town (Designation) Order, 1946, under paragraph 1 of the First Schedule and thereafter caused the same to be published and notices to be given as prescribed by paragraph 2 of the First Schedule. Objections were thereafter received from several persons including the appellants. The Minister

[20]1948 AC 87

accordingly instructed Mr. Arnold Morris, an Inspector of the Ministry of Town and Country Planning, to hold a public local Inquiry, as prescribed by paragraph 3 of the First Schedule. Mr. Morris held the inquiry at the Town Hall, Stevenage, and made a report to the Minister in which he set out a summary of the submissions made and the evidence given by and on behalf of the objectors and attached thereto a complete transcript of the proceedings. Some weeks later on 11th November 1946, the Minister made the order in terms of paragraph 4 of the First Schedule. The appellants applied to the High Court to have the order quashed on several grounds including that (1) that at a meeting held in Stevenage Town Hall the Minister had stated before considering the objections of the persons in question that he would make the order in question and that he was, therefore, biased in any consideration of the objections and that (2) that the Act impliedly required that the objections of the persons should be fairly and properly considered by the Minister and that the Minister should give fair and proper effect to the result of such consideration in deciding whether the said order should be made and that such implied requirements were not complied with. Henn Collins, J. quashed the order holding that the Minister had not fulfilled his duty to act judicially in considering the objections. The Court of Appeal reversed the decision. The matter was carried in appeal to the House of Lords. The House of Lords decided that in considering the report of the person who has held a public local inquiry under paragraph 3 of the First Schedule, after objections have been made to an order under section 1, sub-section (1), the Minister has no judicial or quasi judicial duty imposed on him, so that considerations of bias in the execution of such a duty are irrelevant, the sole question being whether or not he genuinely considered the report and the objections. It was also held that the public local inquiry under paragraph 3 of the First Schedule is held with respect to the objections only and it is not the duty of the Minister to call evidence in support of the order, since the object of the inquiry is to inform his mind and not to consider any issue between him and the objectors. Lord Thankerton, with whom Lord Porter, Lord Uthwatt, Lord du Parcq and Lord Normand concurred 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 respondent'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, discharge of that duty. It is obvious that, before making the 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 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 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 established 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 whether he has complied with the statutory directions to appoint a person to hold the public inquiry, and to consider that person's report."

This decision is important from more than one point of view; but at this stage we have referred to it only in order to illustrate the proposition that where the foundation of the exercise of the jurisdiction of a statutory authority is his personal satisfaction or subjective opinion of certain facts, the function of such statutory authority must be regarded as administrative and not quasi-judicial. In such a case what is made a condition precedent to the exercise of the power by the statutory authority is not the actual existence of such facts but the satisfaction or opinion of the statutory authority that such facts exist. Since the condition is a purely subjective condition, the existence of the condition would be incapable of being determined by a third party as an objective fact and the exercise of the power cannot, therefore, be a quasi-judicial act and must be regarded as an administrative act.

21. Applying this test it is clear that the act of the Government in issuing the notification under section 6 for acquisition of land is an administrative act and not a quasi-judicial act. The power of the Government to issue the notification under section 6 for acquisition of land is founded on the satisfaction of the Government that any particular land is needed for a public purpose or for a Company. The Legislature has committed to the Government the discretion to decide whether any particular land is needed for a public purpose or for a Company and that discretion, if *bona fide* exercised, is final and no Court can interfere with the same. It is for the Government to decide in its subjective satisfaction as to whether or not a case has arisen for the exercise of the power under section 6. The satisfaction of the Government that any particular land is needed for a public purpose or for a Company is made a condition precedent to the exercise of the power under section 6 and once this satisfaction is *bona fide* arrived at, it cannot be subjected to the scrutiny and interference of the Court. Not to leave the matter in doubt, the notification under section 6 is made conclusive evidence of the fact that the land is needed for a public purpose or for a Company so that the decision of the Government that the land is needed for a public purpose or for a Company is removed from the scrutiny and interference of the Court which it would be if it were a quasi-judicial act. It is, therefore, clear that the function entrusted to and

exercised by the Government under section 6 is not a quasi-judicial function but is an administrative function.

22. In this view of the nature of the function of the Government under section 6 which we are inclined to take, we are fortified by a Full Bench decision of the High Court of Madras in *Suryanarayana v. Madras Province*[21], This case dealt specifically with section 6 and it was held in this case that the decision of the Government under section 6 that any particular land is needed for a public purpose or for a Company is final and cannot be tested in a Court of law. We also find support for our view from the decision of the Privy Council in *Wijeyesekera v. Festing*[22], Of course this decision turned on the provisions of sections 4 and 6 of the Acquisition of Land Ordinance, 1876, which was the law in force in Ceylon at the relevant time relating to the acquisition of land, but the principle of this decision must apply equally to the act of acquisition under section 6 of the Land Acquisition Act, 1894. In this case the Governor of Ceylon with the advice of his

[21] AIR 1945 Mad 394

[22](1919) AC 646

Executive Council made an order under the Ceylon 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 relevant portions of sections 4 and 6 of the Ordinance provided as follows :

> "4. 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 generally or specially authorized 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 authorized as aforesaid, shall then make his report to the Governor whether 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 acquisition of the land."

Lord Finlay in delivering the judgment of the Privy Council 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 questioned 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 in a preliminary way, as was suggested by Lord Wrenbury in the course of the argument. It might be raised by an application 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 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 section 6 of the Ordinance, is final and conclusive."
His Lordship concluded by observing :

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

Though the Privy Council was not concerned in this case with the question whether the order of the Governor under the latter part of section 6 of the Ordinance was a quasi-judicial order or an administrative order, it is clear from the aforesaid observations that the order was an administrative order because if it were a quasi-judicial order, it would have been liable to be subjected to the scrutiny of the Court and amenable to review and if necessary to avoidance by the procedure of certiorari which the Privy Council held it was not. Now the principle of this decision was treated as applicable to acquisition of land under section 6 of the Land Acquisition Act, 1894, by Mukherjea, J., in AIR 1950 Supreme Court 222 (supra), where the learned Judge after referring to this decision observed :

> "The language of section 4, Land Acquisition Act of India is very much the same. The section begins with these words :
> '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."

It can no longer, therefore, in our opinion be disputed that the act of acquisition under section 6 is an administrative act and not a quasi-judicial act.

23. If the function entrusted to the Government under section 6 is an administrative function - as we hold it is - the inquiry under section 5-A which is but a step in the process leading up to the exercise of such administrative function would ordinarily, in the absence of other factors, be an administrative inquiry. Of course in a particular case it may be possible to say on the terms of the statute that though the function of a statutory authority in carrying the provisions of the statute

into operation Is fundamentally an administrative function, at a particular stage and for a particular and limited purpose there is superimposed on its administrative character a character which may be described as quasi-judicial as was held in *Errington v. Minister of Health*[23], and *Johnson and Co. v. Minister of Health*[24], This position was also recognized by Subba Rao, J. in his dissenting judgment in *Radheshyam v. State of M. P*[25]., where he observed :

> "With this background, the principles, as I apprehend them, may be concisely stated thus : Every act of an administrative authority is not an administrative or ministerial act. The provisions of a statute may enjoin on an administrative authority to act administratively or to act judicially or to act in part administratively and in part judicially. If policy and expediency are the guiding factors in part or in whole throughout the entire process culminating in the final decision, it is an obvious case of administrative act. On the other hand, if the statute expressly imposes a duty on the administrative body to act judicially, it is again a clear case of a judicial act. Between the two there are many acts, the determination of whose character creates difficult problems for the Court. There may be cases where at one stage of the process the said body may have to act judicially and at another stage ministerially."

In each case the provisions dealing with this class of matter must be considered by reference to their own language for the purpose of determining whether the function of the statutory authority is at all stages an administrative function or whether there is any

[23](1934) All E R 154 [25] AIR 1959 SC 107

[24](1947) 2 All England Reporter 395

stage at which it can be said that the statutory authority is invested with quasi judicial character. But ordinarily and in the absence of other factors where the function to be discharged by the statutory authority is essentially an administrative function, the administrative character would envelope the process leading upto the exercise of the function at all stages. Mr. I. M. Nanavaty, learned advocate appearing on behalf of the petitioners, therefore, relied upon several factors to be found in the provisions of Section 5A for the purpose of contending that the inquiry under Section 5A was a quasi Judicial Inquiry even though the ultimate act of acquisition under Section 6 might be an administrative act. Mr. I. M. Nanavaty pointed out that under Section 5A an opportunity was given to persons interested in the land to object to the acquisition of the land and after the objections were made, the objectors were entitled to be heard in support of the objections either in person or by pleader and the Collector holding the inquiry, after hearing the objections and after making such further inquiry if any as he thought necessary, was required to submit the case for the decision of the Government together with the record of the proceedings held by him and a report containing his recommendations on the objections and the decision of the Government on the objections was to be final. This procedure, argued Mr. I. M. Nanavaty, clearly indicated that the inquiry under Section 5A culminating in the decision of the Government on the objections was a quasi judicial inquiry and that there was a duty to act judicially cast on the Collector holding the inquiry and the Government deciding the objections. Mr. I. M. Nanavaty also contended that where the acquisition was sought to be made for a

Company under the provisions of Part VII, there was a lis between the Company and the objectors - there were two sides as between whom after consideration the Government had to come to a determination - and that the Government was, therefore, under a duty to act judicially in deciding the objections. This theory of a lis was also attempted to be extended to a case where the acquisition is intended to be made for a public purpose and Mr. I. M. Nanavaty contended that even in such a case the objectors would constitute one side whereas the department of the Government or the local authority or the private agency through whom the Government intends to effectuate the public purpose would constitute the other side so that as between these two sides, the Government would have to come to a determination of the objections in a quasi judicial manner. Mr. I. M. Nanavaty referred to the rules made by the Government of Bombay under Section 55 and pointed out that Rule 3 contemplated the existence of the "other party" besides the objectors and this, in the submission of Mr. I. M. Nanavaty, clearly showed that in every case of acquisition of land whether for a public purpose or for a Company, there were two sides and the Government had to decide the contest between the two sides arising out of the objections. Mr. I. M. Nanavaty thus attempted to bring the case within the principle of 1934 All England Reporter 154 (supra) and 1947-2 All England Reporter 395 (supra). This contention of Mr. I. M. Nanavaty appeared at first blush to be somewhat attractive but on closer examination we find that it is defective in ignoring a number of relevant and material considerations which in our judgment must weigh with the Court on this rather important but difficult question.

24. Before we examine the validity of this contention founded on the principle in 1934 All England Reporter 154 (supra) and 1947-2 All England Reporter 395 (supra), it would be convenient to dispose of the contention of Mr. I. M. Nanavaty that the very provision of an inquiry under Section 5A for hearing objections made to the acquisition by persons interested in the land, at which inquiry the objectors are entitled to be heard either in person or by pleader, shows that the Government is clothed with a quasi judicial character in regard to the consideration of the objections and the decision of the Government on the objections is a quasi judicial act. The answer to this contention is to be found in the following observations from the judgment of Das, J., as he then was in AIR 1950 Supreme Court 222 (supra) :

> "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 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."

The case of 1947-1 All England Reporter 851 (supra), to which reference has already been made also illustrates the same proposition, namely, that a duty to act judicially cannot necessarily be inferred from a mere provision relating to holding of inquiry or hearing of objections. This case related to an order made by the Minister under Section 1(1) of the Town and Country Planning Act, 1944. The procedural requirements in connection with the making of an order under Section

1(1) of the Town and Country Planning Act, 1944, provided for filing of objections by persons who would be affected by the making of the order and for hearing of such objections before the Minister decided whether or not to make the order. Notwithstanding this provision the decision of the Minister was held to be an administrative act by the Court of Appeal. Lord Greene M. R. said :

> "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 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. They say that, in coming to his decision, he is in any sense acting in a quasi-judicial capacity is to misunderstand the nature of the process altogether. I am not concerned to dispute that the enquiry itself must be conducted on what may be described as quasi-judicial principles, 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."

There was also a similar provision for hearing of objections at a public local inquiry in 1948 AC 87 (supra), to which also reference has already been made. This case concerned the New Towns Act, 1946, and under that Act if any objections were made to the draft order, the Minister was bound to cause a public local inquiry to be held with respect to the objections and to consider the report of the person by whom the inquiry was held before he made the order in terms of the draft or subject to such modifications as he might think fit. It was held by the House of Lords that the public local inquiry was for the purpose of informing the mind of the Minister and not for the purpose of considering any issue between the Minister and the objectors and that the Minister was not clothed with quasi judicial character at any stage of his functions notwithstanding the provision for a public local inquiry. To repeat the words of Lord Thankerton

> "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 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 established 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 whether he has complied with the statutory directions to appoint a person to hold the public inquiry, and to consider that person's report."

It is, therefore, clear that a mere provision relating to holding of inquiry or hearing of objections as a preliminary step to coming to a decision would not necessarily lead to the inference that the decision is a quasi judicial act, for the purpose of the inquiry may be to further inform the mind of the deciding authority in order to enable the deciding authority to make up its mind to do what may be purely an administrative act. No argument in favor of the petitioners can, therefore, be founded on the mere provision of an inquiry under Section 5A for hearing objections made to the acquisition by persons interested in the land. The mere provision of such an inquiry would not necessarily impose on the Government a duty to act judicially in considering and deciding the objections. Hence we must consider whether the other circumstances relied on by Mr. I. M. Nanavaty cast any duty to act judicially on the Government in regard to the objections.

25. This takes us to a consideration of the well-known case of 1934 All England Reporter 154 (supra). This case represents a heartening attempt on the part of the Courts to defend the rights of the subjects even within the narrow compass allowed to them by what Lord Hewart C. J., called "the new despotism." The statute which came up for consideration in this case was the Housing Act, 1930. Section 1 conferred power on the local authority to declare an area to be a clearance area but by reason of Section 2(1) the clearance order was not to be operative until approved or confirmed by the Minister of Health. Section 2(2) provided that the provisions of Schedule I to the Act shall have effect with respect to the making, submission and confirmation of clearance orders. Paragraph 4 of Schedule I was in the following terms :

> "If no objection is duly made by any of the persons upon whom notices are required to be served, or if all objections so made are withdrawn, the Minister may, if he thinks fit, confirm the order with or without modification; but in any other case he shall, before confirming the order, cause a public local inquiry to be held and shall consider any objection not withdrawn and the report of the person who held the inquiry, and may then confirm the order, either with or without modification....."

On 23rd February 1933 the borough council of Jarrow made a clearance order in regard to certain area within its jurisdiction. On 13th April 1933 notice was published in accordance with the provisions of the Act and on 26th April, 1933, objections were made by the applicants. The Minister thereupon caused a public inquiry to be held by an Inspector of the Ministry. One of the issues raised at the public inquiry was whether the houses of certain property owners in the area should be reconditioned or demolished. After the public inquiry was concluded, the Minister's officials viewed these houses, being shown to them by representatives of the local authority without the knowledge and in the absence of the owners and received statements and arguments from those in favor of the demolition, in the absence of the owners, which included certain new matter which had not been raised at the public inquiry, and the Minister thereafter confirmed the

clearance order. The owners thereupon applied to the High Court under Section 11 of the Act to quash the order of the Minister confirming the clearance order on the ground that the Minister had not acted in accordance with the rules of natural justice and that the order made by the Minister was, therefore, not within the powers given by the Act. Now the principles of natural justice could be held applicable only if the Minister was exercising quasi judicial functions and the question therefore, arose whether in dealing with the objections, the Minister was exercising administrative functions or quasi judicial functions. The Court of Appeal held that though the act of confirming the clearance order was an administrative act, the Minister was, in dealing with the objections, exercising quasi-judicial functions and was, therefore, not entitled to hear evidence from one side in the absence of the other side and to view the property and form his own views about it without giving the owners an opportunity of arguing that the views which he was inclined to take were such as could be readily dealt with by means of repairs and alterations to the building and did not require demolition of the building as proposed by the clearance order. Maugham, L. J., discussed the nature of the functions discharged by the Minister in regard to the objections in the following words :

> "In determining whether the position of the Minister is that which I have defined as being quasi-judicial, I think it is necessary to appreciate that, under a clearance area scheme to which there are objections 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, after consideration, the Minister has to come to a determination. It also has to be borne that their houses shall be demolished without compensation. That, of course, must not be pressed too far, but it is a consideration which cannot be neglected."

and concluded the discussion with the following observations :

> "My conclusion is that, although the act of affirming a clearance order is an administrative act, the consideration which must precede it is of the nature of a quasi-judicial consideration, and the Minister is bound to the extent mentioned by the House of Lords in (1911) AC 179."

Greer, L. J. also took the same view and expressed in the following terms what he conceived to be the position of the Minister in regard to the consideration of the objections :

> "In so far as the Minister deals with the matter in the absence of objection by the owners, it is clear to me, and I think to the other members of the Court, that he is acting in a ministerial or administrative capacity, and is entitled to make such inquiries as he thinks necessary to enable him to make up his mind whether it is in the public interest that the order should be made. But the position, in 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. In deciding whether the order shall 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 exercising quasi-judicial functions. The effect of the order, if confirmed, would be greatly to diminish the value of the property owned by the objecting parties. The decision of the Minister is a decision relating to the rights of the objecting parties, and a decision in respect of which he is exercising quasi-judicial functions."

The aforesaid passage from the judgment of Greer, L. J., was quoted with approval by Swift, J., in *Frost v. Minister of Health*[26], and the learned Judge after quoting that passage 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 recognized 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."

In Johnson's case 1947-2 All England Reporter 395 (supra) the Court of Appeal held much to the same effect as the above statement of Swift, J., in 1935-1 KB 286 (supra). In this case the owners of land comprised in a compulsory purchase order made by a local authority under the Housing Act, 1936, and confirmed by the Minister of Health under Schedule I, para 4, applied to the High Court to quash the order on the grounds that the Minister, in considering objections to it, was bound to act in a quasi-judicial manner and that he had failed in that duty in that he had not made available to the objectors the contents alleged to be relevant to the consideration of the objections of certain letters written to the Minister by the local authority before the order was made by the local authority. The Court of Appeal held that the confirmation of the order by the Minister was essentially an administrative act and that the obligation of the Minister did not go beyond making available to both sides matters which had come into existence for the purpose of the quasi-lis, the inception of which was marked and constituted by the making of the objections, and that there was consequently no obligation on the Minister to make available material which came into his possession before that date, Lord Greene, M. R. in a passage which accurately described the functions of the Minister at all stages of the process leading up to the confirmation of the clearance order said :

> "Cases of this kind are to be found in the books in considerable numbers, and,

[26](1935) 1 KB 286

> although the provisions of every statute dealing with this class of matter have to be considered by reference to their own language, there are one or two general observations that I think may be made about the particular provisions with which we are concerned. First, the functions of the Minister in carrying these provisions into operation are fundamentally administrative functions. In carrying them out, he has the 'duty which every Minister owes to the Crown, viz., to perform his functions fairly and honestly, and to the best of his ability. But his functions are administrative functions, subject only to the qualification that, at a particular stage and for a particular and limited purpose, there is

> superimposed on his administrative character a character which is loosely described as "quasi judicial." The language which has always been construed as giving rise to the obligations, whatever they may be, implied in the words "quasi-judicial" is to be found in the duty to consider the objections, which, as I have said, is superimposed on a process of Ministerial action which is essentially administrative. That process may begin in all sorts of manners - the collection of information, the ascertainment of facts, and the consideration of representations made from all sorts of quarters, and so forth, long before any question of objections can arise under the procedure laid down by the Act. While acting at that stage, to carry the Act into effect or for purposes relevant to it and bearing on it, the Minister is an executive officer of government, and nothing else. The administrative character in which he acts reappears at a later stage because, after considering the objections, which may be regarded as the culminating point of his quasi-judicial functions, there follows something which again, in my view, is purely administrative, viz., the decision whether or not to confirm the order. That decision must be an administrative decision, because it is not to be based purely on the view that he forms of the objections, vis-a-vis the desires of the local authority, but is to be guided by his view as to the policy which in the circumstances he ought to pursue."

According to the Master of Rolls the character occupied by the Minister was essentially an administrative character and if no objections were made or if objections having been made were withdrawn, the administrative character continued uninterrupted right up to the time of the confirmation of the clearance order. But if objections were made and were not withdrawn, there came into existence what might be described as a quasi-lis, the inception of which was marked and constituted by the making of the objections and it was at this stage and for the particular and limited purpose of the quasi-lis that a quasi-Judicial element entered into the functions of the Minister. The Minister was obliged to act in a quasi judicial capacity in considering the objections. During this quasi-judicial interlude the Minister was required to observe the audi alteram partem rule and this was elaborated by the Master of Roils in the following words :

> ". . . statements made by, or obtained from, either of the two quasi-parties to the quasi-lis while it is pending, viz., the local authority and the objector, must be disclosed to the other quasi-party. Information so provided and put before the Minister is information given to enable him to do the thing he is doing at that stage, considering the objections, and it has always been naturally said that information of that kind must be disclosed to the other party to give that other party an opportunity of converting it, or making comments upon it."

The audi alteram partem rule required that the matter which came into existence for the purpose of the quasi-lis must be made available to both sides. The consideration of the objections marked the culminating point of the quasi-judicial functions of the Minister and thereafter once again reappeared an administrative character and it was in an administrative character that the Minister decided whether or not to confirm the clearance order. The Master of Rolls thus held that though

the function of the Minister was essentially an administrative function and it began and ended as an administrative function, there was an intermediate stage - the inception of which was marked and constituted by the making of the objections and the culminating point of which was the consideration of the objections - at which the Minister was invested with a quasi judicial character. The quasi judicial character was as if it were superimposed on the administrative character at this intermediate stage for the particular and limited purpose of considering the objections. To quote once again the words of the Master of Rolls :

> "In this hybrid mixture of administrative and quasi-judicial function the two elements are closely intermingled, but, .... the basic element is the administrative act which begins or may begin, before, and ends after, the quasi-judicial stage has been completed."

Errington's case 1934 All England Reporter 154 and Johnson's case 1947-2 All England Reporter 395 thus clearly laid down that even in arriving at an administrative decision there may be at a particular stage of the proceedings leading up to the decision a duty to act judicially and at that stage the deciding authority would have to act in a quasi judicial manner even though the function of the deciding authority before and after such stage may be an administrative function.

26. Mr. I. M. Nanavaty on behalf of the petitioners strongly contended that the present case fell within the principle in Errington's case 1934 All England Reporter 154 and Johnson's case 1947-2 All England Reporter 395 (supra). There was, argued Mr. I. M. Nanavaty, a quasi-lis between the petitioners and the third respondent-Society which came into existence on the making of the objections by the petitioners and that in considering the objections, the Government was, therefore, under a duty to act judicially and that the inquiry was also consequently a quasi-judicial inquiry. The answer made to this contention by the learned Advocate General on behalf of the State and Mr. J. B. Mehta on behalf of the third respondent-Society was three-fold. They first contended that Errington's case 1934 All England Reporter 154 and Johnson's case 1947-2 All England Reporter 395 could no longer be regarded as good law in view of the decision of the House of Lords in Franklin's case, 1948 AC 87 (supra), and that haying regard to this decision of the House of Lords, it could not be said that the Government was invested with any quasi judicial character in the matter of considering the objections of the petitioners. The second contention urged by them was that even it Errington's case 1934 All England Reporter 154 and Johnson's case 1947-2 All England Reporter 395 were not deemed to be overruled by the decision of the House of Lords in Franklin's case 1948 AC 87, the present case fell within the principle in Franklin's case 1948 AC 87 and not within the principle in Errington's case 1934 All England Reporter 154 and Johnson's case 1947-2 All England Reporter 395. The last contention was that even if the present case was governed by the principle in Errington's case 1934 All England Reporter 154 and Johnson's case 1947-2 All England Reporter 395 it was clear from the provisions of the Act and particularly Section 5A that no quasi judicial duty was imposed on the Government in considering the objections and that the inquiry was an administrative and not a quasi judicial inquiry. We shall now proceed to examine the validity of these respective

contentions urged on behalf of the parties.

27. The learned Advocate General and Mr. J. B. Mehta contended that Errington's case 1934 All England Reporter 154 and Johnson's case 1947-2 All England Reporter 395 must be regarded as overruled by the House of Lords in Franklin's case 1948 AC 87. They relied upon the Hamlyn Lectures delivered by Lord Denning on "Freedom under the Law" where after referring to Franklin's case 1948 AC 87, Lord Denning said at page 121 of the Lectures :

> "Before this case and other recent cases it had been commonly understood by lawyers that the inspector at the local inquiry, and the Minister in considering his order, must act, as it were, judicially, and must observe the elementary rules applicable to judicial functions, such as to allow each party to deal with information adverse to him. That view must now, it appears, be regarded as wrong."

The view which Lord Denning referred to in this passage as a view which must now be regarded as wrong was obviously, as the foot-note shows, the view in Errington's case 1934 All England Reporter 154. Reliance was also placed on the following observations of Sir Carleton Allen in his well known book on "Law and Orders," (Second Edition), where the learned author after referring to a quotation from Lord Denning's Lectures on "Freedom under the Law" said at page 287 :

> "Does this mean that Errington's case 1934 All England Reporter 154 is overruled? To the present writer it seems that this must follow, unless in future some feat of judicial ingenuity can reconcile the two cases. The essence of Errington's Case 1934 All England Reporter 154, as I understand it, is that although a Minister may be exercising an administrative function, as soon as he is required to hear legitimate and *bona fide* objections from interested parties he is pro tanto acting in a quasi-judicial capacity, and is then subject to the rules of natural justice. Franklin's Case 1948 AC 87 appears to lay down that the holding of an inquiry and the consideration of objections does not at any point change the purely administrative character of the entire process. The only ground of distinction which, it is submitted, can be advanced is that the Minister's statutory powers were different in the two cases. The present writer can see nothing in the intertwined Acts relevant to Franklin's Case 1948 AC 87 which ousts the general principle laid down in Errington's case 1934 All England Reporter 154. As matters now stand, it seems that the House of Lords, true to its tradition of being 'more executive-minded than the executive,' has whittled down to zero such small and nebulous element of natural justice as had been admitted to our administrative law."

Now it is no doubt true as the above passages show that both Lord Denning and Sir Carleton Allen - one an eminent law Lord and the other a well-known jurist - have Interpreted Franklin's case 1948 AC 87 as impliedly overruling Errington's Case 1934 All England Reporter 154. But

with the greatest respect to them we find ourselves unable to share their view. We are of the opinion that Errington's case 1934 All England Reporter 154 is good law even after the decision in Franklin's Case 1948 AC 87. The problem is befogged by the fact that similar words are used in the New Towns Act, 1946, and the Housing Act, 1930, with regard to the duty to hold a public inquiry, but the crucial fact is, and cannot be gainsaid, that the functions of a Minister under the Housing Act, 1930, and the New Towns Act, 1946, are totally different. In the first case the duty of the Minister is to hear an appeal from the decision of a local authority to make an order and there being a "true contest" in the words of Maugham L. J., "as between the owners of the property and the local authority," the local authority contending that the order should be confirmed and the owners of the property opposing the confirmation of the order on the grounds set out in the objections, the Minister must act quasi judicially in determining the lis between the parties arising out of the objections. In the second case there is no lis or contest between two opposing parties which has to be determined by the Minister as an outside authority : the initiative lies wholly with the Minister and the Minister has to decide whether or not to make the order despite the objections. In this latter case the objections to what the minister proposes to do are invited and the public inquiry is held with respect to the objections for the purpose of eliciting further information for the Minister and not for the purpose of deciding any controversy between the Minister and the objectors and the Minister is given absolute discretion to decide after considering the report of the person holding the public inquiry. This forms a vital basis of distinction between the functions of the Minister under the two Acts and if this distinction is kept in mind it will be clear that Errington's case, 1934 All England Reporter 154 and Franklin's case, 1948 AC 87 do not cover the same ground so as to result in the implied overrule of the former by the latter but each is an authority within the area of its operation. This view which we are inclined to take is not only supported by opinions of well-known text-book writers but there is also high legal authority in favor of this view. S. A. de Smith has emphasized the same distinction in his work "Judicial Review of Administrative Action". This is what he says at page 129 in relation to Franklin's case, 1948 AC 87 :

> "But in order to reach this conclusion, founded upon a realistic appraisal of the Minister's duties under the Act, the House of Lords used terminology which lent countenance to the view that a public authority does not act in a judicial capacity, in the sense of being required to observe the rules of natural justice, unless it occupies the role of an adjudicator determining something approximating to a lis inter partes, in which case a duty to natural justice may be superimposed upon the procedural requirements already prescribed by statute.
>
> These lines of cases have profoundly influenced the recent attitude of English Courts towards the procedural duties of public authorities invested with statutory powers in relation to individual rights. They have tended to assume that a duty to observe the rules of natural justice arises only where the authority is already under a statutory duty to consider objections or conduct an inquiry in a 'triangular' situation with two contesting private parties before them; and that where no such statutory duty is imposed the

functions of the authority cannot be characterised as judicial for this purpose....."

Robson in "Justice and Administrative Law", commenting upon Franklin's Case, 1948 AC 87 makes the following observation :

> "It should have been obvious from a cursory glance at the New Towns Act that the rules of natural justice could not apply to the Minister's action in making an order, for the simple reason that the initiative lies wholly with him. His role is not to consider whether an order made by a local authority should be confirmed, nor does he have to determine a controversy between a public authority and private interests. The responsibility of seeing that the intention of Parliament is carried out is placed on him."

This observation has been quoted with approval by Subba Rao, J., in *G. Nageswara Rao v. A. P. S. R. T. Corporation*[27], We find that the same distinction has also been made in Halsbury's Laws of England, Third Edition, Volume 11, paragraph 114 at Page 56, where it is stated :

> ". . . .Thus, if in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, if at some stage of the proceedings leading up to the decision there was something in the nature of a lis before it, then in the course of such consideration and at that stage the body would be under a duty to act judicially. If, on the other hand, an administrative body in arriving at its decision has before it at no stage any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any time to act Judicially."

This distinction is brought out even more forcibly in footnote (d) where occurs the following observation :

> "In this case" (Franklin's Case, 1948 AC 87), "unlike the Housing Act cases discussed in note (c), p. 56, ante there was no quasi-lis which required adjudication; the Minister or other official who makes the decision in the exercise of his statutory duty cannot be himself considered as a 'quasi-litigant' vis-a-vis objectors."

Turning to the legal authorities we find that Das J., as he then was, in AIR 1950 Supreme Court 222 (supra), also explained the basis of the decision in Errington's Case, 1934 All England Reporter 154 in terms of the existence of a lis between two contending parties which the Minister was empowered by the statute to decide. The learned Judge said :

> "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."

The decision in Franklin's case, 1948 AC 87 was different obviously because there was
[27] AIR 1959 SC 308
no such lis between two contending parties which the Minister was required to decide as there was in Errington's case, 1934 All England Reporter 154. Mukherjea J., in the same case regarded Errington's case, 1934 All England Reporter 154 as still laying down good law even after Franklin's case, 1948 AC 87 as is clear from the following passage from his judgment :

> "The case of 1934 All England Reporter 154.....is a leading authority which holds that the same proceeding may be administrative at one stage and quasi-judicial at another."

In Robinson's case, 1947-1 All England Reporter 851 Lord Greene M. R., drew the same distinction to which we have already referred for the purpose of holding that the order of the Minister under Section 1(1) of the Town and Country Planning Act, 1944, was an administrative act and not a quasi-judicial act. The Master of Rolls said :

> ".....The first thing to notice is that the order of the Minister under sub-section (1), is in no respect an order approving or confirming any proposals of the local planning authority as to fresh lay-out or redevelopment. The approval or confirmation of such proposals is not in any sense the issue submitted to him. Whether he approves or disapproves of any such proposals in whole or in part, he may still make an order, since the only thing of which the sub-section requires him to be satisfied is the requisiteness of laying out afresh and redeveloping as a whole an area of war damaged land (with or without contiguous or adjacent land) for the purpose of dealing satisfactorily with extensive war damage".

What the Master of Rolls stated in the above passage, he made abundantly clear in the following observations which, though we have quoted them once in another connection, may well be reproduced again in this connection :

> "A number of authorities were referred to in which the powers and duties of ministers under statutes dealing in different language with different classes of subject-matter were discussed and observations were made as to their powers and duties when acting in a quasi-judicial capacity. I am passing this judgment on the particular provisions of this statute in their application to this particular subject matter; and I do not find anything in the decisions cited which either assists or impedes me to such an extent as to make it

> necessary for me to examine them. 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 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 inquiry 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 misunderstand the nature of the process altogether. . ."

It is clear from the aforesaid observations that if the case before the Master of Rolls was a case where the Minister was given the duty of hearing an appeal from an order such as a closing order or a clearance order made by a local authority so that there would be a lis between two contesting parties which the Minister as an outside authority would have to determine, the Master of Rolls would have held the order of the Minister to be a quasi-judicial act. But the Master of Rolls held the order of the Minister to be an administrative act because it was a case of an original order to be made by the Minister without there being any lis between two opposing parties. Johnson's case, 1947-2 All England Reporter 395 came after Robinson's case, 1947-1 All England Reporter 851 and yet in Johnson's case, 1947-2 All England Reporter 395 Lord Greene M. R., affirmed Errington's case, 1934 All England Reporter 154 as good law and laid down, as we have already pointed out above, that even at an intermediate stage in an essentially administrative function there could be a quasi judicial character attaching to the Minister, requiring the Minister to act in a quasi judicial capacity at such intermediate stage. It is also significant to note that Lord Thankerton did not even mention Errington's case, 1934 Ail ER 154 in his speech even though it was cited in the course of the argument. If Lord Thankerton intended to lay down a principle contrary to the decision in Errington's case, 1934 All England Reporter 154 the learned Law Lord would have certainly referred to Errington's case, 1934 All England Reporter 154 and expressed his disapprobation of it. But Lord Thankerton obviously did not consider it necessary to refer to Errington's case, 1934 All England Reporter 154 because Errington's case, 1934 All England Reporter 154 dealt with a totally different situation than the one which had arisen before him. It may also be mentioned that Johnson's case, 1947-2 All England Reporter 395 was decided on the same day on which the House of Lords delivered judgment in Franklin's case, 1948 AC 87 and it is reasonable to assume that if the Court of Appeal regarded Franklin's case, 1948 AC 87 as impliedly overruling the view in Errington's case, 1934 All England Reporter 154 the Court of Appeal would not have referred to Errington's case, 1934 All England Reporter 154 as still laying down good law and come to the decision that there was a quasi judicial duty cast on the Minister in considering the objections. Foot-note 91 at page 129 of S. A. de Smith's "Judicial Review of Administrative Action" also shows that in *Darlassis v. Minister of Education*[28], and *Steele v. Minister of Housing and Local Government*[29], decided after Franklin's case, 1948 AC 87 Errington's case, 1934 All England Reporter 154 was referred to as if it were still good law. We are, therefore, of the view that Errington's case, 1934 All England Reporter

154 and Johnson's case, 1947-2 All England Reporter 395 cannot be regarded as impliedly overruled by Franklin's case, 1948 AC 87 Errington's case, 1934 All England Reporter 154 and Johnson's case, 1947-2 All England Reporter 395 represent one class of cases while Franklin's case, 1948 AC 87 and Robinson's case, 1947-1 All England Reporter 851 represent another class of cases and there is a thin but distinct line which divides off one class from the other on the basis of the distinction earlier mentioned by us.

28. The next question immediately arises : which is the principle that governs the present case : is it the principle in Errington's case, 1934 All England Reporter 154 and Johnson's case, 1947-2 AH ER 395 or is it the principle in Robinson's case, 1947-1 All England Reporter 851 and Franklin's case, 1948 AC 87? The present case, it seems to us, is a fortiori case. The proceedings originate with the Government and the initiative lies

[28](1954) 118 J.P. 452

[29](1956) 6 P. and C. R. 386

wholly with the Government. It is only when it appears to the Government that land in any locality is needed or is likely to be needed for any public purpose that the notification under Section 4 is issued by the Government initiating a proposal for acquisition of land in such locality. It may be that a local authority or a Company or a private body which wants to carry out and effectuate a public purpose may move the Government to adopt proceedings for acquisition of land and if it appears to the Government on the materials placed before it that land in any locality is needed or is likely to be needed for any public purpose the Government may issue the notification under Section 4; but no one has a right to require the Government to issue such notification. It depends entirely on the subjective opinion of the Government whether or not to issue the notification under Section 4. When it appears to the Government that land in any locality is needed or is likely to be needed for any public purpose and the Government issues the notification under Section 4, the proposal for acquisition of land is initiated by the Government as its own proposal and not as a proposal of the local authority, Company or private body which might have moved the Government to adopt proceedings for acquisition of land. The proposal to acquire land embodied in the notification under Section 4 emanates from the Government and not from such local authority, Company or private body. The objections invited under Section 54 are also objections to what the Government proposes to do - the proposal being that contained in the notification under Section 4 - and persons interested in the land when they make their objections do so in order to dissuade the Government from doing that which it proposes to do. The objections are not directed against any proposal of the local authority, Company or private body moving the Government to initiate proceedings for acquisition of land. No proposal of the local authority, Company or private body for whose benefit acquisition is intended to be made is submitted to the Government for approval or confirmation. The approval or confirmation of any such proposal is not in any sense an issue submitted to the Government so that the Government may have to decide the issue as between the local authority, Company or private body proposing the act and the objectors opposing the act. The proposal to acquire land originates as the proposal

of the Government and after hearing objections which may be made to such proposal, the Government in its subjective satisfaction decides whether or not to make an order of acquisition in respect of the land forming the subject matter of such proposal. The role of the local authority, Company or private body at whose instance the Government may be moved to initiate the proposal for acquisition of land is similar to that of the Local Planning Authority In Robinson's case, 1947-1 All England Reporter 851. The Minister in that case could be activated only by an application to be made by the Local Planning Authority and yet it was held by the Court of Appeal that since the order of the Minister was in no respect an order approving or confirming any proposal of the Local Planning Authority and the case was a case of an original order to be made by the Minister, the Minister in coming to his decision could not in any sense be said to be acting in a quasi-judicial capacity. It is, therefore, clear that at no stage there is a lis between two contending parties which requires adjudication by the Government. There is no controversy between the two contesting parties which the Government is called upon to determine as an outside authority. The controversy, if any, is between the Government proposing to acquire land and the objectors opposing such acquisition on the grounds set out in the objections. If this is the position when the Government initiates the proposal for acquisition of land on being moved in that behalf by any local authority, Company or private body, the position is still clearer when the Government initiates the proposal for acquisition of land on its own without being moved by any local authority, Company or private body. In such a case it is indisputable and we may at once state that Mr. I. M. Nanavaty frankly and, in our opinion, rightly conceded that he could not so dispute - that there is no lis between two contesting parties which is required to be determined by the Government as an outside authority. There are in fact no two contesting parties as between whom the Government must come to a determination. The Government in exercising its statutory function cannot be regarded as a quasi litigant vis-a-vis the objectors. The present case must, therefore, indubitably fall within the principle in Robinson's case, 1947-1 All England Reporter 851 and Franklin's case, 1948 AC 87 and cannot fall within the principle in Errington's case, 1934 All England Reporter 154 and Johnson's case, 1947-2 All England Reporter 395 and the conclusion must inevitably be reached that the Government is not under any duty to act judicially in considering the objections.

29. Realizing this difficulty, 1. M. Nanavaty, relied strongly on Rule 3 of the Rules framed by the Government of Bombay under Section 55 and contended that this Rule clearly contemplated the existence of "the other party" and that there was, therefore, a lis between two opposing parties which was required to be determined by the Government, This contention of Mr. I. M. Nanavaty is, in our opinion, without any substance. It is no doubt true that the words "the other party" are used in this Rule, but if this Rule is examined as a whole, it will be clear that this Rule does not support the existence of a lis between the objector and "the other party". This Rule provides that after admitting an objection and after having given the objector an opportunity of being heard either in person or by pleader, the Collector shall decide whether it is desirable to hear oral or documentary evidence and if the Collector decides to admit evidence tendered by the objector, the Collector shall afford "the other party" an opportunity of cross-examining the witnesses or

rebutting such evidence by other evidence. The opportunity of being heard is thus provided only to the objector and not to "the other party". "The other party" does not come into the picture at all so long as no oral or documentary evidence is allowed to be tendered on behalf of the objector. It is only if the Collector decides to hear oral or documentary evidence which may be tendered on behalf of the objector that "the other party" is allowed a locus standi and that locus standi is limited to cross-examining the witnesses who may be examined on behalf of the objector and rebutting the evidence tendered on behalf of the objector by other evidence. This provision is obviously made in order to ensure that the material which is placed before the Government by the objector is not incorrect or even if correct is not one-sided. The purpose of inviting objections and holding an inquiry is for the further information of the Government in order to enable the Government to make up its mind whether or not to make an order for acquisition and it is, therefore, necessary that the information collected by the Government as a result of the inquiry should be as true and complete as can be reasonably possible and this rule, therefore, provides in order to secure this end that the oral evidence tendered on behalf of the objector should be allowed to be tested by cross-examination and the other side should be permitted to produce evidence in rebuttal of the evidence, oral or documentary, which may be tendered on behalf of the objector. "The other party" may be a Department of the Government or a local authority, Company or private body, at whose instance the Government may have initiated the proposal for acquisition. But whoever may be "the other party" it is clear that there is no lis between the objector and "the other party". There is no controversy between the objector and "the other party" which is required to be determined by the Government as an outside authority. No issue as between the objector and "the other party" is submitted for the decision of the Government. We have already dwelt on this aspect of the matter at considerable length and we need not add anything more beyond stating that having regard to the nature and purpose of the inquiry, the provision enabling "the other party" to lead evidence in rebuttal and to cross-examine the witnesses of the objector in case the Collector decides to hear oral or documentary evidence has not the effect of bringing into existence a lis between the objector and "the other party". This becomes all the more apparent when we find that "the other party" has no right to be heard in regard to the objections and that the limited right of leading evidence in rebuttal and cross-examining the witnesses of the objector also becomes available only when the Collector decides to hear oral or documentary evidence tendered on behalf of the objector. We cannot, therefore, accept the argument of Mr. I. M. Nanavaty founded on the provisions of Rule 3 for holding that there is a lis between two contesting parties involved in the consideration of the objections and the Government cannot, under the circumstances, be held to be invested with any quasi judicial capacity in considering the objections.

30. The next contention of Mr. I. M. Nanavaty was based on the language used by the Legislature in Section 5A to denote the function of the Government vis-a-vis the objections. The greatest reliance was placed on the words "the decision of the.....Government on the objections shall be final" and founding himself on these words Mr. I. M. Nanavaty contended that the object of the inquiry was not to further inform the mind of the Government but to decide the issue

between the Government and the objection for arising out of the objections and that the Government was, therefore, under a duty to act judicially in considering the objections. This contention of Mr. I. M. Nanavaty is also, in our opinion, devoid of merit. It is founded on undue literal emphasis on the word "decision" occurring in the words "the decision of the. . . .Government shall be final" and ignores not only the context and setting in which the word occurs but also the object and purpose for which the objections are invited and decided. To say that in deciding the objections the Government is in any sense acting in a quasi judicial capacity is to misunderstand the nature of the process altogether. In the first place it must be remembered that the mere use of the word "decision" can never be determinative of the question whether the act is an administrative act or a quasi judicial act. Even a person entrusted to do an administrative act has often to decide questions of fact to enable him to exercise his power. The process of deciding is not a process peculiar to a quasi judicial act but is also often involved in an administrative act. As observed by Kania C. J., in AIR 1950 Supreme Court 222 (supra) :

> ". . . .Because an executive authority has to determine 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 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. . . ."

We have quoted this passage merely for the purpose of illustrating that decision of facts may be involved as much in an administrative act as in a quasi judicial act, and that no argument can, therefore, be founded on an undue literal emphasis on the word "decision". The decision may be an administrative decision or a quasi judicial decision depending on the facts and circumstances of each case and the provisions of the particular statute and merely because the word "decision" is used, it does not follow that the Government is invested with any quasi judicial character in considering and deciding the objections. To take an analogy which is not far to seek, let us turn to Section 11 which provides for inquiry and award by the Collector in regard to the compensation to be paid to persons interested for the acquisition of the land. After the order for acquisition of land is made by the Government, the Collector causes the land to be measured and then gives public notice stating that the Government intends to make acquisition of the land and that claims to compensation for all interests in the land should be made to him. Persons interested in the land whereupon file their respective claims for compensation stating the nature of their respective interests in the land as also their objections, if any, to the measurements made by the Collector. The Collector thereafter proceeds to inquire into the objections, if any, which may have been made to the measurements of the land as also into the value of the land at the date of the publication of the notice under Section 4 and all the respective interests of the persons claiming the compensation. The inquiry culminates in an award to be made by the Collector stating the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the said compensation among all the persons known or believed to be

interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. There is thus a provision for giving notice, inviting claims and objections and holding inquiry into such claims and objections and the document in which the inquiry ultimately results is described as an "award" - a word certainly more indicative of a quasi judicial determination than the word "decision"; and yet the award was held by the Judicial Committee of the Privy Council in *Ezra v. Secretary of State*[30], to be an administrative act and the Inquiry an administrative inquiry. We may usefully quote the observations of the Privy Council in this connection for they clearly show that the use of a word like "award" could not be regarded as determinative of the question whether the inquiry resulting in the "award" was an administrative inquiry or a quasi Judicial inquiry and that It was the nature and purpose of the inquiry which formed the most relevant consideration. This is what Lord Robertson delivering the judgment of the Privy Council said :

> "The remaining question relates to the second inquiry, which is as to the value of the land now assumed to be 'needed'. Shortly stated, the appellant's objection is that the Collector who conducted the inquiry and made the "award" availed himself of information supplied to him without the knowledge of the appellants, and not disclosed at the inquiry. It is not suggested that there was in the proceedings anything correct or fraudulent, and the objection is based and depends upon the theory that the inquiry by the Collector was a judicial proceeding, and that the rules of judicial proceedings apply. The argument of the appellant starts from the word 'award' (which is used to describe the conclusion of the Collector), and has nothing else to support it. When the sections relating to this matter are read together, it will be found that the proceedings resulting in this 'award' are administrative and not judicial; that the 'award' in which the inquiry results is merely a decision (binding only on the Collector) as to what sum shall be tendered

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> to the owner of the lands; . . ."

It would thus be seen that no reliance can be placed on the word "decision" to spell out any duty in the Government to act judicially in regard to the objections and the attempt of Mr. I. M. Nanavaty to weave an argument out of such thin and flimsy thread must fail.

31. There are two circumstances which to our mind are of the greatest importance and determination of the present controversy between the parties. The first circumstance is that by the very language of the Section the decision of the Government on the objections is to be based not only on the material which may be gathered by the Collector at the hearing of the objections but also on the material which may be gathered by the Collector at the hearing of the objections but also on the material which may be gathered by the Collector as a result of any further inquiry which he may make after the hearing of the objections. The Section says that the Collector shall, after hearing the objections and "after making such further inquiry, if any, as he thinks necessary" submit the case for the decision of the Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections and the decision of

the Government on the objections shall be final. It is, therefore, clear that the inquiry consists of two parts, the first being the hearing of the objections, and the other being such further inquiry as the Collector may think necessary to make. This second part of the inquiry which consists of the further inquiry which may be made by the Collector after the hearing of the objections plainly negatives the existence of any quasi judicial duty in the Government in the consideration of the objections. The material on which the Government can act in deciding the objections is not confined to the material gathered by the Collector at the hearing of the objections; but the Government can also rely on the material which may be gathered by the Collector at any further inquiry which he may make. Now it cannot be disputed that this further inquiry which the Collector may make is obviously of an administrative character and neither the Section nor the Rules require that such further inquiry should be made in the presence of the objector. The Collector in such further Inquiry is unrestricted in his methods of obtaining information bearing upon the objections. The material which is thus gleaned administratively as a result of such further inquiry even behind the back of the objector is also made available to the Government and can be relied upon by the Government in deciding the objections. This one single consideration is sufficient to destroy the argument that the Government is invested with a quasi judicial capacity in the consideration of the objections. But the matter does not rest here. A little scrutiny of the Section will reveal that the Government in deciding the objections is not limited even to the consideration of the material which may be gathered by the Collector at the hearing of the objections or at any further inquiry which he may think it necessary to make. The material brought out in the proceedings before the Collector, whether the proceedings consist of the hearing of the objections, or whether the proceedings consist of the further inquiry made by the Collector or whether the proceedings consist of both, is not the only material which the Government is entitled to consider in coming to its decision on the objections. The Government is unrestricted in its consideration of all the material at its disposal, whether gleaned before the filing of the objections or at the hearing of the objections or at any further inquiry made by the Collector or even after such further inquiry at any time up to the making of the decision. The process of Governmental action may begin in all sorts of manner such as the collection of information, the ascertainment of facts and the consideration of representations and so forth long before any question of objections can arise under the procedure laid down by the Section. The Government may receive information from diverse sources before the stage of making objections by persons interested in the land is reached. The Government may also come in possession of diverse material otherwise than as a result of the hearing of the objections or the further inquiry which the Collector may in his discretion think fit to make. All this material would be available to the Government for the purpose of deciding the objections. The Government may also in this process consider it necessary to consult its various Departments. The Government would also be entitled - nay, even bound - to take into account what in its view is the policy which it ought under the circumstances of the case pursue and the decision on the objections would be necessarily guided by its view as to such policy. If this is the position, it cannot be seriously disputed that the Government is not under any duty to act judicially in considering the objections and that the decision of the Government on the objections is an administrative act and not a quasi

judicial act.

32. The second circumstance which, in our opinion clinches the decision of the case in favor of the Government and the third respondent-Society is that the decision of the Government on the objections is an integral part of the decision whether or not land is needed for a public purpose or for a Company. The former decision cannot be divorced from the latter : it is involved in the process of arriving at the latter. If the Government upholds the validity of any objection, it must inevitably lead to the result that the Government is not satisfied that land is needed for a public purpose or for a Company; the validity of the objection would necessarily destroy the satisfaction of the Government that land is needed for a public purpose or for a Company. If on the other hand the Government rules out any objection, it must mean that the Government does not consider that objection as sufficient to deter it from arriving at the satisfaction that land is needed for a public purpose or for a Company. It may be that even if all objections are overruled by the Government, the Government may yet on consideration of all material before it and taking into account questions of policy be not satisfied that land is needed for a public purpose or for a Company. But it is clear that the consideration of the objections is inextricably and indelibly interwoven in the texture of the process which results in the Government reaching the satisfaction whether any land is needed for a public purpose or for a Company. This latter process is, as we have already pointed out above, invested with an administrative character and we do not see how under these circumstances the consideration of the objections can be said to be invested with any other character. If the process of which the consideration of the objections forms an integral part is itself an administrative process, it must follow as a necessary corollary that the consideration of the objections is also an administrative process and if that be so, it is axiomatic that the Government is not invested with any quasi judicial capacity in considering the objections and that the decision of the Government on the objections is not a quasi judicial act but is an administrative act.

33. There are two or three other minor considerations which also weigh with us in taking the view that the Government is not under any duty to act judicially in considering the objections and that the decision of the Government on the objections is an administrative act. The first consideration relates to the nature of the power exercised by the Government when the Government acquires land under the provisions of the Act. The power of acquisition for a public purpose - and it is clear from what is stated above that acquisition for a Company under the provisions of Part VII being also acquisition for a public purpose, acquisition under the provisions of the Act is always acquisition for a public purpose - is the power of eminent domain as the American jurists call it and is a power which is the necessary concomitant of sovereignty. Could it have been intended by the Legislature that when the Government is acquiring land in exercise of the power of eminent domain, the Government should be obliged to decide the objections to the acquisition of land in a quasi judicial manner so that the exercise of the power of eminent domain by the Government becomes amenable to the controlling jurisdiction of the Court, at least to the extent of the decision on the objections? If the decision of the Government

on the objections is liable to be subjected to the scrutiny of the Court in legal proceedings, such a procedure would in many cases hold up the acquisition proceedings and the Government would by means of protracted litigation be prevented from effectively achieving a public purpose through the acquisition of land. This of course, is a consideration which must not be pressed too far but it is certainly a consideration which cannot be neglected. Another consideration to which we must refer is that arising out of the provision enacted in sub-section (4) of Section 17 under this provision the Government can in the case of any land to which, in the opinion of the Government, the provisions of sub-section (1) or sub-section (2) of Section 17 are applicable, direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4. The net result of this provision is that in the case of any land to which in the opinion of the Government the provisions of sub-section (1) or sub-section (2) of Section 17 apply, the inquiry under Section 5-A can be dispensed with and the Government can proceed to make an order for acquisition of land without giving any opportunity to persons interested in the land to make their objections and without holding any inquiry for the purpose of deciding such objections. We may again ask ourselves the question : if the inquiry were a quasi judicial inquiry intended not for the further information of the mind of the Government but for the purpose of deciding an issue between the objector and the Government, would the Legislature have left it to the sweet will of the Government to dispense with the inquiry and to deprive persons interested in the land of their right to make objections and to have such objections determined in a quasi judicial manner before any order of acquisition could be made by the Government? The provision enabling the Government to dispense with the inquiry can on the other hand be easily explained if the view is taken, that the inquiry is only an administrative inquiry for the purpose of the further information of the Government in order to enable the Government to make up its mind to make an order of acquisition. The inquiry being for further informing the mind of the Government, the Government may very well say in the case of any land to which in the opinion of the Government the provisions of sub-section (1) or sub-section (2) of Section 17 are applicable that it is not necessary to obtain any further information by any such inquiry and may proceed to make an order of acquisition of land at any time after the publication of the notification under Section 4. The provision for the inquiry having been made to assist the Government in coming to a decision, the Government is given the power to dispense with inquiry but that power is limited to the case of land to which in the opinion of the Government the provisions of sub-section (1) or sub-section (2) of Section 17 are applicable. This aspect of the matter also emphasizes the administrative character of the inquiry culminating in the decision of the Government. We may also mention another consideration and it is, that if the decision of the Government on the objections were a quasi judicial decision there would have been some provision in the Act or in the Rules prescribing that the Government should give reasons for the decision or that the decision should be communicated to the objectors. The total absence of any such provision does indicate that the character of the decision is administrative and not quasi judicial. We must, however, point out that this consideration is also a consideration which must not be pressed too far. Standing alone, this consideration would not, in our opinion,

be sufficient to compel us to take the view that the decision of the Government on the objections is an administrative act. It is, however, a consideration which along with other considerations can be taken as indicative of the fact that the Government is not invested with any quasi judicial capacity in considering the objections and that the decision of the Government on the objections is an administrative decision. The present contention of Mr. I. M. Nanavaty must, therefore, be rejected and for the reasons stated above, we must hold that the inquiry under Section 5-A is an administrative inquiry and that the Government is invested with an administrative character in considering the objections and that the decision of the Government on the objections is an administrative act.

34. The result, therefore, is that the petition fails and will be dismissed with costs. Costs will be fixed at Rs. 750/- for each set. There will be separate sets of costs for Respondents Nos. 1 and 2 on the one hand and the third respondent-Society on the other. We are glad to learn that the Government has cancelled the notification dated 14th September 1960 after the matter was argued in Court.
Petition dismissed.