

APPEAL FROM ORIGINAL CIVIL.

Before Mookerjee and Fletcher JJ.

BIPIN BEHARI SEN

v.

TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA.*

Land Acquisition—Application by owner for abandonment of acquisition in consideration of special payment—Rejection of application—Street scheme—Submission of scheme to Government for sanction—Building sites not demarcated—Scheme ultra vires—Calcutta Improvement Act (Beng. V of 1911) ss. 39, 41 and 78.

There is nothing in the Calcutta Improvement Act which compels the Trust to delineate on the plan the building sites before the scheme is submitted to Government for sanction.

The owner of certain premises made an application to the Board of Trustees for the Improvement of Calcutta under section 78 of the Calcutta Improvement Act, for the abandonment of acquisition in consideration of special payment. Such application was subsequently rejected by the Board inasmuch as the disputed property was too small to form an independent building site on a 100 feet main thoroughfare and would not fit in with the lay-out.

Held, that the Board came to the conclusion *bonâ fide* and as there was no evidence to show that the land was not required for the execution of the scheme within the meaning of sub-section (1) of section 78, there was no basis for the application to the Trustees, nor was there any ground for complaint in the suit, for the fact that they made enquiries under sub-section (2) of section 78 did not entitle them ultimately to reject the application on the ground that it did not come within sub-section (1) of that section.

APPEAL by Bipin Behari Sen, the plaintiff, from the judgment of Rankin J.

The Trustees for the Improvement of Calcutta under New Street Scheme No. VII constructed a

* Appeal from Original Civil, No. 83 of 1919, in suit No. 1589 of 1919.

new street known as the Central Avenue and included in the said scheme premises No. 7-1, Jorapukur Lane and No. 41-3, Jeliatola Street which belonged to one Bipin Behari Sen. These two premises did not abut upon the Central Avenue, but were closely adjacent to it being separated therefrom by strips of land. Upon the said scheme being prepared by the Board of Trustees under section 39 of the Calcutta Improvement Act and submitted to the Local Government for approval and upon the same being duly sanctioned by the Local Government the Land Acquisition Collector on behalf of the Government proceeded to acquire both the said premises in the usual manner. Towards the end of August, 1918, Bipin Behari Sen applied in writing to the Trustees in accordance with the provisions of section 78 of the Calcutta Improvement Act, requesting that the acquisition of both the said premises should be abandoned in consideration of the payment by him of a sum to be fixed by the Trustees. On the 2nd September, 1918, Bipin Behari Sen submitted a written application to the Land Acquisition Collector for stay of proceedings pending the final decision of the Trustees in respect of his application under section 78. The proceedings were accordingly stayed by the Land Acquisition Collector. About the end of January, 1919, Bipin Behari Sen received a notice dated the 15th January, 1919, from the Trustees informing him that his application for abandonment had been rejected as the premises were required for the execution of the said scheme. On the 9th and 10th May, 1919, the Collector made awards in respect of the disputed premises respectively. On the 13th June, 1919, Bipin Behari Sen instituted a suit praying for judgment, *inter alia*, that the proceedings for the acquisition of both the disputed premises by or on behalf of the Trustees.

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might be ordered to be finally stayed and the Trustees ordered and decreed to conform to and carry out the provision of section 78 of the Calcutta Improvement Trust Act and abandon the proceedings for the acquisition of the said two premises in accordance with the provisions of that section; for the declaration that the resolution of the Trustees rejecting the plaintiff's application for exemption was illegal and *ultra vires* and void and the same be ordered to be set aside. Mr. Justice Rankin having dismissed the suit, the plaintiff appealed.

The Advocate-General (Mr. T. C. P. Gibbons, K.C.) (with him *Mr. A. K. Ghose* and *Mr. A. K. Deb*), for the appellant. The only question in this case was the construction of section 78 of the Calcutta Improvement Act. The Board wrongly refused exemption. Their reason for refusal was absolutely insufficient. Though it was true that the appellant could not satisfy Mr. Justice Rankin that the land was not required for the execution of the scheme the burden of proof was on the respondents. They had to satisfy the Court that the premises in question originally came within the new street scheme. The conduct of the Board in staying the hand of the Land Acquisition Collector clearly showed that the said premises were not required for the purposes of the scheme, but was an afterthought. The scheme in question was not for re-housing but merely for making the new street. A Street Scheme was the same as an Improvement Scheme: section 2(f) of the Calcutta Improvement Act. The reason they gave was that the Board required the premises in question for the due and proper laying out of the land. The building sites were not demarcated on the plan. The plan submitted to Government should have been a complete plan showing the entire

scheme including the plotting of land for building purposes and Government sanction should have been obtained in respect to such a plan. Government had no power to sanction a scheme not framed in accordance with the Act. Sections 39, 40, 41, 42 and 49 of the Calcutta Improvement Act and *Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh* (1) referred to. In the present case there was no sanctioned scheme on which the Board could find that the appellant's premises interfered with the lay out which must be determined not by the Board of Trustees but by the sanction given by Government. The scheme, therefore, was *ultra vires*.

Mr. S. R. Das and *Mr. Langford James*, for the respondents, were not called upon.

MOOKERJEE J. This is an appeal by the plaintiff in a suit to test the validity of an order made by the Calcutta Improvement Trust rejecting his application for exemption under section 78 of the Calcutta Improvement Act, 1911. The plaintiff made an application on the 31st August, 1918, on the assumption that the land in dispute was not required for the execution of the scheme within the meaning of sub-section (1) of section 78. Reference was, thereupon, made to the Land Acquisition Collector and the Deputy Valuer, and the proceedings for acquisition were temporarily stayed. The Board, after enquiry, came to the conclusion that the land was required for the execution of the scheme and rejected the application. The plaintiff accordingly instituted this suit, for two-fold relief, namely, *first*, "that the proceedings for the acquisition of the said premises No. 41-3, Jeliatola Street and No. 7-1, Jorapukur Lane by or on behalf of the defendants, the Trustees, may be ordered to be finally

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“ stayed and the defendants, the Trustees, ordered and decreed to conform to and carry out the provisions of section 78 in manner stated in the fifteenth paragraph of the plaint and abandon the proceedings for the acquisition of the said two premises in accordance with the provisions of the said section ” ; and, *secondly*, for “ the declaration that the said resolution of the defendants, the Trustees, in so far as it rejected the plaintiff’s said application was and is illegal and *ultra vires* and void and that the same may be ordered to be set aside.”

Mr. Justice Rankin has dismissed the suit on the ground that the plaintiff had failed to satisfy him by evidence that the property was not required for the execution of the scheme. The appellant has contended that the burden of proof should not have been thrown upon him and that in view of the proceedings taken by the Board under section 78, it should have been presumed that the land was not required for the execution of the scheme. Our attention has also been drawn to section 39 of the Act which sets out the circumstances under which a street scheme may be framed, as also to section 41 which sets out the matters required to be provided for in improvement schemes. Section 39 provides that “ whenever the Board are of opinion that, for the purpose of (a) providing building-sites, or (b) remedying defective ventilation, or (c) creating new, or improving existing, means of communication and facilities for traffic, or (d) affording better facilities for conservancy, it is expedient to lay out new streets or to alter existing streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as they may think fit.” Section 41 provides, *inter alia*, that “ every improvement scheme shall provide

“ for (a) the acquisition by the Board of any land, in
 “ the area comprised in the scheme, which will, in
 “ their opinion, be required for the execution of the
 “ scheme ; and (b) the laying out or re-laying out of
 “ the land in the said area.” In the case before us, a
 scheme was prepared by the Board under section 39
 and was submitted to the Government for approval.
 The scheme is not set out in a compact form and it is
 difficult to determine from the various papers embody-
 ing it the precise scope of the scheme ; but this much
 is clear that the scheme was undertaken because the
 Board were of opinion that for the purposes of pro-
 viding building-sites, remedying defective ventilation,
 and creating new, or improving existing, means of
 communication, it was expedient to lay out new
 streets or to alter existing streets in Ward No. VI and
 its neighbourhood. The scheme further stated that
 building-sites would be provided and would be plot-
 ted in accordance with public demand and this was
 supplemented by the observation that generally there
 should be a ready market for plots of from 6 kattas to
 1 bigha. It has been contended by the Advocate-
 General on behalf of the claimant that the scheme
 was *ultra vires*, because building-sites were not de-
 marcated on the plan. We are unable to give effect
 to this contention. We can find nothing in the Act
 which compels the Trustees to delineate on the plan
 the building-sites before the scheme is submitted to
 Government for sanction. In this case, when the
 matter was under investigation by the Board, the
 Assistant Valuer stated that the disputed property was
 too small to form an independent building-site on a
 100 feet main thoroughfare. He recommended ac-
 cordingly that the properties should be amal-
 gamated with neighbouring parcels to form a suitable
 plot. The Board came to the conclusion that this

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view was correct and that if the application were granted, the result would be that the holding would not fit in with the lay-out. The plan placed before us shows that this opinion was reasonable and well-founded. There can thus be no doubt that the Board came to the conclusion *bonâ fide*, and Mr. Justice Rankin correctly held that there was no evidence to show that the land was not required for the execution of the scheme, within the meaning of sub-section (1) of section 78. Consequently, there was no basis for the application to the Trustees; nor is there any ground for complaint in this suit, for the fact that they made enquiries under sub-section (2) of section 78 does not disentitle them ultimately to reject the application on the ground that it does not come within sub-section (1) of that section.

The result is that the decree of Mr. Justice Rankin is affirmed and this appeal dismissed with costs.

FLETCHER J. I agree.

Appeal dismissed.

O. M.

Attorneys for the appellant : *Watkins & Co.*

Attorneys for the respondents : *Morgan & Co.*