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—  
BHIDE J.

For reasons given above, the suggested interpretation of the word 'pre-emptor' as used in section 17 of the Punjab Pre-emption Act seems to me to be untenable. In my opinion the plaintiff is not a 'pre-emptor' within the meaning of that section and is, therefore, not entitled to share the property equally with the second vendee. His suit should, therefore, be dismissed. I would answer the second question accordingly.

N. F. F.

### LETTERS PATENT APPEAL.

*Before Broadway and Agha Haidar JJ.*

MUNICIPAL COMMITTEE, DELHI

(DEFENDANT) Appellant

*versus*

MST. CHAMBELI (PLAINTIFF) Respondent.

Letters Patent Appeal No. 124 of 1929.

*Punjab Municipal Act, III of 1911, sections 172, 188 (as amended by the Punjab Municipal (Amendment) Act, I of 1925)—Sanction to build—whether can be made subject to conditions—Section 188, clause (u)—applicability of—in absence of bye-laws.*

The plaintiff intending to build a verandah over a *chhajja* in the second storey of her house, a part of which would project over the street, applied to the Municipal Committee for permission to do so. The Municipal Committee granted the permission subject to the two conditions, *viz.* (1) that the plaintiff should pay rent and (2) that she should execute an agreement to the effect that she would remove the verandah without any compensation whenever the Committee required her to do so. Plaintiff built the verandah without executing the agreement. The Municipal Committee then issued a notice under sections 172 and 195 of the Punjab Municipal Act, requiring her to remove the verandah projecting over the street or in the alternative to comply with the conditions subject to which the permission to build had been

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granted. The plaintiff thereon brought the present suit for an injunction restraining the Committee from taking any action respecting the verandah.

*Held*, that the conditions laid down by the Municipal Committee while granting the sanction to build were *ultra vires*.

The Committee under section 172 of the Punjab Municipal Act, could have refused the permission if it had thought fit to do so, but having once decided to grant the same, it could not put any conditions or limitations around it.

*Held also*, that the Committee could not avail itself of the provisions of the amended clause (v) of section 188 of the Act, as it did not make the necessary bye-laws which it was empowered to do under the section.

*Municipal Committee, Ludhiana v. Ahad Shah (1), and Brijbehari Lal v. Chairman of the Municipality, Daltangunj (2)*, referred to.

*Appeal under Clause 10 of the Letters Patent from the judgment of Dalip Singh, J., dated 17th May 1929.*

RAJ NARAIN, and MEHR CHAND MAHAJAN, for Appellant.

BHAWANI SINGH PURI, for Respondent.

AGHA HAIDAR J.—The facts of the case out of AGHA HAIDAR J. which this Letters Patent appeal arises are as follows:—

*Mussammatt Chambeli* had a *chhajja* and she intended to build a verandah over it in the second storey of her house. The total breadth of the verandah was to be three feet, and, as the breadth of the old *chhajja* was one foot and eight inches and it extended over the private property of the lady, the projection over the street was one foot and four inches only. On

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(1) (1919) 51 I. C. 831.

(2) (1921) 63 I. C. 355.

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the 4th of October, 1926, *Mussammat* Chambeli made an application to the Municipal Committee for permission to build this new verandah. The Municipality granted the permission but made it subject to the following conditions:—

(1) that the applicant, *Mussammat* Chambeli would pay rent in respect of the verandah in so far as it extended over the street and

(2) that she would execute an agreement to the effect that she would remove the verandah without any compensation whenever the Municipal Committee required her to do so.

That permission, which formed the subject of a resolution, was communicated to *Mussammat* Chambeli some time in November, 1926. She, however, built the verandah but failed to execute the agreement which was required by the Municipal Committee. Upon this the Municipal Committee issued a notice under sections 172 and 195 of the Punjab Municipal Act to *Mussammat* Chambeli requiring her to remove the verandah, which was projecting over the street or in the alternative to comply with the conditions subject to which the permission to build had been granted.

On the 10th of January, 1928, *Mussammat* Chambeli, brought a suit against the Municipal Committee, Delhi, for a declaration and permanent injunction restraining the Committee from taking any action as regards the verandah. The two Courts below dismissed the plaintiff's suit. *Mussammat* Chambeli came up in appeal to this Court and a learned Single Judge modified the decree of the Court below and decreed the plaintiff's claim in part by granting the injunction as regards the verandah. The defendant

Municipal Committee has now filed this Letters Patent appeal.

It is argued on behalf of the appellant Municipality that the action of the Municipal Committee was justified by section 170 of the Punjab Municipal Act (1911), in that the Municipal Committee could grant permission subject to such conditions as it might choose to impose, and that it could also charge fees for granting such permission. In my opinion the learned Judge of this Court was perfectly right in holding that section 170 had no application. That section refers to an altogether different state of affairs and certainly had no application to a permanent structure like the verandah which the plaintiff was seeking to build in her house.

The next question for consideration is whether the action of the Municipal Committee was covered by section 172 of the Punjab Municipal Act (1911). Undoubtedly there was a permission granted within the meaning of section 172 of the Act. The only question is whether the Municipal Committee while granting such permission could lay down any conditions as to the payment of rent by the plaintiff and the removal of the structure at any future date in case the Committee so required. After considering the matter carefully, I hold that such conditions were *ultra vires* and the Municipal Committee had no power to put restrictions upon the permission granted by it. It could have refused the permission if it had thought fit to do so, but having once decided to grant the same, it could not put any conditions or limitations around it.

The learned counsel for the Municipal Committee referred to section 188 (u) of the Punjab Municipal

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Act, 1911, as amended by the Punjab Municipal (Amendment) Act, 1925. This clause runs as follows:—

“(u) regulate the conditions on which and the periods for which permission may be given under sub-section (1) of section 172 and sub-section (1) of section 173, and provide for the levy of fees and rents for such permission.”

The argument on behalf of the appellant was that, having regard to this amendment, the Municipal Committee was within its right in imposing the conditions as regards the payment of the rent and the removal of the building at a future date in case the Municipal Committee demanded such removal. But the learned counsel has failed to notice the opening words of section 188 which are as follows:—

“ Any Committee may, by *bye-law*...”. It is clear that in order to avail itself of the amended clause (u) it was incumbent upon the Municipal Committee to implement section 188 by making the necessary bye-laws. It is admitted by the learned counsel for the Municipal Committee that no such bye-laws have been framed. The result, therefore, is that clause (u) is not of any help to the Municipal Committee in the absence of the bye-laws which alone could have conferred powers on the Municipal Committee to impose the conditions, etc., indicated in the amended clause.

There is no direct authority on the point, though a number of cases have been cited on behalf of the respondent. Only two cases may be mentioned here as they have some bearing upon the question under consideration. In *The Municipal Committee of Ludhiana v. Ahad Shah*, (1) the plaintiff had obtained

permission from the Municipality of Ludhiana to build a culvert over a drain in front of his house. The Municipal Committee granted the permission on the condition of the applicant executing an agreement that at the end of ten years he would either apply for fresh permission to maintain the culvert or permit its demolition. The ten years having elapsed and the plaintiff not having applied for fresh permission, the Municipality issued a notice under section 172 of the Punjab Municipal Act calling upon the plaintiff to demolish the culvert or obtain fresh permission to maintain it. It was held that the notice issued by the Municipality was *ultra vires*, and the plaintiff in spite of the fact that he had executed a formal agreement was allowed to maintain his culvert. By a parity of reasoning the action of the plaintiff in the present case can be justified and it can be said on her behalf that the conditions subject to which the permission was granted were *ultra vires*.

There is a case of the Patna High Court which is reported as *Brijbehari Lal v. The Chairman of the Municipality, Daltangunj* (1). It is true that this case dealt with section 237 of the Bengal Municipal Act (III of 1884); but, as the provisions of this section are *in pari materia* with the provisions of section 172, read with section 188 (u), the observations of Couetts J. are instructive. It was observed by the learned Judge that a Municipal Committee, which can sanction a building and impose certain conditions in accordance with the rules which it is empowered to make, cannot, in the absence of such rules, impose such conditions and is bound either to refuse sanction or to grant it unconditionally, and that, where sanction to build is given

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by a Municipality subject to conditions which, in the absence of the rules, are *ultra vires*, such conditions are not binding, and may be disregarded. This principle, in my judgment, applies to the present case and the conditions as regards rent and the execution of an agreement, being *ultra vires* and not binding upon the plaintiff, the conclusions arrived at by Dalip Singh J. in this case are correct.

I would, therefore, dismiss the appeal with costs throughout.

BROADWAY J.

BROADWAY J.—I concur in dismissing the appeal as proposed.

A. N. C.

*Appeal dismissed.*


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**APPELLATE CIVIL.**
*Before Zafar Ali and Dalip Singh JJ.*

HIRA (DEFENDANT) Appellant

*versus*

MST. JAI KAUR (PLAINTIFF) Respondent.

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Dec. 10.

Civil Appeal No. 1026 of 1924.

*Punjab Colonization of Government Land Act, V of 1912, section 21 (a), (b)—Tenancy acquired by a female—applicability of clause (a) of section 21—Collector—duty of—to nominate her successor.*

The land was originally allotted in 1899 to one D. as *abadkar*, who died in 1900, before he had fulfilled the conditions of the grant. Mutation of the land was then entered in the name of *Mst. K.*, his widow, who acquired the "tenancy" rights in 1904. On her death in 1923 there were two claimants to the property, *viz.*, her daughter and the brother of her deceased husband, and the question was whether the case was governed by section 21 (a) or 21 (b) of the Punjab Colonization of Government Land Act, 1912.