

APPELLATE CIVIL.*Before Addison and Abdul Rashid JJ.*

MUNICIPAL COMMITTEE, SIMLA (DEFENDANT)

Appellant

versus

PURAN MAL AND SONS (PLAINTIFFS)

Respondents.

Civil Appeal No. 1755 of 1935.

Punjab Municipal Act, III of 1911 [as amended by Punjab Municipal (Amendment) Act, III of 1933] sections 193, 193-A : Municipal Committee — whether competent to modify a previously sanctioned plan.

The Municipal Committee, Simla, granted sanction for the erection of a building by a resolution, dated 7th April, 1933. On 8th December, 1933 (before the appellant had commenced building operations) the Committee passed a resolution, in pursuance of section 193-A of the Punjab Municipal Act (as amended by Punjab Act III of 1933) modifying the sanctioned plan, the amending Act having come into force on 17th July, 1933. It was contended that the action of the Municipal Committee in modifying the previously sanctioned plan was illegal and *ultra vires*, section 193-A not being applicable to plans sanctioned before the 17th July, 1933.

Held, (over-ruling the contention) that section 193-A empowers the Municipal Committee to modify any plan that has been sanctioned before the 17th July, 1933, or after that date, up to the time of the completion of the building of which the erection has been sanctioned under section 193.

First appeal from the decree of Mr. R. B. Elwin, Senior Subordinate Judge, Simla, dated 17th May, 1935, granting the plaintiffs the declaration claimed.

MEHR CHAND MAHAJAN, JINDRA LAL and YASHPAL GANDHI, for Appellant.

JAGAN NATH AGGARWAL and NAWAL KISHORE, for Respondents.

1936

May 19.

The judgment of the Court was delivered by—

ABDUL RASHID J.—The facts of the case, bearing on the question of law involved in this appeal, may be shortly stated. Puran Mal and Sons, plaintiffs, owned shops Nos.125 to 127 in the Lower Bazar, Simla. In the year 1921, the plaintiffs got a plan prepared for the rebuilding of these shops as the old building had become dilapidated and uninhabitable. According to the new plan, the plaintiffs meant to erect a five storeyed building, two storeys being above the level of the Bazar on the south side. This plan was rejected by the Municipal Committee. From 1921 to 1933, four other applications made by the plaintiffs for erecting a five storeyed building were also rejected. On the 14th of March, 1933, the plaintiffs submitted a sixth application for putting up a five storeyed building. On the 30th of March the Secretary of the Municipal Committee informed the plaintiffs that their application, dated the 14th of March to rebuild shops Nos.125 to 127, Lower Bazar, had been sanctioned. It appears that this sanction was conveyed by the Secretary, Municipal Committee, to the plaintiffs in anticipation of a resolution of the Committee to that effect. This action taken by the Secretary, under the instructions of the Senior Vice-President, was confirmed by the Committee by means of a resolution on the 7th of April, 1933. Major Mukand, I.M.S., Health Officer of Simla, was a tenant of the plaintiffs, and it was on his recommendation that the plan submitted by the plaintiffs for the sixth time for the erection of a five storeyed building was ultimately sanctioned. On the 16th of November a number of shopkeepers of Simla submitted an application to the Secretary of the Municipal Committee raising objections to the sanction granted to the plaintiffs whereby

1936

MUNICIPAL
COMMITTEE,
SIMLA
v.
PURAN MAL
AND SONS.

1936

MUNICIPAL
COMMITTEE.
SIMLA
v.
PURAN MAL
AND SONS.

they were authorised to build an additional storey on shops Nos.125 to 127. This application pointed out that if the plaintiffs were permitted to build an additional storey, the applicants would be deprived of most of the light, air and sunshine that they were enjoying and that the locality would become highly insanitary. At the time of the making of this application the plaintiffs had not yet demolished their old building, and consequently no building operations had been started with respect to the new building. On the 8th of December the Simla Municipal Committee passed a resolution to the effect that, in pursuance of the provisions of Section 193-A of the Punjab Municipal Act, 1911, the topmost storey of shops Nos.125 to 127, Lower Bazar, sanctioned by the Municipal Committee on the 7th of April, 1933, be disallowed, and that the sanctioned plan be modified accordingly. On the 11th of December a copy of this resolution was sent to the plaintiffs by the Secretary. It may be mentioned that the Punjab Municipal Act, 1911, was amended by Act III of 1933, and the amended Act had come into force on the 17th of July, 1933. Section 193-A referred to in this resolution was introduced into the Punjab Municipal Act by the Amending Act of 1933. The plaintiffs preferred an appeal to the Commissioner, Ambala Division, against the resolution of the Municipal Committee, dated the 8th of December, 1933, whereby the building of the topmost storey had been disallowed. This appeal was rejected on the 17th of March, 1934. On the 29th of May, 1934, the plaintiffs instituted the present suit for a declaration that the action of the Municipal Committee in modifying the plan by its resolution, dated the 8th of December, 1933, was illegal and *ultra vires* and not binding on the plaintiffs, and for an

injunction restraining the Municipal Committee from preventing the plaintiffs from building the topmost storey, and in the alternative the plaintiffs claimed Rs.10,000 by way of compensation for the loss that they would suffer on account of the disallowance of the building of the topmost storey. The trial Court gave the plaintiffs a declaration to the effect that the action of the Municipal Committee in modifying the sanction already given by its resolution, dated the 8th of December, 1933, was illegal and *ultra vires*. The suit, regarding compensation and injunction, was dismissed. Against this decision the Municipal Committee of Simla has preferred an appeal to this Court.

The sole question for consideration in this appeal is whether section 193-A empowers the Municipal Committee to modify the plans which had been sanctioned before the 17th of July, 1933, the date on which the Amending Act (Act III of 1933) came into force. Section 193-A which was inserted by the Amending Act runs as follows:—

“ If at any time before the completion of a building of which the erection has been sanctioned under section 193, the Committee finds that any modification of the sanctioned plan is necessary the Committee may subject to compensation for any loss to which the owner may be put direct that the building be modified accordingly.”

The trial Court has held that as this section did not exist in the Punjab Municipal Act as it stood before the 17th of July, 1933, this section does not apply to plans that were sanctioned before the 17th of July, 1933. The basis of the decision of the trial Court is that legislation which affects vested rights must be held to be prospective and not retrospective in

1936

MUNICIPAL
COMMITTEE,
SIMLA
v.PURAN MAL
AND SONS.

1936

MUNICIPAL
COMMITTEE,
SIMLA
v.
PURAN MAL
AND SONS.

its operation, and that section 193-A cannot, therefore, affect vested rights that had come into being before the 17th of July, 1933. In our opinion, the decision of the trial Court is unsustainable. Every owner of land has the right to erect buildings thereon. The Punjab Municipal Act merely restricts the undoubted right of the owner of erecting a building on his own land by providing that the owner of the land can erect buildings only with the sanction of the Municipal Committee and subject to the conditions laid down in the resolution conveying the sanction. Section 193 of the Act by granting sanction to the owner of the land to erect buildings thereon does not create any vested rights. Section 194 of the Punjab Municipal Act lays down that every sanction for the erection or re-erection of any building given by the Municipal Committee shall remain in force for one year from the date of such sanction. The sanction lapses one year after the grant thereof. It cannot be said that a vested right had been created by the grant of sanction and that that vested right had disappeared by lapse of time.

In our opinion, the opening words of section 193-A make it perfectly clear that the Municipal Committee has the power to modify any plan that has been sanctioned up to the time of the completion of the building of which the erection has been sanctioned under section 193. As the Act stood before the amendment, section 193 dealt with the sanctioning of plans. After the amendments made in 1933, section 193 continues to deal with sanctions regarding the erection of buildings. A reference in section 193-A to section 193 does not, therefore, show that section 193-A is restricted in its applicability to plans sanctioned under section 193 as amended in 1933. In this

view of the matter no question arises as to the retrospective or prospective operation of section 193-A. In our opinion, therefore, the plan of any building whether sanctioned before the 17th of July, 1933, or after that date is liable to be modified by the Municipal Committee under section 193-A, at any time before the completion of the building. After the completion of such building the Municipal Committee cannot in any way modify or alter the sanctioned plan.

Reference was made by the learned counsel for the respondents to Maxwell on the Interpretation of Statutes and *The Colonial Sugar Refining Company v. Irving* (1) and *Ata-ur-Rehman v. Income Tax Commissioner, Lahore* (2). The two rulings relied upon by the learned counsel merely lay down that the right of appeal is a vested right and cannot be taken away by legislation which comes into operation after the right has accrued unless there is a definite provision in the new legislation to that effect. These rulings and the observations in Maxwell relied upon by the learned counsel for the respondents have no applicability to the facts of the present case.

For the reasons given above, we hold that the resolution of the Municipal Committee, dated the 8th of December, 1933, modifying the previously sanctioned plan was not illegal or *ultra vires*. We, therefore, accept this appeal, set aside the judgment and the decree of the Court below, and dismiss the plaintiffs' suit. The plaintiffs-respondents will pay the costs incurred by the defendant-appellant in the trial Court. Parties will bear their own costs in this Court.

A. N. C.

Appeal accepted.

(1) 1905 A. C. 369.

(2) 1934 A. I. R. (Lah.) 1013.

1936

MUNICIPAL
COMMITTEE,
SIMLA
v.
PURAN MAL
AND SONS.