

such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47.

That, however, does not, we think, involve the conclusion that a suit cannot be filed upon the contract created by the surety bond.

We therefore agree with the learned Subordinate Judge in thinking that this suit will lie.

Then it is contended that the Rs. 10,000, the recovery of which is the object of the suit, is not money realized in execution and therefore the sureties are not liable to restore it.

It is to be observed, however, that the sureties do not confine their liability to money realized in execution, but they contract that the plaintiff Mohansangji shall give back to the defendants the whole of the moveable property of which the plaintiff may have come in possession. These words cover, in our opinion, the Rs. 10,000. We affirm the decree and dismiss the appeal with costs.

*Decree affirmed.*

G. B. R.

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## APPELLATE CIVIL.

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*Before Mr. Justice Chandavarkar and Mr. Justice Hayward.*

CHUNILAL VIRCHAND (ORIGINAL PETITIONER), APPELLANT, v. THE AHMED-  
ABAD MUNICIPALITY (ORIGINAL OPPONENT), RESPONDENT.\*

*Bombay District Municipal Act (Bombay Act III of 1901), section 160†—Municipality—Compulsory acquisition of land—Compensation—Arbitration—Decision of District Court—Appeal—High Court—Construction of statutes.*

No appeal lies from the decision of a District Court under clause (3) of section 160 of the Bombay District Municipal Act (Bombay Act III of 1901).

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\* First Appeal No. 200 of 1910.

† The section runs as follows:—

160. (1) If a dispute arises with respect to any compensation, damages, costs or expenses which are by this Act directed to be paid, the amount, and if necessary, the apportionment of the same, shall be ascertained and determined

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Where a statute creates a right not existing at common law and prescribes a particular remedy for its enforcement, then that remedy alone must be followed.

*Wolverhampton New Waterworks Co. v. Hawkesford*(1), followed.

APPEAL from the decision of Dayaram Gidumal, District Judge of Ahmedabad.

The Municipality of Ahmedabad acquired compulsorily some lands belonging to Chunilal Virchand (the applicant).

The applicant applied to the District Judge of Ahmedabad, under section 160 of the Bombay District Municipal Act, 1901, to fix compensation for the land.

The District Judge made an inquiry and fixed the compensation at Rs. 1,015-13-4.

The applicant appealed to the High Court against the decision.

At the hearing, a preliminary objection was raised on behalf of the respondent that no appeal lay.

ly a panchayat of five persons, of whom two shall be appointed by the municipality, two by the party (to or from whom such compensation, damages, costs or expenses may be payable or recoverable) and one, who shall be sir-panch, shall be selected by the members already appointed as above.

(2) If either party, or both parties fail to appoint members, or if the members fail to select a sir-panch within one month from the date of either party receiving written notice from the other of claim to such compensation, damages, costs or expenses, such members as may be necessary to constitute the panchayat shall be appointed, at the instance of either party, by the District Judge.

(3) In the event of the panchayat not giving a decision within one month from the date of the selection of the sir-panch, or of the appointment by the District Court of such members as may be necessary to constitute the panchayat, the matter shall, on application by either party, be determined by the District Court which shall, in cases in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court :

Provided that—

- (a) no application to the Collector for a reference shall be necessary, and
- (b) the Court shall have full power to give and apportion the costs of all proceedings in any manner it thinks fit.

*L. A. Shah*, for the respondent, in support of the preliminary objection :—The order is passed under clause (3) of section 160 of the Bombay District Municipal Act (Bombay Act III of 1901) ; and no appeal lies against it. Section 54 of the Land Acquisition Act (I of 1894) does not apply, as a right of appeal is not a matter of procedure. The right is the creation of statute and must be expressly given. See *Narayan Ballal v. Secretary of State for India*<sup>(1)</sup> ; and *Poona City Municipality v. Ramchandra*<sup>(2)</sup>.

*G. N. Thakore*, for the appellant :—Under section 81 of the earlier District Municipal Act (Bombay Act VI of 1873) the order passed was appealable. See *The Collector of Poona v. Ramset*<sup>(3)</sup>. The present section 106 makes no difference as regards the right of appeal, as the word “proceedings” is wide enough to include the right of appeal. Further, section 54 of the Land Acquisition Act (I of 1894) applies, which gives a right of appeal. Again, the order awarding compensation is a decree and as such is appealable. Refers to *Meenakshi Naidoo v. Subramaniya Sastri*<sup>(4)</sup>.

CHANDAVARKAR, J. :—The preliminary question arising in this case is, whether there is an appeal from the decision of a District Court under clause (3) of section 160 of the Bombay District Municipal Act (Bombay Act III of 1901).

That section provides a remedy for the determination of the amount of compensation, to which a person becomes entitled under clause (3) of section 92 of the Act, by reason of his land forming part of a public street and becoming vested in the Municipality in virtue of the last portion of the first clause of that section. Both the right to compensation and the remedy for the determination and apportionment of its amount are given by the Act itself ; so the right must be asserted and the remedy pursued only in the manner and upon the conditions prescribed by the Act. This is on the well known rule of law that, where a statute creates a right not existing at common

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(1) (1895) 20 Bom. 803.

(2) (1908) 10 Ecm. L. R. 617.

(3) (1876) P. J. 139.

(4) (1887) L. R. 14 I. A. 100.

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law and prescribes a particular remedy for its enforcement, then that remedy alone must be followed: per Willes, J., in *Wolverhampton New Waterworks Co. v. Hawkesford*<sup>(1)</sup>.

The question then is, whether section 160 of the Bombay District Municipal Act, which constitutes the District Court the tribunal for the determination of the amount of compensation, gives a remedy by way of appeal from that Court's order made under clause (3) of that section. If that section does not give the right, it is admitted that there is no other section in the Act which gives it. A right to appeal cannot be assumed "in every matter which comes under the consideration of a Judge; such right must be given by statute or by some authority equivalent to a statute": *Meenakshi Naidoo v. Subramaniya Sastri*<sup>(2)</sup>. In terms section 160 does not provide an appeal. Nor can it be said that it is provided by necessary implication. Clause (1) of the section directs that the amount of compensation shall be determined in the first instance by a panchayat appointed by the parties. Clause (2) provides that if they fail to appoint, the District Judge shall make the appointment at the instance of either party. It is not, and can hardly be, contended that where a panchayat, appointed under either of the said clauses, has determined the amount of compensation, its award can be questioned by way of appeal to a Court of law. Clause (3) of the same section provides that if the panchayat appointed under either clause (1) or clause (2) fails to give a decision within the period fixed in the clause, the District Court shall determine the amount on application by either party. It will thus be seen that the Court in question comes in as a substitute for the panchayat where adjudication by the latter has failed. What applies to the latter in the matter of appeal must apply, therefore, to the former, on the principle of the legal maxim "*noscitur a sociis*." So far the necessary implication in section 160 is against a right of appeal.

Further, clause (3) of section 160 directs that the District Court shall "follow as far as may be the procedure provided by the Land Acquisition Act (1 of 1894)" in determining the

(1) (1856) 6 C. B. N. S. 336.

(2) (1887) L. R. 14 I. A. 160 at p. 165.

amount of compensation. That means that only those provisions of the latter Act apply to the proceedings before the District Court, which regulate its procedure in land acquisition cases. The said provisions do not include, but stand apart from, the provision relating to an appeal against an award made by a District Court under the Land Acquisition Act. The right to appeal from the award is specifically given by section 54 of that Act. That section is, therefore, excluded from the purview of section 160 of the Bombay District Municipal Act.

There are two provisos to clause (3) of this latter section. The first says that no application to the Collector for a reference to the District Court of the question as to the amount of compensation, such as is required under the Land Acquisition Act to give jurisdiction to that Court in land acquisition cases, shall be necessary where the same Court has to determine the amount of compensation under the said clause (3). By this proviso section 18 of the Land Acquisition Act, which would have otherwise applied to the proceedings before the District Court under that clause as part of the procedure to be followed, is made inapplicable to those proceedings. So, again, the second proviso to clause (3) of section 160 says that the District Court "shall have full power to give and apportion the costs of all proceedings in any manner it thinks fit." But for this proviso, section 27 of the Land Acquisition Act, which points out how the District Court shall make an order as to costs in land acquisition cases, would have applied to the proceedings before the District Court under clause (3) of section 160 of the Municipal Act as part of its procedure. So careful has the Legislature been to limit the application of the provisions of the Land Acquisition Act to the proceedings in the District Court under clause (3) of section 160 of the Municipal Act that the implication is distinctly against a right of appeal from any decision of that Court made under that clause.

It was contended before us by the learned pleader for the appellant that such right existed under the Code of Civil Procedure because that Code gave an appeal against a decree of every Court. But it is taking a long stride in logic to infer from that that there is an appeal from an order made by the

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District Court under clause (3) of the Bombay District Municipal Act. An order made under the said clause is not a decree, because it is made, not under the ordinary civil jurisdiction, but under a special jurisdiction created by a special Act, and that Act does not say that such an order is a decree.

This conclusion is supported by the decision of the Judicial Committee of the Privy Council in *Meenakshi Naidoo v. Subramaniya Sastri*<sup>(1)</sup>, on the construction of a somewhat similar section (section 10) in Act XX of 1863, which relates to the management of religious endowments. That Act provides for the supplying of vacancies among the members of Temple Committees by election; where the election fails, it says, "the Civil Court, on the application of any person, may appoint a person to fill the vacancy." It was held that an order by the Civil Court made under that provision was not appealable, because there was nothing in the provisions which conferred a right of appeal. With reference to the argument that though the Act gave no such right it must be found in the general law, *i. e.*, the Code of Civil Procedure, their Lordships held that an order under section 10 of Act XX of 1863 was not a decree within the meaning of the Code (Act X of 1877 as modified by Act XII of 1879), because a decree was defined to mean "a formal expression of an adjudication upon any right, claim, or defence, set up in a Civil Court where such adjudication decides the suit or the appeal." "In the opinion of their Lordships, there was no civil suit respecting the appointment" made by the Court under section 10 of Act XX of 1863. In the present Code (Act V of 1908) a decree is defined to mean an adjudication in a suit. A proceeding under clause (3) of section 160 of the Bombay District Municipal Act is initiated, not by suit, but by application, and a decision passed in it is at best an award on the analogy of the Land Acquisition Act, so far as the provisions of the latter apply to the former.

For these reasons this appeal must be dismissed with costs, on the ground that it does not lie.

*Appeal dismissed.*

R. R.

(1) (1887) L. R. 14 I. A. 160.