

the sale of ornaments seems to me to be a pure invention. I am inclined to think that Ganeshmal was paid out of the Rs. 6,000 borrowed from the plaintiff.

I, therefore, pass judgment for the plaintiff against both defendants for Rs. 6,000 with interest thereon at the rate of six per cent. per annum from May 23, 1920, costs and interest on judgment at six per cent.

The findings on the issues will be: No. (1)—In the affirmative. No. (2)—In the affirmative.

Solicitors for plaintiff: Messrs. *Purnanand, Clubvalla and Jasubhai.*

Solicitors for defendant No. 2: Messrs. *Payne & Co.*

*Suit decreed.*

R. R.

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### PRIVY COUNCIL.

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KHANDERAO VITHOBA KORE, SINCE DECEASED (PLAINTIFF) v. THE MUNICIPAL CORPORATION OF BOMBAY AND ANOTHER (DEFENDANT).

[On Appeal from the High Court at Bombay.]

*Bombay Municipality—Land acquisition—Laying out and improvement of streets—Power to acquire additional land—Recoupment—City of Bombay Municipal Act (Bombay Act III of 1888), section 296.*

Under section 296 of the City of Bombay Municipal Act, 1888, the Municipal Commissioner, in laying out a new public street or in the improvement of a street, has power to acquire land outside the intended regular line of the street, provided it is in contiguity therewith, although it is acquired merely with a view to recoupment of the cost of the work by reselling. The exercise of the power is subject to section 91 under which it is within the discretion of the Government whether proceedings for compulsory acquisition should be ordered.

Judgment of the High Court affirmed.

\**Present*: Lord Dunedin, Lord Phillimore, Sir John Edge, Mr. Ameer Ali and Sir Lawrence Jenkins.

1923.

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SAREMAL  
PUNAMCHAND  
v.  
KAPURCHAND

J C.

1923.

October 19.

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1923.

APPEAL (No. 61 of 1922) from a decree of the High Court, dated October 21, 1920.

KHANDERAO  
VITHOBA  
v.  
THE  
MUNICIPAL  
CORPORATION  
OF BOMBAY.

The suit was brought in the High Court by the deceased appellant on behalf of himself and other owners of property in the Mahim District in the City of Bombay against the respondents, the Municipal Corporation and the Municipal Commissioner. He prayed for a declaration that the defendants were not entitled under the City of Bombay Municipal Act, 1888, to acquire compulsorily the property of the said landowners.

The suit was brought in consequence of notices served by the Corporation in connection with the proposed extension of a road and the widening of another road in the Mahim District. The Corporation had resolved to acquire, in addition to land required for the actual work of extension and widening, a large area of land outside the regular line or intended regular line of the streets. The present appeal related to land so situated.

The defendants, by their written statement, pleaded that it seemed expedient to the Corporation to acquire the said land, and that they had power to do so under section 296 of the Act, the material terms of which are set out in the judgment of the Judicial Committee.

The suit was heard by the Chief Justice (Sir Norman Macleod) and Fawcett J. and was dismissed. The learned judges were of opinion that considering section 296 together with sections 90, 91 and 92 the Commissioner had power to acquire frontages whenever they honestly, and on reasonable grounds, considered that to do so was expedient.

1923, October 19.—*De. Gruyther K. C.* and *Kenworthy Brown*, for the appellant's representatives.

*Sir George Lowndes K. C.* and *E. B. Raikes*, for the respondents.

October 19. The judgment of their Lordships was delivered by

LORD DUNEDIN.—In this case the question arises upon what is proposed to be done by the Municipality of Bombay in connection with a projected improvement of a public street. The Municipality propose in improving a certain street, not only to widen it, but to take a certain amount of extra ground contiguous to, but beyond, the actual limits of the widened street, with the avowed intention of erecting new buildings thereon and afterwards reselling the land with the buildings upon it. The powers of the Municipality with regard to this matter are dealt with in section 296 of the City of Bombay Municipal Act, 1888, which is as follows :—

“(1) The Commissioner may, subject to the provisions of sections 90, 91 and 92—(a) acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street or of making any new public street and the buildings, if any, standing upon such land; (b) acquire, in addition to the said land and the buildings, if any, standing thereupon, all such land, with the buildings, if any, standing thereupon, as it shall seem expedient for the corporation to acquire outside of the regular line, or of the intended regular line, of such street; (c) lease, sell, or otherwise dispose of any land or building purchased under clause (b).”

Reference has been made to certain cases, but it is perfectly clear that in cases of this sort each must be determined upon its own circumstances, and its circumstances consists first and foremost of the precise terms of the Act in question and, secondly of the thing which is proposed to be done: In one sense no other case is an authority; but at the same time certain principles have been very clearly laid down by this Board in the

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case of *Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh*<sup>(1)</sup>. In that case what was proposed to be done was similar to what is proposed to be done in the present case, that is to say, the land was going to be acquired for the purposes of future sale and, if prices realised their expectancy, part of the expense to which the municipality had been put would be recouped. Section 42 of the Calcutta Improvement Act, 1911, provided :—

“ Any improvement scheme may provide for—(a) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be affected by the execution of the scheme.”

Lord Parmoor, in delivering the judgment of their Lordships, says :—

“ It is not immaterial to observe that there was at the date of the passing of the Calcutta Improvement Act no novelty in the recoupment principle<sup>(2)</sup>.”

Then he cites *Galloway v. London Corporation*<sup>(3)</sup> and continues :—

“ But whether this principle has been sanctioned in the Calcutta Improvement Act must be determined on the language used, and the case of *Donaldson v. South Shields Corporation*<sup>(4)</sup> shows, if authority is necessary, that where an Act authorises land to be taken for the actual works only, a local authority, or other public body, will be restrained from taking more than is actually necessary for such works.”

Their Lordships have no doubt that that is the correct principle. One, therefore, has to find in the Act something more than the mere possibility of acquiring land for the purposes of the improvement where it is proposed to do what is proposed to be done in this case. When their Lordships come to this Act they find that the case is *a fortiori* of the *Calcutta Case*<sup>(1)</sup>. It appears to their Lordships that it is clear beyond all doubt, not only that the Municipality may

(1) (1919) 47 Cal. 500 ; L. R. 47

I. A. 45.

(2) 47 Cal. 500, 511; L. R. 47

A 45, 53.

(3) (1866) L. R. 1 H. L. 34.

(4) (1899) 68 L. J. Ch. 162.

acquire land for the purpose of making a street, but that they may acquire, if it seems expedient, land outside the regular line of such street. If the matter had ended there it might have been said that the land outside the street was only meant to form an appendage to such street; but then comes clause (c) which says: that they may "lease, sell, or otherwise dispose of any land or building purchased under clause (b)". This seems to their Lordships to point to recoupment with almost the greatest certainty that could be expressed in words. The powers no doubt are drastic, but they are not altogether untrammelled, because when section 91, which is one of the sections to which section 296 is subject, is looked at, it is found that if the Commissioner is unable to acquire any property by agreement Government may in their discretion upon the application of the Commissioner made with the approval of the Standing Committee order proceedings to be taken for compulsory acquirement; so that in the discretionary power of the Government would always be found a certain limitation over and above the limitation which their Lordships think necessarily follows from the fact that what is done must be done in the course of making or widening the street, for it appears to their Lordships that the Municipality certainly could not take land which was not in contiguity. Their Lordships think that this result would follow notwithstanding any of the somewhat more vague words which are used in the earlier sections of the Act.

In these circumstances their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitors for appellant: Messrs. *Hughes & Sons.*

Solicitors for respondents: Messrs. *Sandersons & Orr Dignams.*

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KHANDERAO  
VITTHOBA  
2.  
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