ORIGINAL CIVIL.

Before Mr. Justice Stephen.

RAM LALL MISTRY*

v.

R. T. GREER.

1904

June 13.

Compensation—Demolition—Epidemic Diseases Act 1897 (III of 1897) s. 4, words "done or intended to be done" meaning of—Plague Regulations A, cl. 2, 14.

The words "done or intended to be done" in Epidemic Diseases Act, 1897, s. 4, do not include omissions.

Jolliffe v. *Wallasey Local Board*(1) explained and distinguished.

A Magistrate, who omits to pay adequate compensation in respect of property demolished under the Act is personally liable and an action will lie against him in respect thereof even though he may have acted in his administrative capacity as Chairman of the Calcutta Corporation under clause 2 of Plague Regulation A.(2)

The Magistrate's decision as to the amount of compensation to be accorded is not final and can be reviewed by the Courts.

ORIGINAL SUIT.

This was a suit to recover from the defendant compensation for certain buildings demolished by him under cl. 14 of Plague Regulation A(2), issued under the provisions of the Epidemic Diseases Act, 1897 (III of 1897), together with damages for the same and other incidental relief.

The plaintiff was served with notice under clause 14 of the above mentioned regulation by the defendant, the Chairman of the Calcutta Corporation, acting as the Magistrate under clause 2, informing him that the premises specified in the notice were dangerous to the public health and should be demolished, and that adequate compensation would be paid in due course.

It was pointed out to the defendant that two of the structures specified in the notice were not huts or temporary buildings of

* Original Civil Suit No. 800 of 1902.

(1) (1873) 9 C. P. 162.

(2) Calcutta Gazette 1900. Part I, page 1144.

1904

RAM LALL MISTRY v. R. T. GREER.

the kind mentioned in clause 14 of the Plague Regulation, but in part pucca buildings, the actual cost of which had been Rs. 9,200, and an offer was made to accept that sum by way of compensation The defendant replied that the value of the structures had been assessed by the assessor to the Corporation, whose valuation was in the defendant's opinion fair and reasonable, and that the amount, which was not specified, would be paid after the demolition of the buildings.

The amount of the valuation was never communicated to the plaintiff, who was therefore unable to consider whether it would be adequate compensation for the demolition of his property, and therefore brought this suit against the defendant for compensation and damages.

The following points arose on a preliminary argument as to whether the defendant was personally liable for omission to pay compensation to the plaintiff, *viz*, whether he was protected by s. 4 of the Epidemic Diseases Act for all acts done under that Act and further whether his decision as to the amount of compensation to be awarded was final.

Mr. Sinha (*Mr. J. E. Bagram* with him) for the defendant.

The suit is not maintainable. S. 4 of the Epidemic Diseases Act, 1897, expressly lays down that no suit shall lie against any person for anything done or in good faith intended to be done under that Act.

[STEPHEN J. That does not include an act of omission; here there is an omission to pay compensation.]

The words done or intended to be done include acts of omission on the part of a public body.

Jolliffe v. *Wallasey Local Board*(1). The suit should in any case have been brought against the Secretary of State, not against the defendant.

[STEPHEN J. But payment is to be made out of Municipal funds under cl. 21 of Plague Regulation A.]

The amount to be paid is determinable by the Magistrate only, and his decision is final. The defendant cannot therefore be liable.

(1) (1873) 9 C. P. 162.

1904

RAM LALL MISTRY v. R. T. GREER.

Under the Regulation there is no machinery provided by which compensation is to be awarded by anybody other than the Magistrate, see clause 14. His decision is final, but it does not follow from this that the person to be sued is the Magistrate. It could never have been the intention of the Legislature that the Magistrate should be personally liable for anything done under the Act, especially such an act as this. I admit *Bentley* v. *The Manchester, Sheffield and Lincolnshire Railway* is against me(1). (Refers to Glen's Public Health Act p. 674). There is no machinery under the Act by which the Magistrate's decision as to the adequacy of compensation can be reviewed.

In any event the plaintiff can only get compensation, not damages.

Mr. Dunne (*Mr. Chakravarty* with him) for the plaintiff. There can be no doubt the Chairman is liable, *see* s. 2 (1), Epidemic Diseases Act, 1897, cl. 14 and 19, Plague Regulation A. These clauses do not leave to him the decision as to adequacy of compensation. There is nothing in the Act, which contemplates the Chairman's assuming the functions of a Court to determine how much compensation should be allowed. He cannot be the sole authority to assess. There is a bare statutory obligation on him to do it.

In this case he has been guilty of an omission to pay compensation, and it is contended that he is personally liable.

STEPHEN J. In this case the defendant has, acting under the provisions of the Epidemic Diseases Act of 1897, destroyed the property of the plaintiff. I need not now consider the facts of the case, but three points of law have been raised before me.

In the first place, is the defendant protected under section 4 of the Act, which provides in the ordinary form that "no suit or other legal proceeding shall lie against any person for anything done, or in good faith intended to be done, under this Act." The defendant is the Chairman of the Calcutta Corporation, and consequently under the rules framed under the Act, he is the

(1) (1891) L. R. 3 Ch. 222.

1904

RAM LALL MISTRY v. R. T. GREER.

Magistrate, who is to enforce them. See Rule 2, Plague Regulation A, dated 8th October 1900, in the Calcutta Gazette, 17th October 1900, page 1144.

It is plain that the provision in section 4 of the Act is intended in the first place to protect a person in the defendant's position against liability for irregularities that may occur in the proper performance of his duties under the Act, *e.g.*, the demolition of a hut under Rule 14, though disinfection could in fact have been satisfactorily effected otherwise. On any reasonable construction of the Act, he is also entitled to a similar protection against any omission in the performance of such a duty, *e.g.*, an omission to take steps for the safe-guarding of property in the hut, or the protection of the public, which it would be his duty to take, if he were proceeding in a more leisurely way.

But after he has carried out his duty under Rule 14, another quite distinct duty is thrown on him, namely, to pay adequate compensation under Rule 14; and I cannot suppose the protection afforded to him by section 4 of the Act can extend to an omission to perform this duty. The case of *Jolliffe* v. *Wallasey Local Board*(1) has been quoted to show that the defendant is not liable to a suit for omission of any duty cast on him under the Act. I do not, however, consider that this is what it decides. What it does decide is that, where a certain public duty or act is to be performed in a certain way, an omission to do that is "an act done or intended to be done" within the meaning of a clause requiring notice of action, and I consider that it has consequently no application to the present case. I hold therefore that section 4 gives the defendant no ground of defence that that section applies. Non-payment is not an omission within section 4 of the Act.

The second question is whether the defendant is personally liable. To my mind it is clear that that duty of paying adequate compensation (and the only question here is whether the compensation he has offered to pay is adequate) is cast upon him. The words are he "shall" pay; and if he does not pay, I do not see how anybody, but he, can be liable. It is true that the

(1) (1873) L. R. 9 C. P. 162.

expenses may be recovered from the Municipal funds, but the man, who has suffered damages, has to look to the defendant for compensation, and it is for the defendant to pay it.

I cannot imagine that any action can lie, as it is suggested it may, against the Chairman or Treasurer of the Calcutta Corporation. Under section 21 of the Regulations, the only liability cast upon them is that all expenses which are to be incurred by the Magistrate are to be met out of their fund; but their liability is to the Magistrate, and there is no privity between them and the plaintiff.

It is proved that Mr. Greer is a Magistrate acting in his administrative capacity under the Secretary of State, but I know of no principle by which this can exonerate Mr. Greer from liability. I hold therefore that Mr. Greer is personally liable.

The last point is whether Mr. Greer's decision as to the adequacy of the compensation offered is final. There are many instances in Indian as in other legislation where power is given to persons, who would not otherwise have it, to determine finally what compensation is to be paid to persons, who have suffered damage from the carrying out of the provisions of a particular law. It is a well-known common form of legislation. Here no such power is conferred.

There is no Act or Regulation which says that Mr. Greer shall be what is really a judge in his own cause, and in the absence of such legislation, it is plain that the acts of an administrative officer are properly called in question in a Court of law. Therefore this action lies against him.

Attorney for plaintiff: *Charu Chunder Bose.*

Attorneys for defendant: *Sanderson & Co.*

W. T. G.