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and natural sense and so taken they seem to us to cover every fact in this case beyond the reach of argument.

We might add without unnecessarily extending this discussion, that we were also referred to a decision of this Court in the case of *Bhagvant Govind* v. *Kondi valad Mahadu*[1], the facts of which closely resemble the facts before us. It is sufficient to say, however, that so much of that judgment as is relevant for our present purposes is very distinctly disapproved, if not impliedly overruled, by the Privy Council in *Malkarjun's case* (*Malkarjun* v. *Narhari*[2]).

We would, therefore, reverse the decree of the lower appellate Court and restore the decree of the trial Court with all costs upon the plaintiff throughout.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Marten.

1918.

February 19.

VITHAL DHONDDEV RAILKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* THE ALIBAG MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT.*

District Municipalities Act (Bom. Act III of 1901), section 96, sub-sections 1, 2, 3 and 4—Permission to build a privy granted under sub-section (2)—Subsequent order by the Municipality revoking the permission—Legality of the order.

The plaintiff applied to the Municipality on December 1, 1913, for permission to build a privy on his own land. The permission was granted by the Municipality on 22nd December under sub-section 2 of section 96 of the District Municipalities Act, 1901. On January 8, 1914, the Municipality acting on the resolution of the Managing Committee gave notice and passed an order to the plaintiff not to build the privy until further orders. The plaintiff having sued for the cancellation of the order of January 8, 1914, as *ultra vires*,

(1) (1889) 14 Bom. 279. (2) (1900) 25 Bom. 337.

* Second Appeal No. 180 of 1917.

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Held, that the order was not legal in the absence of any power to cancel the permission once granted under sub-section 2 of section 96 of the District Municipalities Act, 1901.

Emperor v. *Kareem Ranjan*[1], followed.

SECOND Appeal against the decision of K. B. Wassoodev, Assistant Judge at Thana, reversing the decree passed by K. G. Palkar, Second Class Subordinate Judge at Alibag.

Suit for cancellation of an order, for injunction and damages.

The plaintiff, a house-owner in Alibag, applied to the Alibag Municipality on December 1, 1913, for permission to build a privy in his compound.

The permission was granted by the Managing Committee by its resolution, dated December 19, 1913, and which was formally communicated to the plaintiff by the Municipality's letter, dated 22nd December.

Subsequently the Managing Committee received complaints about the grant of this permission from the neighbouring owners and the Committee, therefore, resolved on January 6, 1914, to stop the erection of the privy provisionally. The plaintiff was informed of this resolution by the Managing Committee's order, dated January 8, 1914. Since that date, for about six months, the Municipality took no steps in the matter.

On June 6, 1914, the plaintiff gave a notice to the Municipality complaining of the conduct of the Managing Committee. The Municipality at their general meeting on June 16, resolved not to interfere with the orders of the Managing Committee and gave the following reply to the plaintiff: "The plaintiff should apply afresh after first obtaining the permission of the Revenue authorities to build the privy on his land."

(1) (1916) 19 Bom. L. R. 65.

The plaintiff on receipt of this reply filed a suit against the Municipality, for cancellation of the order of the Municipality, dated January 8, 1914, for a declaration that he had a right to construct the privy and for a perpetual injunction restraining the Municipality from preventing the building of the privy. He also prayed for Rs. 5 as damages for loss occasioned to him by his having procured materials for construction.

The defendant Municipality contended *inter alia* that after the plaintiff was given the permission to erect the privy the adjoining house-owners complained that from sanitary point of view the privy would be a nuisance to them; that the Managing Committee on considering the applications passed the resolution, dated January 6, 1914, suspending the work pending further orders; that the resolution of the Committee was approved by the General Body in June 1914; that the Civil Court could not interfere with the proceedings of the Municipality and that the plaintiff had not actually undertaken the work.

The Subordinate Judge allowed the plaintiff's claim holding that the action of the Municipality in revoking provisionally the permission granted to the plaintiff to construct the privy was beyond the powers conferred on it by the District Municipalities Act, 1901. His reasons were :—

"The District Municipal Act, however, does not authorize the Managing Committee to review or modify a permission once granted and it is obvious that the action of the Managing Committee in revoking the permission was *ultra vires*. The order complained of was passed by the Committee on the 8th January 1914 (exhibit 10). Such a provisional order suspending the work could have been passed by it under sub-section (3) only before permission was granted; but even then the Committee could not have stopped the work for a period longer than one month. The Committee's order did not specify any period, but merely suspended the work pending further orders. No further order was passed by it; and it was only when the plaintiff served the Municipality with a notice on the 6th June 1914 (Exhibit 23) that the General

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Body assembled and resolved that the order of the Managing Committee suspending the work could not be cancelled. The reason given for arriving at that decision is somewhat curious (vide Exhibit 12). The applicant was thereby informed that he might again apply for first permission after he had obtained the sanction of the Revenue Authorities to the proposed privy. Now the Chairman of the Municipality in his deposition (Exhibit 24) has clearly stated that it is no business of the Municipality to enquire whether an applicant seeking permission has or has not obtained permission of the Revenue Authorities under the Land Revenue Code. There is nothing on the record of the Municipality to show that the General Committee considered the proposed privy inexpedient on sanitary ground or that the Managing Committee had overlooked that fact when it granted permission to build the privy. In my opinion the Managing Committee had no power to revoke the permission once granted and in doing so it has contravened the provisions of section 96 of the Municipal Act. I am not persuaded to believe that independently of section 96 the Committee had any general powers under the Act to modify its previous order. On the other hand, there is a distinct provision in the Municipal By-laws that it shall not do so. I, therefore, record my finding on the first issue in the affirmative."

On appeal, the Assistant Judge reversed the decree holding that the order of the Managing Committee revoking the original permission was not *ultra vires* and that the plaintiff had lost the right he had obtained to commence the work under sub-section (4) of section 96 of the District Municipalities Act, 1901.

The plaintiff appealed to the High Court.

B. V. Desai, for the appellant:—The permission to build the privy was granted to my client under sub-section 2 of section 96 of the District Municipalities Act, 1901. The order granting the permission under that section was final. The Managing Committee had no power to pass a second order preventing my client from proceeding with the building of the privy until further order was made and this order of the Managing Committee was *ultra vires*. It could not be referred to sub-section (3) of section 96 of the Act as the Municipality could act under that section only before issuing an order under sub-section (2). Once the order

is issued under sub-section (2), sub-section (3) cannot have any operation.

Sub-section (4) has no application to the facts of the present case. My client had already collected materials and workmen to proceed with the work but he had to stop it in compliance with the second order issued by the Municipality.

There is no other provision in the Act which authorises a Managing Committee to cancel an order once granted under sub-section (2). On the other hand, the By-laws of the Alibag Municipality provided that the Managing Committee could not modify or revoke its former order, vide Rule 47 of the By-laws.

The decision in *Emperor* v. *Kareem Ranjan*[1] is on all fours with the present case.

J. G. Rele, for the respondent :—The Managing Committee by its order, dated January 8, 1914, commanded the appellant to suspend the work until further order was passed. It was a provisional order issued to enable the Managing Committee to deal with the complaints of the neighbouring house-owners. The powers of the Managing Committee are defined in section 27 of the District Municipalities Act, 1901, and they can only be limited by the rules framed by the Municipality under clause (*a*) of section 46. There is nothing in the rules of the Municipality in force restricting the inherent powers of the Managing Committee. A wider and more liberal construction will be put upon the powers vested in public bodies such as Municipal Corporation, Railways, &c., which are created for the benefit of the public : see Brice on *ultra vires*, 3rd edition, pages 476 and 478.

The case of *Emperor* v. *Kareem Ranjan*[1] is distinguishable. In that case after the permission was

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granted and the party had begun to build, the permission was entirely revoked by the Managing Committee. Such is not the case here. In this case the order was temporarily suspended.

Lastly, the appellant's right to proceed with the work is now barred. After the permission was granted on December 22, 1913, the appellant obtained a statutory right to commence the work of building the privy and he having failed to commence it during the period of one year, his remedy is barred under proviso to sub-section (4) of section 96 of the District Municipalities Act, 1901.

SHAH, J.:—In this case the plaintiff applied to the Municipality of Alibag on the 1st of December 1913 for permission to build a privy on his own land. The permission was granted by the Municipality on the 22nd of December. On the 8th of January 1914, the Municipality gave a notice to the present plaintiff requiring him not to build the privy until a further order was made. The plaintiff gave notice to the Municipality on the 6th June of the present action and on the 7th of July 1914 filed the suit for the cancellation of the order of the Municipality, dated the 8th of January 1914 based on a resolution of the Managing Committee of the 6th January and for a declaration that he had a right to construct the privy. He also prayed for a perpetual injunction restraining the defendant Municipality from preventing the plaintiff in the work of constructing the privy, and for damages.

The trial Court allowed the plaintiff's claim holding that the second order was beyond the powers of the Municipality and that the permission granted on the 22nd of December was good. Accordingly, a decree was passed in favour of the plaintiff. The Municipality appealed from that decree. The learned Assistant

Judge who heard the appeal came to the conclusion that the order of the 8th of January 1914 was within the powers of the Municipality and that it was binding upon the plaintiff. He was, however, of opinion that having regard to the preparation which the plaintiff had made by way of commencing the work he was entitled to damages of Rs. 2. The decree of the trial Court was reversed on the main point and affirmed as to damages.

The present appeal is preferred by the plaintiff against that decree, and it is contended on behalf of the plaintiff that the second order made by the Municipality is *ultra vires*. It seems to me, on the facts of this case, that the first order made by the Municipality granting permission to the plaintiff to build the privy was a final order under sub-section (2) of section 96 of the District Municipalities Act. The subsequent order which purports to be provisional in its character is not referable to sub-section (3) of that section. In the first place, it was not made within a month from the receipt of the notice given to the Municipality under sub-section (1). Secondly, it did not purport to specify any period not exceeding a month. And indeed, from the omission of the Municipality to pass any further order after communicating this order to the plaintiff up to June 1914, it seems clear that though in form the second order was provisional in substance it was a cancellation of the permission already granted and practically a prohibition to the plaintiff against building the privy. But taking the order to be what it purports to be in form, it is clear that it is not covered by sub-section (3), because it is not a provisional order of the character contemplated by that sub-section. It was, in fact, made after the order granting the permission under sub-section (2). There is no other provision of the Act to which we have been referred on behalf of the Municipality as saving this order.

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The only contention urged on behalf of the Municipality is that the powers of the Municipality under the District Municipal Act are wide, and there is nothing in the Act to restrict its powers so as to make the order invalid. I am wholly unable to accept this argument.

In the absence of any power to cancel the permission once granted under sub-section (2) of section 96, I do not think that the order of the Municipality made on the 8th January 1914 is legal.

The view which I take of the powers of the Municipality is supported by the decision in *Emperor* v. *Kareem Ranjan*[1]. The plaintiff, in my opinion, has succeeded in establishing that the second order of the Municipality is not binding upon him and that he is entitled to act under the permission which was granted to him before this order was made.

As to the relief to be granted, the Municipality did not contend in the lower Courts that even if the second order were bad the plaintiff would not be entitled to build the privy. Though the first permission in terms contains a condition that it shall not be in force after one year, I think that on the facts of this case the plaintiff is entitled to an injunction restraining the Municipality from interfering with the building of this privy. In my opinion, sub-section 4 of section 96 has no application to the facts of the case nor has it any bearing on the relief to be granted to the plaintiff.

I would, therefore, allow the appeal, set aside the decree of the lower appellate Court and restore that of the trial Court with costs throughout on the defendant.

MARTEN, J. :—The three important dates here are : 1st December, application by the plaintiff under section 96 ; 19th December permission granted ; and 6th January, Resolution of the Managing Committee notice whereof

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was given to the plaintiff on the 8th January 1914. Having regard to the decision in *Emperor* v. *Kareem Ranjan*[1] it cannot in this Court be contended that the Municipality had a right by their Resolution of the 6th January 1914 to cancel the permission given on the 19th of December 1913. Nor can that Resolution of the 6th of January be justified under section 96 (3) for it was not issued within a month from the receipt of the plaintiff's notice of the 1st December.

Therefore, as far as the real point is concerned, namely, as to legality of this Resolution of the 6th January, the Municipality are, in my opinion, in the wrong. I think, so far, that both the lower Courts are really agreed. The lower appellate Court however refused to grant an injunction because it said the work was not commenced within a year which ought to be done under section 96 (4) and that accordingly, it would be improper to grant an injunction. On the other hand, it awarded damages to the plaintiff which I think it could not have done unless it was of opinion that the plaintiff was right on the merits of the case and the Municipality were wrong. Now, as far as the point of commencing the work is concerned, it is a point which appears not to have been pleaded or taken in the Court of first instance. We also find that building materials were collected on the ground and workmen seem to have been employed there. I accordingly infer that there is, under all the circumstances, a sufficient commencement of the work within section 96 (4) of the Act, and that similarly there has been a compliance with the final clause of the permission given by the Managing Committee by their Resolution of the 19th December and which was communicated to the plaintiff in the formal permission of the 22nd December.

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That being so, I think, the injunction granted by the trial Court was right. I agree, therefore, that this appeal must be allowed and that the judgment of the trial Court must be restored and that the appellant must have all his costs throughout.

Decree reversed.

J. G. R.

FULL BENCH.

APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Acting Chief Justice, Mr. Justice Shah and Mr. Justice Kemp.

1918. *February* 19.

NARSAGOUNDA BIN SAVANTGOUNDA PATIL (ORIGINAL DEFENDANT), APPELLANT *v.* CHAWAGOUNDA ADGOUNDA PATIL (ORIGINAL PLAINTIFF), RESPONDENT.*

Indian Limitation Act (IX of 1908), Schedule I, Article 91—Sale-deed executed by a minor—Void instrument—Suit to recover possession—Suit for cancellation of sale deed, whether necessary.

Article 91, Schedule I of the Indian Limitation Act, 1908, does not apply to a suit for possession, where the plaintiff alleges and proves that a sale deed is void because it was executed by him whilst a minor, but does not claim expressly to have it cancelled or set aside.

SECOND appeal against the decision of W. Baker, District Judge of Satara confirming the decree passed by M. H. Limaye, Second Class Subordinate Judge at Tasgaon.

Suit to recover possession.

The property in suit originally belonged to the plaintiff. In 1901 it was mortgaged with possession to the defendant. On June 16, 1903, while the plaintiff was still a minor, he executed a sale deed of the property in

* Second Appeal No. 722 of 1916.