

1918.

EMPEROR
v.
NAGINDAS.

prescribe the extent to which and the conditions under which shop-boards may be allowed to project. The condition which they have imposed *inter alia* is that certain fees should be paid in advance. In my opinion they are entitled to impose a monetary condition and this view is borne out by section 70 of the Act. I accordingly think that the rule should be discharged.

Rule discharged.

R. R.

PRIVY COUNCIL.*

P. C.^o

1918.

February
19, 20;
arch 14.

ABDUL RAHIM MAHOMED NARMA AND OTHERS (PLAINTIFFS) v.
MUNICIPAL COMMISSIONER FOR CITY OF BOMBAY...

[On appeal from the High Court of Judicature at Bombay.]

Bombay City Municipal Act (Bom. Act III of 1888, as amended by Bom. Act V of 1905)—Construction of Act, sections 296, 297, 299, 301—Powers of Municipal authorities acting in conformity with terms of Act—"Preservation of line of street"—Building a bridge over level crossing of railway—Land Acquisition Act and compensation to owners of land acquired.

Under the Bombay City Municipal Act (Bom. Act III of 1888, as amended by Bom. Act V of 1905), the Municipal authorities have power to acquire land for widening, extending, and improving a public street, and to pay compensation to the owner of the land, notwithstanding that the purpose for which the land is taken is not solely the "preservation of the line of the street," but includes the building of a bridge to carry the road over a railway on the level of the street. They are not restricted to acquiring the land, and paying compensation for it under the Land Acquisition Act. They can prescribe a line for the street and take possession of the part of the owner's land which falls within the line, and so avoid having to proceed under the latter Act.

Cases in which it has been held that powers conferred only for a statutory purpose cannot be validly exercised for a different purpose were not in point. Such an exercise of those powers is outside the Act which confers them. In the present case the exercise of the powers given was within, and in strict conformity with the terms of the Act. The "preservation of the line of the street" was not laid down as the definite and sole object for which the power is to be exercised.

* *Regent* :—Earl Loreburn, Lord Dunedin and Lord Sumner.

APPEAL 50 of 1916 from a judgment and decree (11th August 1912) of the High Court of Bombay on its Appellate side, which affirmed, with slight variation, a judgment and decree (7th October 1911) of a Judge of the same Court in the exercise of its Original Jurisdiction.

The main questions for determination on this appeal were whether certain proceedings taken by the respondents (defendants) for the acquisition of a strip of land belonging to the appellants (plaintiffs), under the City of Bombay Municipal Acts (Bombay Acts III of 1888 and V of 1905) for the purposes of a road were *ultra vires* and illegal, and whether the appellants were entitled to recover damages in excess of what by consent has been decreed to them.

The judgment of the High Court (SIR BASIL SCOTT C. J. and CHANDAVARKAR J.) appealed from, in which the facts are fully stated, was as follows:—

“ This suit was filed by the plaintiff's against the Municipal Commissioner and the Municipal Corporation on the 5th of December 1910 ; for possession of certain portions of plaintiff's premises upon the Elphinstone Road, taken possession of by the Municipal Commissioner on the 7th of July 1909. The Commissioner purported to take them up under the powers contained in section 299 of the Municipal Act of 1888, as amended by the Act of 1905. That section provides that if any land not vesting in the Corporation, whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building, the Commissioner may, after giving to the owner of the land not less than 7 clear days written notice of his intention so to do, take possession on behalf of the Corporation, of the said land which shall thenceforth be deemed a part of the street. Section 301 provides that compensation should be paid by the Commissioner to the owner for any land acquired for a public street under section 299. A regular line of a public street could be prescribed under the Act of 1888 as originally framed by the Commissioner, and after it had been prescribed no portion of any building abutting on the street could after such a line had been prescribed be constructed within the regular line.

“ One of the plaintiffs who are co-owners of the land taken up, sent in a building application in December 1902 for permission to build a three storeyed

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMISSIONER
FOR
CITY OF
BOMBAY.

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMISSIONER
FOR
CITY OF
BOMBAY.

chawl with certain shop on the basement on the road frontage owned by the applicant and his brothers on the north side of the Elphinstone Road. On the 6th of March 1903, in reply to his application, he was informed that the building could not be permitted on the whole of the land as 50 feet of the land had been taken into the regular line of the street. Then, on the 25th of May 1909 the plaintiffs received from the Municipal Commissioner a notice under section 299 saying that 20 feet only were required for the purposes of the street. This was in consequence of action having been taken by the Municipal authorities for laying down a fresh regular line of the street on the assumption that no regular line had already been laid down. We have not got the whole of the Municipal correspondence upon the point but it appears that on the 13th of March 1909 the Executive Engineer in continuation of his letter of the 5th of March forwarded to the Commissioner a plan showing in red the new proposed regular lines of the street at Elphinstone Road, Parel, along which a proposed over-bridge was to be constructed. That was the regular line which showed that only 20 feet of the plaintiffs' property was within the regular line of the street. On the 1st of July 1909, one of the plaintiffs wrote to the Municipal Commissioner drawing attention to the regular line prescribed in 1903 and to the papers relating to the previous building proposal. Upon investigation it then appeared to the Municipal authorities that the fixing of the regular line in March 1909 was not the fixing of an original regular line but the fixing of a new regular line in substitution of a previous one. Now, the power of the Municipal Commissioner to fix a new line in substitution of a previous line was conferred upon him by the City of Bombay Municipal Amendment Act of 1905 which provided that he might from time to time but subject in each case to his receiving the authority of the Corporation in that behalf prescribe a fresh line in substitution for any line so prescribed or for any part thereof, provided that such authority shall not be accorded except upon certain conditions. Notwithstanding the letter of the 1st of July, however, which put the Municipal Commissioner on inquiry as to the legality of the new line which he had prescribed, possession was taken of the plaintiff's land under section 299 on the footing of the land so taken possession of falling within the regular line prescribed in 1909. It appears that it was not until after that date that any resolution of the Corporation was obtained authorising the Commissioner to prescribe a regular line in substitution of the regular line of 1903. The resolution of the Corporation giving that authority is dated the 11th of October 1909. The plaintiff contends that no regular line of the street on the Elphinstone Road has been or was ever prescribed as required by law under the City of Bombay Municipal Act in 1903, and that the action of the Commissioner subsequent thereto at various times in purporting to prescribe a regular line of the street was *ultra vires* and illegal. The defendants contend

that the regular line of the street is the line prescribed subsequent to the passing of the resolution of the 11th of October 1909.

"The first point for consideration is whether the line prescribed in 1903 was lawfully prescribed. Now, the facts relating to it are to be found in Exhibit E. On the 21st of January 1903, the Executive Engineer of the Municipality forwarded the building application already referred to to the Commissioner stating that the plan showed that it was proposed to construct a large three-storeyed chawl with privies and store rooms on the Elphinstone Road; that as the Commissioner was aware the lines of an over-bridge over the two railways as already sanctioned by Government at the recommendation of the Over-bridge Committee were at a short distance north of the Elphinstone Road; that the matter of the overbridges over the two railways had been lately discussed by the Municipal Commissioner and the officials of the Railway Companies, and the question as regards the over-bridge near Elphinstone Road as it then stood was to construct an over-bridge the lines of which would pass through the ground on which the chawls were proposed to be constructed; and the Municipal Executive Engineer asked to be informed whether the proposal of the building applicant could be accepted until the question of the over-bridge could be settled. Upon that the Municipal Commissioner Mr. Harvey gave orders that the proposed construction should be stopped and proposals for new lines of road sent up as soon as possible. The Executive Engineer then sent up proposals for new lines of road, and the Commissioner on 4th March sanctioned those proposals.

"Now, it is contended that the Commissioner could only prescribe a regular line of the street under the unamended Act of 1888 in a case where it was necessary to prescribe a regular line, and that if the only object of prescribing the line was to acquire land for the purposes of a street in a manner other than that prescribed in section 286, the prescribing of the line was unlawful and did not give power to the Commissioner to acquire land under section 299; and for this the decision of this Court in *Essa Jacob v. Municipal Commissioner of Bombay*⁽¹⁾ was cited as an authority. That was a case in which the Commissioner had prescribed a regular line for a street and at a subsequent date in order to widen the street and throw it back beyond the line already prescribed, he prescribed a fresh line having no statutory authority so to do; and it was stated by the Chief Justice in his judgment that there could be no question of there being any necessity to prescribe a regular line at the time when the second line was prescribed because *ex concessis* a regular line had been prescribed at an earlier date.

"Now, in the present case the circumstances were entirely different. As the letter of the Executive Engineer showed the lines of the overbridge, which

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMIS-
SIONER
FOR
CITY OF
BOMBAY.

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMIS-
SIONER
FOR
CITY OF
BOMBAY.

had been settled in consultation between the Officials of the Railway Companies and the Commissioner, would bring the bridge across the existing northern edge of the street and break into it, and therefore put an end to its regularity as an existing street. Then the Commissioner having ordered that proposals for new lines should be sent up, the Executive Engineer proposed a line giving a regular and continuous line of street so far as the bridge extended 50 feet further back on the north side. This proposal was accepted by the Commissioner and as a result a regular line was provided for to meet the time when the over-bridge should be built which would break into the existing line of the street. This it appears to us was entirely in accordance with the powers of the Commissioner under the unamended section 297, and we have no reason to suppose that the Commissioner was actuated by improper and indirect motives in the matter. To show that the result of laying down a regular line would be to enable the Commissioner to enter upon vacant land within that line under section 299 does not show that the Commissioner was not also actuated by the necessity of laying down of regular line for the street and the existence of the incidental result does not vitiate the legality of his action.

“The first point taken by the plaintiffs’ counsel in this appeal is that the line of 1903 being illegal the refusal of the Commissioner to allow the applicant to build was also illegal and therefore damages are claimable in consequence of the plaintiff being unable to build from 1903 up to the date of suit. This claim falls to the ground with our decision that the prescription of the line in 1903 was within the powers of the Commissioner.

“Then it was contended that because the object of acquiring the land under section 299 was to provide ground for the erection of the foundations of the bridge, the action was unlawful, because there was section 296 of the Act which provided the manner in which the Commissioner might acquire land. Now, that section gives the Commissioner power to acquire land, whether vacant or with buildings upon it; whereas section 299 only gives him power to acquire vacant land falling within the regular line of the street. Provided he had a regular line and vacant land falling within that line, it was quite unnecessary for him to resort to the powers given under section 296 of the Act; and granting the legality of the prescription of the line, the powers under section 299 lawfully followed. The question, however, although it was argued in connection with the line of 1903, did not really arise until after the prescription of the line of 1909.

“There is no dispute that the new line prescribed in 1909 without the sanction of the Corporation was unlawfully prescribed and therefore the possession by the Commissioner before the prescription of the last line with the sanction of the Corporation was unlawful. In respect of that unlawful possession, damages are claimed by the plaintiff, and the Advocate-General on

behalf of the Municipal Commissioner has agreed to pay 6 per cent. on the compensation which may be fixed as the value of the land as from the 7th of July 1909, the date of the acquisition and this has been agreed to by counsel for the plaintiff. It might perhaps be contended that the acquisition on the 7th of July was a lawful acquisition on the footing of the line of 1903 being the then existing line of the street, but that point has not been taken as the question of damages is a small one and the Corporation through their counsel have agreed to pay compensation.

"Then, the fresh line which was prescribed subsequent to" October 1909 is a line prescribed in accordance with the provisions of section 297 (b) of the amended Municipal Act, and if the first line of 1903 was as we have held, a lawfully prescribed line, it follows, we think, that the Municipal Commissioner could substitute a fresh line for it if the effect of that line would be to provide a new regular line for the street. There is no question that the Commissioner prescribed a fresh regular line and the effect of that was to give 30 feet more of his property to the plaintiff than he would have on the original line of 1903.

"It was contended on behalf of the plaintiff that having prescribed a line 50 feet from the North of the existing Elphinstone Road, the Municipality were estopped from acquiring less than 50 feet under section 299, but section 299 does not compel the Commissioner to acquire land as soon as a regular line of the street has been laid down. He may acquire whenever he thinks fit on giving not less than 7 clear days' notice under the section. The estoppel apparently, it is contended, arises owing to the plaintiff being prevented from building from 1903 up to the present time, but that prevention arises from the statutory provision that no person shall construct any portion of the building within the regular line of the street.

"The last point taken was that the Municipal Act does not give power to the Municipal Commissioner so as to cause a nuisance. Now with regard to that the plaintiffs merely say that the construction of the overbridge approaches and retaining walls thereto on the Elphinstone Road is in opposition of the plaintiffs' rights of property and easements in the Road and will irreparably damage plaintiffs' land and is *ultra vires* and illegal of the defendants, and the plaintiffs say that the construction of the overbridge approaches and retaining walls thereto on only the central strip of the street will make the street in front of the plaintiffs' land of three different levels and is *ultra vires* illegal and unreasonable of the defendants. It is admitted that the Municipal Commissioner has power under section 295 to agree with the Railway Company for the building and maintenance of the overbridge, and it has not been shown that the plaintiff has any easements upon the road which will be interfered with by the overbridge. It may be very unpleasant for him to

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMISSIONER
FOR
CITY OF
BOMBAY.

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMISSIONER
FOR
CITY OF
BOMBAY.

have a wall 30 feet high opposite to his property, but if that wall will not interfere with his ancient lights or any other easements, he has no cause of action with regard to it. For these reasons, we think that this point also fails."

On this appeal,

De Gruyther K. C., Sir W. Garth, and J. M. Parikh for the appellants contended that on the evidence in the case the mode of prescribing by the respondents of the alleged "regular lines of the street" both in 1903 and in 1909 was *ultra vires* and illegal, and that the land required for the purposes for which the appellants' land was admittedly required, could only be legally acquired under the Land Acquisition Act. Reference was made to *Essa Jacob v. Municipal Commissioner of Bombay*⁽¹⁾; and the Bombay Municipal Act (Bom. Act III of 1888 as amended by Bom. Act V of 1905), sections 286, 289, 295, 296, 297 (amended in 1905), 299 and 301, sub-section (1). The land was wanted for widening the street in order to construct an overbridge, and not for the purpose of preserving the regular line of the street, and to acquire the land the respondents were not entitled to proceed under the Municipal Act. The construction of the overbridge on it was not using it as a public street. The English cases showed that the line must be a line for the preservation of the line of the old street, that is a line with reference to keeping the line of an existing street: *Galloway v. Mayor and Commonalty of London*⁽²⁾ and *Gard v. Commissioners of Sewers of the City of London*⁽³⁾. The steps taken by the respondents were unnecessary, and the object only afterwards appeared to be the building of a bridge over the street. The whole question is whether what the respondents did was done for the purpose of preserving the regular line of the street. If, as contended, the action of

⁽¹⁾ (1900) 25 Bom. 107.

⁽²⁾ (1866) L. R. 1 H. L. 34 at p. 43.

⁽³⁾ (1885) 28 Ch. D. 486 at p. 498.

the respondents was *ultra vires* and illegal, the appellants were entitled to the relief claimed in the plaint. But even if it was legal and valid they were bound to take the whole of the land included in the original line of 1903, and to pay damages for the period during which the land remained vacant and useless owing to the prescription of the line.

P. O. Lawrence K. C. and A. M. Dunne, for the respondent were not called on.

1918, *March 14*:—The judgment of their Lordships was delivered by

LORD SUMNER:—By the City of Bombay Municipal Act, 1888, section 289, the Municipal Commissioner for the City of Bombay has under his control all public streets within the city, and may from time to time widen, extend, or otherwise improve any such street, or cause the soil thereof to be raised, lowered, or altered, subject to the sanction of the Corporation in certain events. By section 297 he may prescribe a line on each side of any public street, and, subject to receiving the necessary authority, may from time to time prescribe a fresh line in substitution therefor, and the line so prescribed shall be called “the regular line of the street.” If the line is so drawn that any land not vesting in the Corporation falls within it, the Commissioner may, by section 299, take possession of it on the Corporation’s behalf, which has the effect of acquiring it for the Corporation, and thereupon the land so acquired shall thenceforward be deemed a part of the public street, and the former owner will be entitled to receive certain compensation as prescribed by section 301. The Commissioner further has power, under section 296, to acquire any land required for the purpose of widening, extending, or otherwise improving any public street, subject among other things to the payment of compensation in accordance with the Land

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMISSIONER
FOR
CITY OF
BOMBAY.

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMISSIONER
FOR
CITY OF
BOMBAY.

Acquisition Act, 1894. The only question in this appeal is whether the compensation to be paid for for certain land of the appellants, which the Commissioner has acquired, is to be calculated according to the provisions of section 301 of the City of Bombay Municipal Act or according to those of the Land Acquisition Act.

Elphinstone Road, which is within the area of the Municipal Corporation of Bombay, intersects at right-angles and by level-crossings two railway lines, which run parallel with and close to one another at Parel station, namely, the Bombay, Baroda and Central India Railway and the Great Indian Peninsular Railway. The appellants were the owners of a plot of land fronting the road and lying in the north-east angle between the road and the railways. In 1909 the Commissioner prescribed a line on the north side of the road as the regular line of the street, which was so drawn that part of the appellants' land, namely, the front part, fell within it, and he duly gave notices and took possession of this land in order that, within section 299, this part of the appellants' land might thus be acquired by the Corporation, and might thenceforward be deemed part of Elphinstone Road. In point of fact, the line so prescribed was in substitution for an earlier prescribed line, but, in the view of their Lordships, nothing now turns on this.

That the Commissioner meant to prescribe the regular line of the street under section 297, and that in form he purported to do so, and in fact actually did so, there can be no manner of doubt. The whole object of what he was doing depended on its being an exercise of the powers given by this section. Equally little is there any doubt why he did so. Even if he concerned himself to some extent with prescribing a regular line, simply in lieu of the somewhat irregular line which

previously bounded Elphinstone Road on the north, his main object at any rate was a different one, and he has never made any secret of it. Whether what he did was in the circumstances within the Act or without it, whether or not the exercise of his powers was a harsh application of the section, unforeseen by those who framed it, their Lordships think it quite clear that he acted in good faith, for the benefit, as he supposed, of the Corporation which he represented, and as he conceived in the discharge of his duty. Sooner or later, Elphinstone Road must have been carried over these two railways by a bridge. A double level-crossing could not be indefinitely maintained there. Such a bridge involved approaches of considerable length and height, and the embankment with its retaining walls and the provision of access to land adjoining it would require a site considerably wider than the existing width of Elphinstone Road. For this purpose the Commissioner wished to acquire additional land, and to do so on the cheapest possible terms, and so he first of all prescribed a line and then took possession of the part of the appellants' land which fell within that line. Thus he avoided having to proceed under the Land Acquisition Act.

The appellants' whole contention is that this exercise of the Commissioner's power was good or bad according as he acted with a single eye to the creation and preservation of a regular boundary to Elphinstone Road as an end in itself, or with the ulterior object of extending the road in order to be able to raise it by an incline to the level of the necessary overbridge.

The contention must stand or fall on the construction of the Bombay Act. There is no word in the Act which prescribes the frame of mind in which the Commissioner is to exercise the powers given by section 297, or which restricts the objects for which

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMISSIONER
FOR
CITY OF
BOMBAY.

1918.

ABDUL
RAHIM
MAHOMED
v.
MUNICIPAL
COMMISS-
SIONER
FOR
CITY OF
BOMBAY.

he is to exercise them to the mere regulation of the street in question or to the creation or preservation of a regular line in it. Even if it were proved, as it is not, that the creation and preservation of a regular line on the north side of the road was no part of the Commissioner's object, though it certainly was an incidental result of his scheme, their Lordships can find nothing in the Act which either entitles the appellants to investigate his motives or has the effect of invalidating his action on account of the purpose, with which in fact he prescribed the regular line of the street in 1909.

Cases in which it has been held that powers conferred only for a statutory purpose cannot be validly exercised for a different purpose are not in point. Such an exercise of the powers is outside the Act which confers them. Here the exercise of the powers was within the Act, for it was in strict conformity with the terms of the Act. "Preservation of Regular Line in Public Streets" is the heading to the group of sections beginning with section 297, but this cannot be pressed into a constructive limitation upon the exercise of the powers given by the express words of the Act. The preservation of the line of the street is not laid down as the definite and sole object for which the power is to be exercised. It may be the immediate effect of that exercise, but certainly it is not more. The case was very fully and cogently dealt with by the learned Chief Justice of Bombay in the High Court of Bombay, and their Lordships think it unnecessary to discuss the matter further. They will humbly advise His Majesty that the appeal should be dismissed with costs.

Solicitor for the appellants : Mr. *Edward Dalgado*.

Solicitors for the respondents : Messrs. *Cameron, Kemm & Co.*

Appeal dismissed.

J. V. W.