APPELLATE CIVIL.

FULL BENCH.

Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Shah and Mr. Justice Fawcett.

MULJI TRIBHOVAN SEVAK (ORIGINAL PLAINTIFF), APPELLANT *v.* THE DAKOR MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT*. 1921. *November* 18.

Bombay District Municipal Act (Bombay Act III of 1901), sections 96, 36(2)—New building—Permission to build granted by Public Works Committee of Municipality—Cancellation thereof subsequently by General Body of Municipality.

The plaintiff applied for and obtained permission from the Public Works Committee of the defendant Municipality to add to his existing building, under the provisions of section 96 of the Bombay District Municipal Act, 1901. Subsequently, the General Body of the Municipality cancelled the permission, on the application of a neighbour of the plaintiff. The plaintiff thereupon sued the Municipality for a declaration that he was entitled to build in accordance with the permission originally granted:—

Held, by *Macleod C. J.*, and *Fawcett, J.*, that the order made by the Public Works Committee under section 96 could be cancelled or revoked by the General Body of the Municipality, either of its own motion or on the application of a person injuriously affected thereby.

So *held*, also by *Shah, J.*, subject to the qualification, that such cancellation or revocation was otherwise consistent with the provisions of section 96 of the Bombay District Municipal Act, 1901.

Emperor v. *Kareem Ranjan*[1]; *Vithal Dhonddev* v. *Alibag Municipality*[2]; and *Municipality of Sholapur* v. *Abdul Wahab*[3]; considered and distinguished.

SECOND appeal from the decision of T. R. Kotwal, Assistant Judge of Ahmedabad, reversing the decree passed by C. P. Parekh, Subordinate Judge at Umreth.

Suit for declaration.

*Second Appeal No. 175 of 1921.

(1) (1916) 19 Bom. L. R. 65. (2) (1918) 42 Bom. 629.

(3) (1920) 45 Bom. 797.

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The plaintiff applied to the Municipality of Dakor for permission to add a storey to his house at Dakor, under section 96 of the Bombay District Municipal Act, 1901. The permission was granted by the Public Works Committee of the Municipality, on the 22nd March 1917. Chunilal, the plaintiff's neighbour, thereupon applied to the Municipality complaining that if the plaintiff built under the permission granted, his light and air would be blocked up. The Municipality first asked the plaintiff on the 5th April 1917 not to proceed with the work; and on the 9th May 1917, the General Body of the Municipality cancelled the permission granted by the Public Works Committee.

The plaintiff sued for a declaration that he was entitled to build according to the permission granted to him by the Public Works Committee and that the General Body had no right to cancel the permission thus granted.

The Subordinate Judge held, following 19 Bom. L. R. 65 and 20 Bom. L. R. 756, that the permission once granted could not subsequently be recalled by the Municipality and decreed the suit.

On appeal, the decree was reversed and the suit dismissed, by the Assistant Judge, on the following grounds :—

"The Rules 42 and 50 apply to this case and the revocation was legal and within the powers of the Municipality. The evidence on record shows that the powers were used reasonably and not arbitrarily. The order was opposed to the policy of the Municipality as to sanitation and the safety of the property in its jurisdiction. The Public Works Committee on reconsidering its order came to the same conclusion. It was accepted by the Municipality."

The plaintiff appealed to the High Court.

The appeal was heard by a Division Bench consisting of Macleod C. J. and Shah J. on the 2nd September 1921,

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when their Lordships made a reference to the Full Bench. The following judgments were delivered.

MACLEOD, C. J.:—On the 12th March 1917, the plaintiff made an application to the Municipality of Dakor for permission to build an upper storey over the portion of his Khadki which admittedly belonged to him. The Public Works Committee granted the permission asked for by its Resolution No. 2, dated 22nd March 1917, and the same was duly communicated to him. Plaintiff had also asked for permission to build *otlas* at the southern end of the Khadki on both the sides. The permission for *otlas* was also granted. On the same day, one Chunilal Amritlal made an application to the Vice-President of the Municipality stating that the light and air coming through the eastern wall of his house would be obstructed by plaintiff's building an upper storey over the Khadki. He also alleged that in case of fire taking place in plaintiff's Khadki, the fire would extend to the other Khadki. That application was put before the General Board of the Municipality and the Board directed the plaintiff, on 5th April 1917, not to commence any work according to the permission granted by the Public Works Committee. No work had been commenced by the plaintiff then. The General Board also, on the same day, asked the Public Works Committee to reconsider the matter in view of Chunilal's application. On the 7th May 1917, the Public Works Committee reported to the General Board that on seeing the place it appeared that light and air would be diminished by plaintiff's building an upper storey, and that it would cause inconvenience to the people in times of fire. The Committee, therefore, recommended that the plaintiff should not be allowed to build an upper storey over the Khadki. On 7th May 1917, the General Board adopted the recommendations made by the Committee and cancelled the permission granted to

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the plaintiff and directed him not to build the upper storey. Plaintiff accordingly filed this suit, after giving notice to the Municipality, asking for a declaration that he was entitled to build the upper storey according to the permission granted to him by the Public Works Committee and alleging that the permission granted by the Managing Committee could not subsequently be revoked by the General Board and that the order of the General Board was illegal.

The suit was decreed by the trial Court; in appeal that decision was reversed and the suit was dismissed.

The question at issue in this appeal to my mind admits neither of doubt nor of difficulty. The material sections of the Bombay District Municipal Act (III of 1901) are as follows:—

Section 29. ...The Municipality may appoint, for a period not exceeding one year, any such Committee or such or so many Committees consisting of such councillors as they think fit for any purpose or respectively for any of the purposes, other than those specified in section 28, for which a Managing Committee may, under section 27, exercise the powers of a Municipality, and may invest each Committee so appointed with such of the said powers as may be necessary or expedient for the fulfilment of the purpose for which it is appointed.

Section 36 (2). Every order passed by a Managing Committee or by a Committee appointed under section 28 or 29, other than orders under sub-section (3) of section 65, shall be subject to such revision, and open to such appeal, as may be required or allowed in respect thereof by any rules of the Municipality for the time being in force under section 46.

Section 46 (*a*). Every Municipality shall...make...rules...regulating the conduct of their business and the delegation of any of their powers or duties and, subject to the provisions of section 27, the appointment and constitution of Committees.

Then the following rules of the defendant Municipality are relevant:—

Rule 42. Every delegation of the Municipality's executive functions, power or duties shall be deemed to be made subject to the general control of the Municipality and in particular to the provisions of Rules 43 to 55.

Rule 49. It shall be the duty of the President to watch over delegates (whether Committees or individuals) and to bring to their notice and, if necessary, to the notice of the Municipality any instances in which they seem to have erred in the exercise of their functions as delegates, or to be negligent or dilatory about exercising the same.

Rule 54. Except as otherwise expressly provided in the Act or in the rules under the Act no act of any delegate shall be revised or called in question otherwise than

(i) as provided in Rules 49, 50, and 55, or

(ii) by a resolution supported by at least half the total number of councillors at a special general meeting called for this purpose.

Rule 55. First appeals against the decisions or orders of delegates other than the orders of a Committee under section 65 (3) shall lie to the Municipality.

Rule 58 (1). Any appeal may be rejected by the authority to which it lies, if received more than 30 days after the date of delivery of the order appealed against to the party affected orally or in writing.

Clearly, therefore, the order of the Public Works Committee is appealable. The only question is whether the appeal by Chunilal Amratlal, a neighbour, should be entertained. It seems to me that, according to the ordinary principles of justice, any person injuriously affected by an order of the Public Works Committee would be entitled to appeal to the General Board of the Municipality against the order. Otherwise the only person who could appeal would be the person who had applied for permission to the Committee and he would only appeal if his application was refused.

It is argued that when the Public Works Committee granted permission they were making the order under section 96 of the Act and that it should be treated as an order of the Municipality which plaintiff was not entitled to get set aside. No doubt to this extent it is an order of the Municipality that any action in compliance with the permission would be lawful. But if the order was only granted by the Public Works

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Committee, it would still be open for consideration whether the Committee had properly exercised the powers delegated to it by the Municipality, and the rules make it clear that the order of the Public Works Committee is open to appeal and subject to revision. The only difficulty which arises to my mind in the case is the decisions of this Court to which references have been made, namely, *Emperor* v. *Kareem Ranjan*[1], *Vithal Dhonddev* v. *Alibag Municipality*[2] and *Municipality of Sholapur* v. *Abdul Wahab*[3]. In none of these cases was section 36 of Act III of 1901 mentioned. As far as I can see the principle laid down in these decisions was that, once the Municipality had come to a decision and passed an order, the Municipality could not cancel or revoke that order. However it would appear from the record in S. A. 180 of 1917 that the first order was made by the Managing Committee and not by the Municipality. It is desirable, therefore, that this question should be settled by a Full Bench and the question to be referred is :—

Whether the order made by the Public Works Committee of the defendant Municipality under section 96 of Act III of 1901, could be cancelled or revoked by the General Body either of its own motion or on the application of a person injuriously affected thereby ?

SHAH, J.:—I agree that the question formulated by my Lord the Chief Justice should be referred to a Full Bench.

With regard to the power of the Municipality to revoke the permission once granted under section 96 of the Bombay District Municipal Act, I think it fair to state that so far as I remember at present neither the provisions of section 36 (2) of the Act nor the rules relating to revision and appeal were referred to in the

(1) (1916) 19 Bom. L. R. 65. (2) (1918) 42 Bom. 629.

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course of the arguments in any of the decisions in *Emperor* v. *Kareem Ranjan*[1], *Vithal Dhonddev* v. *Alibag Municipality*[2] and *Municipality of Sholapur* v. *Abdul Wahab*[3] to which I was a party. But whether they were referred to or not, there is no reference to them in the judgments. In all these cases the permission to build was granted by the Managing Committee. I feel a difficulty in accepting the contention of the respondent that the principle underlying these decisions is wrong and the difficulty arises in consequence of the provisions and scheme of section 96 of the Bombay District Municipal Act. I do not desire to say anything more on this point as it will be considered by the Full Bench. The reasons for the view taken in those decisions are stated therein.

It is no doubt true that under section 36 (2) read with the rules which are framed by the Municipality in this particular case, the order passed by the Committee would appear to be open to appeal and liable to be cancelled by the General Body. But the point that presents a difficulty to my mind is whether the general provisions and rules as to revision and appeal allow an appeal by any person to the Municipality against the order of the Committee granting the permission to build. If the notice to build under section 96 is treated as a matter between the Municipality and the owner, the Municipality either as a body or through its Committee may grant or refuse the permission. If a Committee refuses the permission, the owner may appeal to the General Body: but if the permission is granted there would be an end of that matter so far as the Municipality is concerned. If these rules relating to revision and appeal for the

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internal management of the Municipality are interpreted so liberally as to allow appeals by anybody to the General Body against an order, which is of such importance to the person who wants to build, it would introduce an element of uncertainty and hardship not contemplated by section 96. This is an aspect of the question which requires to be considered; and I am by no means clear that an order granting permission to build under section 96 could be modified or cancelled subsequently by the Municipality either of its own accord or at the instance of a third party. It may be possible to distinguish the decisions above referred to. But as the interpretation of the provisions as to revision and appeal might conflict with the *ratio decidendi* of these cases it is desirable that the matter should be considered by a Full Bench.

The reference was heard by a Full Bench consisting of Macleod C. J. and Shah and Fawcett JJ.

G. N. Thakor, for the appellant:—The question whether permission once granted by the Municipality can be revoked would turn mainly on the reading of section 96 of the Bombay District Municipal Act, 1901. The provisions and the scheme of the Act are such that once the permission is granted it is not within the power of the Municipality to revoke it. The section deliberately speaks of only one order to be given by the Municipality. It does not refer to revocation of permission once granted, though no doubt it imposes certain restrictions but they are very guarded.

The *ratio decidendi* of the decisions in *Emperor* v. *Kareem Ranjan*,[1] *Vithal Dhonddev* v. *Alibag Municipality*[2] and *Municipality of Sholapur* v. *Abdul Wahab*[3] is the same. They lay down that only one permission is

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contemplated by section 96 of the Bombay District Municipal Act and if a person disregards any subsequent permission modifying the first permission, he would not be liable for it. In each of these cases the Municipality was represented, but it is now suggested that because none of these decisions alludes to section 36(2), those decisions may be taken to have been passed without any consideration of section 36. A reference to section 36 is not found because the question was rightly argued on section 96 and it became immaterial to refer to section 36. It would be too much to assume that absence of any reference to section 36 detracts from the soundness of those decisions.

I submit that once an order is passed, whether by a Managing Committee or by any other person acting under the direction of the Municipality, the act becomes the act of the Municipality and section 96 comes into operation. It is under this section that it must be judged whether the Municipality can revoke the order once granted. Section 36 relates to the internal arrangements of the Municipality. A person who acts under an order of the Municipality has nothing to do with its internal arrangements.

Referring to the rules framed by the Municipality under section 46 the material rules are Rules 42, 50, 57 and 58. Rule 42 speaks of general conditions of delegations of the Municipality's executive functions, i.e., it cannot refer to an act which is already done by the Municipality but refers only to acts which are in the course of being executed. Rule 50 speaks of revision of delegates' acts. It could not have in contemplation any act of a stranger but an act or order of a Committee, which the President shall have power to suspend. If the rule is intended to authorise suspension of power once given, it is *ultra vires*.

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Rule 55 relates to appeals. It refers to such decisions as remain to be executed. Once an order is given the person concerned gets a right under the order and that cannot be taken away by this rule.

Rules 57 and 58 relate to return and rejection of appeal. These rules contemplate an appeal by a person who has received the order and not by a person who interposes; otherwise if neighbours go on applying, then the peremptory provision of section 96 would be nullified.

Section 65 of the Bombay District Municipal Act, 1888 has no provision corresponding with section 36 (2) of the Bombay District Municipal Act, 1901. From this it can be argued that the provision regarding revision or appeal ought to be restricted to the party in whose favour an order is made and these provisions are intended for the internal administration of the Municipality.

H. V. Divatia, for the respondents:—I submit that there is nothing in section 96 of the Bombay District Municipal Act, 1901, which would conflict with section 36 (2) of the Act. A General Body of the Municipality has the right to cancel or revoke an order passed by the Public Works Committee under section 36 (2) which gives the Municipality a right of appeal as well as revision. The three decisions (*Emperor* v. *Kareem Ranjan* [1], *Vithal Dhonddev* v. *Alibag Municipality* [2] and *Municipality of Sholapur* v. *Abdul Wahab* [3]) lay down that an order once given by the Municipality cannot be revoked. I submit that if by the Municipality it was meant the General Body the decisions may be good, but here the order was made by the Public Works Committee and that order could be revised by the General Body of the Municipality under section 36 (2). The

(1) (1916) 19 Bom. L. R. 65. (2) (1918) 42 Bom. 629.
(3) (1920) 45 Bom. 797.

right of appeal which is provided for by the latter section cannot be restricted to the party in whose favour the order was made but any person aggrieved by the order gets the right to move the Municipality, or otherwise that party will have to file a suit to get the order cancelled.

The rules framed by the Municipality are perfectly legal and valid. There is nothing illegal in them and unless they are found to be *ultra vires*, which they are not, it cannot be held that an order once made under section 96 cannot be revoked. Rule 42 speaks not only of executive functions of the Municipality but of its powers and duties and Rule 45 says that delegation of Municipality's powers should be deemed to include delegation of all the executive functions. Under Rule 48 there are powers and duties imposed on the Municipality by certain sections in the Act, which cannot be delegated, but section 96 is not mentioned among them. Then under Rule 49 the President has an authority to supervise delegates' orders and bring to the notice of the Municipality any irregularity or impropriety in them and it is under this rule that the Municipality can revise any order passed by a Committee. Moreover section 96 of the Bombay District Municipal Act says nothing about non-application of section 36 (2) to that section. Even if section 96 is peremptory and an order once made is to be proceeded with, it lies with the Municipality to reconsider it, regard being had to the rules and bye-laws framed by it. It cannot be said that reconsideration of an order is a matter of internal administration of the Municipality and that a party affected should be referred to a separate suit. If that was the intention of the Legislature, it would lead to disastrous results as the civil Courts would not interfere with powers of the Municipality unless they were capriciously exercised.

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In the three decisions under consideration, there is no mention made of section 36, probably because the Municipalities in those cases did not purport to act under that section. The decision in *Emperor* v. *Kareem Ranjan*[1] is confined to the facts of that case alone and even there the expression of opinion "that if words clearly importing such a power of subsequently overriding the permission were discoverable in the Statute" supports my case. In *Vithal Dhonddev* v. *Alibag Municipality*[2] the second order which was a provisional order was held illegal because although it purported to be made under section 96 it could not satisfy the provisions of any part of that section. Such was also the case in *Municipality of Sholapur* v. *Abdul Wahab*[3]. In the present case, however, the second order is not provisional but final, and it does not conflict with any part of section 96 and is lawfully made under section 36 (*b*) and the rules made under section 46.

Thakor, in reply :—There is nothing in Rule 42 to suggest that it would affect the final orders passed by the Municipality. The rule is not meant to get rid of orders once made but is intended to keep a general control.

Neither the Statute nor Rule 55 gives any right of appeal to a stranger. It is only the party affected by the order who can appeal.

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MACLEOD, C. J. :—I think the question referred to the Full Bench should be answered in the affirmative. There can be no doubt that a Municipality has appellate and revisional powers over orders passed by the Managing Committee, or by a Committee appointed under section 28 or 29, other than orders under subsection 3 of section 65, which powers are to be exercised

(1) (1916) 19 Bom. L. R. 65. (2) (1918) 42 Bom. 629.

(3) (1920) 45 Bom. 797.

in accordance with the rules framed under section 46. Whether those powers have been properly exercised is a question which must be decided in each case on its merits.

SHAH, J.:—I would answer the question referred to the Full Bench in the affirmative, subject to the qualification that the cancellation or revocation is otherwise consistent with the provisions of section 96 of the Bombay District Municipal Act of 1901.

In the present case the power to deal with notices under section 96 is delegated to the Public Works Committee and the delegation is subject to revision and appeal as provided by section 36 (2) and the rules of the Dakore Municipality framed under section 46 of that Act. So far as the General Board of the Municipality can exercise the power vested in them consistently with the provisions of section 96, undoubtedly that body may do so. It may be that, owing to the lapse of time or anything that may have happened in consequence of the leave granted by the Committee or any other reason, there may be difficulty in the way of exercising those powers effectively. But the Municipality have the legal right to exercise the powers of revision and appeal within the limits allowed by the statute and the rules thereunder.

Having regard to the terms of Rule 58, which prescribes the period of limitation for appeal by the party affected to whom the order complained of has been delivered orally or in writing, I am not clear that in the present case an appeal by a person to whom no such order was communicated is provided or contemplated. But Rule 55 provides for appeals against the decisions or orders of delegates generally and where a party is injuriously affected by an order even though it may not be communicated to him orally or in

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writing, it would be open to him to appeal to the Municipality. In the absence of any specific rule as to the parties who may appeal, it is not possible to say that the neighbour in the present case had no right to appeal. It is really for the Municipality to consider whether they will entertain an appeal from a third person, when an order is passed under section 96 by any delegated authority. They would have to consider whether an appellant has sufficient interest in the order to make his appeal competent. This question is not of any practical importance as in any case the Municipality have the power to revise the order of their own accord. The difficulty may really arise in making a proper order so as to satisfy the requirements of section 96 which does not in terms contemplate and provide for a second order under sub-section (2). That, however, is a matter to be considered by the Municipality in the first instance while making an order in revision or appeal, and by the Court so far as necessary if the dispute arises between the Municipality and the party, with reference to the facts of the case.

As regards the decisions of this Court which have been referred to in the referring judgments I think that on their own facts they are distinguishable from the present case; and in those cases, so far I can see, the result could not have been different in spite of the provisions of section 36 (2). However that may be, if and so far as they purport to lay down any general rule which conflicts with the statutory powers of the General Body of the Municipality to modify the orders of their delegates or of any committee, they cannot be followed.

While thus the Municipality had the power to modify the order of the Public Works Committee the question as to whether the cancellation is in accordance with the provisions of section 96 must be considered with

reference to the facts of the present case. The plaintiff gave notice under section 96 on the 12th March to build an upper storey over the portion of his Khadki which belonged to him. The Public Works Committee of the Municipality granted him leave on the 22nd March under section 96 sub-section (2). His neighbour, Chunilal, made an application on the same day complaining of the permission granted by that Committee. The General Board made a provisional order on the 5th April restraining him from building. Ultimately the General Board cancelled the leave on the 7th May. The plaintiff had not commenced to build before this date or even before the 5th April. It is not necessary to consider whether the provisional order of the 5th April would be within the scope of sub-section (3) of section 96. The orders contemplated by that sub-section are those made before any order under sub-section (2) is made. On the other hand it was made within a month of the application and in exercise of the revisional powers which the Municipality had under the rules. It is not necessary to decide this point as the plaintiff had not commenced to build before or after that date. The final order was made within two months of the date of the application. No doubt it is an order which cancels the permission granted; but it is not suggested on the facts of this case, and, having regard to the nature of the proposed building and the objections to it, it can hardly be suggested that the order is not within the powers of the Municipality under section 96, sub-section (2). I do not say that it is open to the Municipality under sub-section (2) to prevent all building by the owners on their respective lands, nor do I desire to express any opinion as to whether the Municipality can properly take into consideration the disputes between neighbours as to easements in deciding whether the permission

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asked for should be granted or not. All that it is necessary to decide is whether the final order of the Municipality is open to any such objection as would necessitate the interference of the Court with the discretionary powers of the Municipality in a matter which is primarily committed to its care by the Legislature. I do not think that the refusal of the Municipality to let the plaintiff build in this case transgresses the limits of their discretion under the Act.

At the same time it is possible that in consequence of the lapse of time or the owner proceeding to act under the first order, which he might be entitled to do if so minded, the revocation may not be effective. It seems to me that having regard to the scheme of the section, the detailed provisions as to various matters connected with the newly proposed building and the element of uncertainty and hardship which conflicting orders purporting to be made under sub-section (2) are apt to involve and the difficult questions which they are likely to give rise to, it is desirable that the position of the Municipality and the persons desirous of building may be defined by the Legislature so that the General Body exercising revisional or appellate powers and the persons who want to build may know definitely their respective positions after an order is made by a Committee or any other authority under sub-section (2) which is subject to revision or appeal against the person proposing to build. The usual case in which the person proposing to build wants a modification of the order of the Committee presents no difficulty. But the difficulty might arise in cases where the General Board of the Municipality seek to modify or cancel the order already made in his favour under sub-section (2) of section 96, as no time limit apparently is prescribed within which the General Board may pass orders under

section 96 (2) in appeal or revision against the person who has already got leave to build from the Committee.

FAWCETT, J.:—In my opinion the question referred to the Full Bench should be answered in the affirmative.

There is no doubt, and it has not been disputed, that the power of making orders under section 96 of the Bombay District Municipal Act III of 1901 could be delegated by the Municipality to its Public Works Committee. That is a Committee appointed under section 29 of the Act, and it follows that the provisions of sub-section (2) of section 36 of the Act cover the order passed by the Public Works Committee, on the 22nd March 1917, giving the appellant the permission he had applied for, unless there is such an inconsistency between this general enactment and the particular enactment regarding new buildings in section 96 as would make it incumbent upon the Court to apply the ordinary rule of construction in such a case. This is "wherever there is a particular enactment and a general enactment in the same Statute, and the latter, taken in its most comprehensive sense, would over-rule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the Statute to which it may properly apply." This is the rule laid down by Romilly M. R. in *Pretty* v. *Solly*[a], the leading case on the subject.

It is contended by Mr. Thakor for the appellant that there is such an inconsistency. His contention is that inasmuch as this power had been delegated to the Public Works Committee, it was the mouthpiece of the Municipality, and an order by it giving permission under sub-section (2) of section 96 amounted to an order by the Municipality, which having been once given could not be revoked, in accordance with the

[a] (1859) 26 Beav. 606 at p. 610.

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decision of this Court in the three cases mentioned in the referring judgments. So far as those cases go, it is clear that section 36 was not considered in connection with the point there decided and there is no reason to suppose that the provisions of that section had been brought to the notice of the learned Judges who gave those rulings. This is confirmed by the fact that in the first of these cases, *Emperor* v. *Kareem Ranjan*[1], Batchelor J. in giving the judgment of the Court expressly guarded himself by saying: "If, however, words clearly importing such a power of subsequently overriding the permission were discoverable in the Statute, there would be no alternative but to give effect to them. No such words are, however, discoverable." This overlooks section 36, sub-section (2), an enactment which purports to empower the Municipality under certain conditions to override any order given by the Managing Committee, and it would, therefore, presumably have affected the decision in *Emperor* v. *Kareem Ranjan*[1] had it been brought to the Court's notice.

I cannot myself find anything in section 96 which would justify our holding that the Legislature intended that an order by a delegated authority under section 96 should be final, and not subject to modification by the Municipality. What Mr. Thakor mainly relies on is the provision under which, if no orders are issued by the Municipality within one month from the receipt of the notice, the applicant has a right to proceed with his proposed building. This, he says, gives the applicant a right to build with which the Municipality cannot interfere, and he argues that the provision in Rule 58 of the Municipal Rules, allowing a period of thirty days for appeal, conflicts with the provisions I have just mentioned. It may be that in the particular case where no orders had been passed within a month of the

[1] (1917) 19 Bom. L. R. 65.

notice, there would be no right of appeal or revision. There would in fact be no order to revise or appeal against. But the present case is on a different footing. There had been an order by the Public Works Committee within the month, and also an order by the Municipality suspending the carrying on of the work under sub-section (3), clause (*a*), and the case does not, therefore, fall under sub-section (*4*) of section 96. Also in a case where the Committee passes an order within the one month, refusing to give permission, there would clearly be nothing inconsistent in the right of appeal or revision referred to in section 36, sub-section (2); on the other hand, the present contention would deprive an applicant of this right. Nor is there any other provision in section 96 which has been shewn to be inconsistent with this right of appeal or revision. In fact I think the Legislature has clearly indicated in another part of the Act its intention to allow such interference with the power exercised by a delegate under section 96. Section 186G authorises a Municipal Commissioner to pass orders under section 96, and this is not one of the powers which can only be exercised with the previous approval of the Municipality under proviso (A) to that section. Then under section 186M the Municipal Commissioner may delegate his powers under section 96 to a Municipal officer or servant, section 96 not being one of the excepted sections specified. Under sub-section (2) the exercise or discharge by the delegate of the powers delegated to him under section 96 is made subject to such conditions and limitations, if any, as may be prescribed in the order of delegation, and also to control and revision by the Municipal Commissioner. This gives the Municipal Commissioner clear power to override a permission which may have been given by the Municipal officer or servant, to whom the powers had been delegated. Similar provisions are contained

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in the Bombay City Municipal Act. Under sections 345 and 346 (1) the Commissioner may pass orders approving or disapproving of a proposed building or work, and under section 68 he can delegate this power to a Municipal officer, in which case the powers are to be exercised or performed or discharged under the Commissioner's control and subject to his revision. Therefore there is nothing incongruous in the Municipality exercising a similar right of control and revision over acts of a Committee to whom powers under section 96 have been delegated. In my opinion, in cases where an order is passed by such a Committee, the words "the Municipality" in section 96 must be read as "the Committee subject to the provisions of section 36, sub-section (2)." In so reading it, each of the two sections has its proper scope and the Court follows the general principle that due effect should be given to every part of a Statute.

Then the question arises whether in this particular case the order passed by the Municipality was one which complies with the requirements of sub-section (2) of section 36, that is to say, was it passed in the exercise of authority given to it as a revisional or appellate body under the rules of the Municipality in force under section 46 of the Act? In this particular case the application of Chunilal, which was made to the Vice-President, and by him submitted to the Municipality, complains of the order granting permission to the appellant and asks for its revocation by the Municipality. In my opinion it amounted to an appeal, and as it was made on the very day on which the order was passed, it was clearly within the time allowed by Rule 58.

Mr. Thakor contended that it could not be considered as an appeal because Chunilal was not a

party to the proceeding, the main question under section 96 being between the appellant and the Municipality. But I do not think there is anything in Rules 55 to 58 which justified this narrow construction of the word "appeal". Rule 58, sub-rule (1), speaks of the party affected by the order appealed against, and unless the word "party" is to be read in the narrow sense of a party to a suit or legal proceeding, it clearly covers the application of Chunilal, who as a neighbour was affected by the order complained of. In my opinion the word "party" in Rules 56 and 58 does not mean anything more than "person" [as it often does, *cf.* Stroud's Judicial Dictionary, under the Heading "Party"]; and it would clearly be giving considerable limitation to the right of appeal to read the rules otherwise. Thus, suppose a Committee has given permission to the owner of a building in a public street to put up a balcony projecting from his upper-storey, and supposing the owner of the neighbouring building considers that this projection will be an obstruction to the safe and convenient passage along the street, is he not to be considered a party affected who should have a right of appeal asking the Municipality to over-ride the permission, in accordance with the provisions of sub-section (3) of section 113? I think the answer should be in the affirmative, and that the appeal contemplated in the rules is practically one given to "any person deeming himself aggrieved" by the order complained of. As an analogous case, reference may be made to section 269 of the Public Health Act of 1875 (38 & 39 Vict. c. 55) giving a right of appeal to such a person from any order, including an order of the kind now under consideration, passed by an authority under that Act.

But even supposing that the application cannot properly be considered as an appeal, I think that the

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case fell within the revisional authority of the Municipality under the rules. Rule 42 in general terms subjects every delegation of the Municipality's executive functions, power or duties, to the general control of the Municipality, and this rule cannot be limited to executive functions, as opposed to powers of the kind referred in section 96, in view of the provisions of Rule 45 which speak of executive functions involved in the exercise of a power conferred on the Municipality. It was, therefore, competent in my opinion for the Municipality to pass their order suspending the proceeding with the building and subsequently to revoke the permission granted by the Public Works Committee. It is a case which can be held to fall under Rule 49, read with Rule 70, i.e., the Vice-President, in the absence of the President, brought this question to the notice of the Municipality as an instance in which the Public Works Committee seemed to have erred in the exercise of its functions. But, even supposing that the case did not fall under that rule the Municipality, as a revisional authority with a right of general control under Rule 42, could, I think, legally interfere with the order of the Public Works Committee. Rule 42 expressly confers this power upon the Municipality, and therefore is excepted from the limitations contained in Rule 54. There is nothing in the rules which shows that it was intended that the Municipality should not be able to act in revision on their own motion, independently of any initiation by the President or the Vice-President under Rules 49 and 50. Rule 42 shows this by using the words "in particular" when referring to the provisions of Rules 43 to 55, which imports that the reference was without prejudice to the right of general control previously mentioned. Therefore, in my opinion, the General Body could legally act on its own

motion or on the application of a person injuriously affected by the order of the Public Works Committee, and the order of revocation was legal.

Answers accordingly.

R. R.

REPORTER'S NOTE.—The following rules framed by the Dakor Municipality in virtue of the powers conferred upon it by section 46 of the Bombay District Municipal Act, 1901, are material.

42. Every delegation of the Municipality's executive functions, power or duties shall be deemed to be made subject to the general control of the Municipality and in particular to the provisions of Rules 43 to 55.

43. No delegation made by the Municipality shall be valid unless—

(i) it is made at a General Meeting;

(ii) in the case of a delegation to an individual, the resolution by which the delegation is made is supported by at least half the total number of councillors.

44. When any of the Municipality's powers other than a power of entry of inspection has been delegated to more individuals than one, such delegation shall be deemed to have been made subject to the conditions—(1) that the power is to be exercised by any individual only when all the superior delegates are absent from municipal limits.***

45. In the absence of any express provision to the contrary in the resolution of delegation, every delegation of any of the Municipality's powers shall be deemed to include the delegation of all the executive functions involved in the exercise of that power and the withdrawal of such power from the Managing Committee and every delegation of any of the Municipality's executive functions shall be deemed to include the withdrawal of such functions from the President.

49. It shall be the duty of the President to watch over delegates (whether Committees or individuals) and to bring to their notice and, if necessary, to the notice of the Municipality any instances in which they seem to have erred in exercise of their functions as delegates, or to be negligent or dilatory about exercising the same.

50. The President shall be competent to suspend, pending a reference to the Municipality, the operation of any order passed in virtue of delegation which appears to him to be open to objection in law or in policy.

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51. When issuing an order of suspension under Rule 50, the President shall at the same time call a special general meeting to consider the matter within five days.

54. Except as otherwise expressly provided in the Act or in the rules under the Act no act of any delegate shall be revised or called in question otherwise than—.

(i) as provided in Rules 49, 50 and 55, or

(ii) by a resolution supported by at least half the total number of councillors at a special general meeting called for this purpose.

55. First appeals against the decisions or orders of delegates other than the orders of a Committee under section 65 (3) shall lie as shown below:—

Appeals from order or decision of any Committee	Shall lie to—
President or Vice-President,	The Municipality.
or Secretary,	The Municipality.
Any other individual delegate,	The Controlling Committee.

There shall be no second appeal in any case.

56. Any notice, petition or appeal may be returned to the presenting party and shall be treated as not received, if it

(*a*) is unintelligible or disrespectful,

(*b*) does not bear the name, father's name, occupation or address of the petitioner or appellant and his signature or mark or that of his agent,

(*c*) is ascertained to be pseudonymous, or

(*d*) is sent by post unstamped or insufficiently stamped.

57. Any appeal may be so returned which is unaccompanied by the decision or order appealed against or an authenticated copy of the same.

58. (1) Any appeal may be rejected by the authority to which it lies, if received more than 30 days after the date of delivery of the order appealed against to the party affected orally or in writing.***

70. In the absence of specific provision to the contrary in these rules or in orders passed by the President in writing, the President shall be deemed to have deputed all his powers, duties and executive functions to the Vice-President for so long as he (the President) is absent from municipal limits.

R. R.