

APPELLATE CIVIL

Before Mr. Justice Bhagwati and Mr. Justice Chainani.

GOVERNMENT OF PROVINCE OF BOMBAY (ORIGINAL DEFENDANT No. 2), APPELLANT *v.* GUNVANTRAI MANEKLAL DESAI AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.*

1951
Jan. 19

Bombay Municipal Boroughs Act (Bom. XVIII of 1925), s. 52—Land Acquisition Act (I of 1894), s. 4—Compulsory acquisition of land by Government for road widening—Non-existence of hindrance to exercise of powers of acquisition under Municipal Act by local Municipality—Validity of acquisition.

Section 52 of the Bombay Municipal Boroughs Act, 1925, does not place any limitation or restriction on the general powers of the Provincial Government to compulsorily acquire a land for a public purpose within the meaning of s. 4 of the Land Acquisition Act, 1894.

Hence the Provincial Government may compulsorily acquire any land within the limits of a Municipality for the purpose of road widening although there is no hindrance to its acquisition by the Municipality within the meaning of the said s. 52 of the Municipal Act.

Second Appeal from the decision of J. A. Clerance Smith, Assistant Judge at Ahmedabad reversing the decision of P. D. Vyas, Civil Judge (S. D.) at Ahmedabad.

Suit for declaration and injunction.

Gunvantrai (plaintiff) was the owner of a house standing on survey numbers 1266-1268 in Khadia Ward of Ahmedabad City. In 1938, the plaintiff asked for permission to reconstruct his house but the same was refused to him under sub-section (3) of s. 118 of the Bombay Municipal Boroughs Act, 1925, as a part of the house fell within the regular line of the public street prescribed by the Ahmedabad Borough Municipality (defendant No. 1). The plaintiff thereupon asked defendant No. 1 to take action under clauses (b) and (c) of the said sub-section and acquire the portion of his land included in the regular line of the public street. What was, however, done by the defendant No. 1 was to ask the Provincial Government (defendant No. 2) to acquire the land under the Land Acquisition Act, 1894. Accordingly on December 12, 1939, a notification was issued under s. 4 of the Land Acquisition Act in regard to the said piece of land and some others notifying that they were likely to be needed for the public purpose of road widening. This

* Second Appeal No. 761 of 1949.

1951
 GOVERN-
 MENT
 OF
 PROVINCE
 OF
 BOMBAY
 v.
 GUNVANT-
 RAI
 MANEKLAL

notification was followed by another notification dated November 24, 1941, under s. 6 of the Act declaring that the lands mentioned therein needed to be acquired at the expense of defendant No. 1 for the purpose of road widening.

On April 26, 1945, the plaintiff filed the present suit firstly for a declaration that there was no valid prescribed regular line of public street and for a mandatory injunction against defendant No. 1 requiring it to grant him permission to build, and secondly for a declaration that the Notifications issued by defendant No. 2 under the Land Acquisition Act were illegal and *ultra vires* and for an injunction restraining defendant No. 2 from taking any proceedings under them.

The trial Court negated the plaintiff's contentions and dismissed his suit.

On appeal the learned Assistant Judge confirmed the decision in regard to reliefs claimed against defendant No. 1 but decreed the suit as against defendant No. 2. In his judgment he observed:—

“It was the case of the learned advocate for the Municipality that Government were not acting under s. 52 at all but under their general powers under the Land Acquisition Act itself. There is no doubt that if this position is correct then the proceedings of the Provincial Government cannot be attacked. To widen a public street is, beyond doubt, a public purpose even without the presumption raised by s. 6 of the Land Acquisition Act. The difficulty about this argument is that if it is correct, s. 52 of the Municipal Boroughs Act will have no meaning at all except in so far as the latter half of it declares that if the land is acquired for Municipality by Government the Municipality must pay to Government both the compensation and expenses which the Government has incurred. This seems hardly necessary to say; but even if it is necessary to make this clear, it does not help us to give any meaning to the first half of the section. To say that the Provincial Government may acquire land for the Municipality under the Land Acquisition Act when there is any hindrance to the Municipality's acquiring it for itself would be a mere waste of breath, since it is already laid down in the Land Acquisition Act that the Provincial Government may acquire land for the Municipality whether there is hindrance or not. As the legislature is not lightly to be assumed to have said something entirely unnecessary, and since it is possible to give an intelligent meaning to this section that meaning must be attributed to it. That meaning is ‘Unless there is any hindrance to acquisition by the Municipality upon paymentthe Provincial Government may not obtain possession.....under the Land Acquisition Act.....’”

Defendant No. 2 appealed to the High Court.

B. G. Thakore, Additional Assistant Government Pleader, for the Province of Bombay.

R. J. Thakore, with Pochaji Jamshedji, for respondent No. 1.

R. M. Shah, for respondent No. 2.

BHAGWATI J. This is a second appeal from the decision of the learned Assistant Judge at Ahmedabad who allowed the appeal against the decision of the learned Civil Judge (S. D.), at Ahmedabad, dismissing the plaintiff's suit. The plaintiff is the owner of S. Nos. 1266, 1267 and 1268, Municipal Census Nos. 830-1-2-3-4 and 5 situated at Khadia, Ahmedabad. The Ahmedabad Borough Municipality wanted to acquire certain portions of these S. Nos. as coming within the regular line of public street and there was correspondence between the plaintiff and the Municipality in regard to the plaintiff's intention to build on these S. Nos. and the permission which he asked for from the Municipality to carry out the construction work. The Municipality refused that permission to the plaintiff stating that these S. Nos. were within the regular line of public street. The plaintiff then asked the Municipality to acquire these S. Nos. What was, however, done by the Municipality was to ask the Government to acquire these S. Nos. under the Land Acquisition Act, I of 1894. Accordingly on December 12, 1939, a notification was issued under s. 4 of the Land Acquisition Act by the Provincial Government in regard *inter alia* to these S. Nos. on the basis that these S. Nos. were likely to be needed for the public purpose "road widening". On November 24, 1941, the Provincial Government issued another notification under s. 6 of the Land Acquisition Act declaring that the suit S. Nos. were needed for the public purpose. Nothing further seems to have transpired after November 24, 1941, and on April 26, 1945, the plaintiff filed the suit out of which this second appeal arises against the Ahmedabad Borough Municipality, defendant No. 1, and the Province of Bombay, defendant No. 2, for a declaration that there was no legal and valid prescribed regular line of a public street and for a mandatory injunction that defendant No. 1 do grant permission to build in accordance with s. 123 of the Bombay Municipal Boroughs Act and rules framed thereunder and further for a declaration that the notifications issued by defendant No. 2 dated December 12, 1939, and November 24, 1941, were illegal and *ultra vires* and for an injunction restraining defendant No. 2 from taking any proceedings under the same. The learned trial Judge before whom the suit was heard negatived the contentions of the plaintiff and dismissed his suit with costs. An appeal was filed from this decision of the learned trial Judge and the learned Assistant Judge who

1951

GOVERN-
MENT
OF
PROVINCE
OF
BOMBAY
v.
GUNVANT-
RAI
MANEKLAL

Bhagwati
J.

1951
 GOVERN-
 MENT
 OF
 PROVINCE
 OF
 BOMBAY
 v.
 GUNVANT-
 RAI
 MANEKLAL
 Bhagwati
 J.

heard the appeal confirmed the decision of the learned trial Judge in regard to the reliefs which had been claimed against the Municipality. But so far as the Provincial Government was concerned, he came to the conclusion adverse to the Provincial Government on a construction of s. 52 of the Bombay Municipal Boroughs Act. He, therefore, allowed the appeal against the Provincial Government and reversed the order of the lower Court to that extent. The plaintiff's suit was thus dismissed with costs against the Municipality but it was declared that the Provincial Government had no power of acquiring the suit property under the Land Acquisition Act until there was hindrance to acquisition by the Municipality, and the Provincial Government and all its officers were restrained from continuing their proceedings under the Land Acquisition Act in so far as they related to the suit property. This second appeal has been filed by the Provincial Government against that decision of the learned Assistant Judge.

It may be noted at the outset that this point which found favour with the learned Assistant Judge was not mooted before the learned trial Judge. In any event, it does not appear if the question whether there was a hindrance or not was gone into with that detail as it might otherwise have been done if the point had been specifically mooted before the learned trial Judge. The learned Assistant Judge, however, considered this point and came to a conclusion in favour of the plaintiff in that behalf. It is necessary, therefore, to consider what is the effect of the enactment of this s. 52 of the Bombay Municipal Boroughs Act. The power of acquiring land is conferred on the Provincial Government by the Land Acquisition Act, I of 1894. It is an Act for acquisition of land for public purposes and for companies and it empowers the Provincial Government to acquire land which is needed or likely to be needed for any public purpose, the procedure therefor being laid down in Part II of the Act commencing with s. 4 thereof. This power is as wide as wide can be, and if the Provincial Government exercised the powers complying with the provisions and the procedure laid down in that behalf in the Act, issued the necessary notifications and acquired the land, that compulsory acquisition of land would be valid in law. It would be a valid acquisition of land for public purpose. Section 52 of the Municipal Boroughs Act, however, enacts,

“When there is any hindrance to the permanent or temporary acquisition by a Municipality upon payment of any land or building required for the purposes of this Act, the Provincial Government may, after

obtaining possession of the same for itself under the Land Acquisition Act, 1894, or other existing law, vest such land or building in the Municipality on its paying the compensation awarded, and on its repaying to the Provincial Government all costs incurred by the Provincial Government on account of the acquisition."

This provision is contained in the Bombay Municipal Boroughs Act, XVIII of 1925, and it enacts a provision with regard to the compulsory acquisition of land by having recourse to the Land Acquisition Act, I of 1894. It may be noted that the acquisition of land for the public purpose has got to be made after having resort to the Land Acquisition Act, 1894. These are the powers which have got to be exercised and no other. The powers have got to be exercised within the four corners of the provisions enacted in the Land Acquisition Act, 1894, and all the procedure and the formalities which are laid down in that Act would have to be gone into. The question, therefore, which arises for our determination is whether s. 52 of the Bombay Municipal Boroughs Act, 1925, provides for cases where even though acting under the provisions of the Land Acquisition Act, 1894, the Provincial Government may in certain cases acquire the land compulsorily for the benefit of the Municipality or lays down a restriction on the general powers which have been conferred on the Provincial Government under the provisions of the Land Acquisition Act, 1894. It was urged before us and it was urged before the learned Assistant Judge that the Bombay Legislature did not enact the provision of this nature for nothing and that fullest effect must be given to the words which have been used in s. 52 of the Bombay Municipal Boroughs Act. Section 52 starts with the expression "When there is any hindrance to the permanent or temporary acquisition by a Municipality upon payment of any land or building required for the purposes of this Act." It was urged that the power which the Provincial Government may exercise by having recourse to the Land Acquisition Act, 1894, would be exercisable only in the event of there being a hindrance to the permanent or temporary acquisition by the Municipality upon payment of any land or building required for the purposes of the Act, and unless and until that condition was fulfilled, no question could arise of the Provincial Government exercising the powers under the Land Acquisition Act, 1894. It was thus in effect urged that in the case of compulsory acquisition of land for the purpose of the Municipalities a restriction was laid down by the enactment of s. 52 of the Bombay Municipal Boroughs Act upon the general powers which were vested in the Provincial

1951

GOVERN-
MENT
OF
PROVINCE
OF
BOMBAY
v.
GUNVANT-
RAI
MANEKLAL

Bhagwati
J.

1951
 GOVERN-
 MENT
 OF
 PROVINCE
 OF
 BOMBAY
 v.
 GUNVANT-
 RAI
 MANEKLAL
 Bhagwati
 J.

Government under the provisions of the Land Acquisition Act, 1894. If this provision which is contained in s. 52 of the Bombay Municipal Boroughs Act was not meant to be a restriction on the general powers of the Provincial Government in this behalf, it was urged that there would be no sense in the enactment of s. 52 of the Bombay Municipal Boroughs Act because the power to acquire land compulsorily for public purposes was there and the acquisition of land for the purpose of the Municipality within the meaning of the Bombay Municipal Boroughs Act would be a public purpose within the meaning of the expression as used in the Land Acquisition Act, 1894. It could not be attributed to the Bombay Legislature when it enacted s. 52 of the Bombay Municipal Boroughs Act that it was enacting a superfluous provision.

This was the argument which found favour with the learned Assistant Judge when he allowed the appeal against the Provincial Government. We are afraid, however, that we cannot accept this construction. The general powers of compulsory acquisition of land for public purpose are contained in the provisions of the Land Acquisition Act, 1894. We are not inclined to read the provisions of s. 52 of the Bombay Municipal Boroughs Act as laying down any restriction upon the same. The learned Assistant Judge read the provisions of s. 52 of the Bombay Municipal Boroughs Act as meaning that unless there was any hindrance to the permanent or temporary acquisition by a Municipality upon payment of any land or building required for the purpose of the Act, the Provincial Government were not entitled to exercise the powers which were vested in them under the Land Acquisition Act, 1894. There is no warrant for reading s. 52 of the Bombay Municipal Boroughs Act in that manner. That section only enables the Provincial Government as between themselves and the Municipality to have recourse to the Land Acquisition Act, 1894, and it also enables the Municipality in the circumstances laid down therein to request the Provincial Government to have recourse to the powers vested in them under the Land Acquisition Act, 1894. The consequence of such a request on behalf of the Municipality and the action taken by the Provincial Government thereupon under the provisions of the Land Acquisition Act, 1894, are further worked out in s. 52 of the Bombay Municipal Boroughs Act in so far as it lays down that whatever costs are incurred by the Provincial Government on account of the acquisition have got to be repaid to the Provincial Government

by the Municipality concerned and whatever compensation has been awarded the person whose land has thus been compulsorily acquired has also got to be paid by the Municipality concerned. The Municipalities are statutory bodies constituted under the Bombay Municipal Boroughs Act and but for such a provision contained in s. 52 of the Bombay Municipal Boroughs Act, it may not be possible for the Municipalities to sanction the payment of any such compensation moneys or the costs incurred by the Provincial Government in the matter of the land acquisition proceedings. There is, therefore, a purpose behind the enactment of this s. 52 of the Bombay Municipal Boroughs Act. It is not superfluous. It is not meaningless. But it only gives one illustration of the exercise of the powers by the Provincial Government for compulsory acquisition of land under the provisions of the Land Acquisition Act, 1894, and the consequences of such compulsory acquisition of land are worked out therein. We do not read in the enactment of s. 52 of the Bombay Municipal Boroughs Act any limitation or restriction on the powers of the Provincial Government to compulsorily acquire the land for the public purpose within the meaning of the Land Acquisition Act, 1894. We have, therefore, come to the conclusion that the argument which found favour with the learned Assistant Judge and which was advanced also before us is not sound. The notifications which were issued by the Provincial Government on December 12, 1939, and November 24, 1941, were valid and the plaintiff is not entitled to any relief against the Provincial Government as asked for.

The result, therefore, is that the appeal will be allowed. The decree passed by the learned Assistant Judge against the Provincial Government, defendant No. 2, will be set aside. The order for dismissal which was passed by the learned trial Judge will be restored and the suit will be dismissed with costs throughout.

Appeal allowed.

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Bhagwati and Mr. Justice Chainani.

BHALCHANDRA LAXMAN POTNIS AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* BALKRISHNA MADHAV POTNIS (ORIGINAL PLAINTIFF), RESPONDENT.*

1951
Jan. 19

* First Appeal No. 356 of 1949 with First Appeal No. 373 of 1949.

1951
GOVERNMENT
OF
PROVINCE
OF
BOMBAY
v.
GUNWANT-
RAI
MANEKLAL
Bhagwati
J.