

(1923) 01 CAL CK 0031
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

The Calcutta Improvement Trust

RESPONDENT

Date of Decision : 29-01-1923

Acts Referred:

Calcutta Improvement Act, 1911 — Section 41, 54

Citation : AIR 1924 Cal 85

Hon'ble Judges : Sanderson, C.J.; Richardson, J

Bench : Full Bench

Judgement

Sanderson, C.J.—This is an appeal from the judgment of my learned brother Mr. Justice Greaves which was given with reference to a special case stated by the Board of the Calcutta Improvement Trust and the Calcutta Corporation under the provisions of Order 36 of the Code of Civil Procedure.

2. When the matter was before my learned brother there were several schemes for his consideration, but on the hearing of the appeal the argument has been limited to one scheme which is scheme IV-A, and the plan relating to it, is marked Exhibit D-3. The plots of land, to which this case relates, are situated between Kalighat New Road and Kalidas Patitandi Lane. The scheme was a street-scheme and the works comprised in the scheme are shown on the map Exhibit D-3. Part of the land, which lies between Kalighat New Road and Kalidas Patitandi Lane, was required for making a new street running from Kalidas Patitandi Lane to Kalighat New Road; part of it was required for widening Kalighat New Road and part of it was required for widening Kalidas Patitandi Lane and Russa Road South. There remained six plots, which on the plan are numbered 17, 18, 19, 20, 21 and 22 which were not required for the making of the new street or for the widening of the old streets. With regard to the scheme in question, we were referred to a statement of the purpose for which the land was required, and it is as follows: "This is practically a case of recoupment" and, the learned Counsel, Mr. Langford James, appearing for the Improvement Trust, stated that he was willing that it should be treated, for the purpose of this case

only, as a case of recoupment.

3. The only question, therefore, which arises is whether the Improvement Trust was entitled to deal with those plots which I have mentioned, under the provisions of Section 54 of the Calcutta Improvement Act, 1911.

4. The learned Judge in dealing with this case as well as the others said, "The matter is not, I think, free from doubt and if Section 54 had stood alone I should have been inclined to think that the contention of the Corporation was well founded, but it seems to me that Section 62(5) does contemplate that after executing the scheme the Board may have portions of the land acquired u/s 54 still vested in them and it is rather difficult to see what this land would be unless it is land acquired u/s 54 in excess of the land actually required for executing the engineering portions of the scheme." The learned Judge then held that under the provisions of Section 54, the Board might acquire land in excess of that actually required for executing the engineering portions of the scheme, that is to say, land required for lay-out or for recoupment.

5. As I have already said, this Court in this case has not to consider the question of land which is required for lay-out, having regard to the agreement which was arrived at by the learned Counsel in the case. Our decision is confined to the plots of land which I have mentioned and which, it is agreed, were included in the scheme for the purpose of recoupment.

6. For the purpose of my judgment it is necessary to refer to a few sections of the Act. Section 41 is as follows : "Every improvement scheme shall provide for (a) the acquisition by the Board of any land in the area comprised in the scheme, which will, in their opinion, be required for the execution of the scheme". Then are set out in the section certain matters which are connected with the improvement scheme, such as laying out or re-laying of the land in the said area; the demolition, alteration or reconstruction of buildings situated on land which it is proposed to acquire in the said area; the construction of any buildings which the Board may consider it necessary to erect for any purpose other than sale or hire; the laying out or alteration of streets, etc., if required; and levelling, paving, metalling, etc. Then Section 42 provides: "Any improvement scheme may provide (a) for the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be affected by the execution of the scheme...." The Improvement Trust by reason of the provisions in Chapter IV of the Act, when dealing with parties other than the Calcutta Municipality or other Municipalities referred to in Section 54, may have recourse to the Land Acquisition Act of 1894 for carrying out any of the purposes of the Improvement Act. But when the Improvement Trust are dealing with any building, or any street, square or other land or any part; thereof which is situated in the Calcutta Municipality and is vested in the Corporation, and which is required for executing any improvement scheme, the Board may have recourse to the procedure provided by Section 54(1) of the Act, and the Board may give notice accordingly to the Chairman of the Corporation in accordance

with the section.

7. It is provided that thereupon any such building, street, square, land or part shall vest in the Board, subject, in the case of any building or any land (not being a. street or square), to the payment to the Corporation of such sum as may be required to compensate them for actual loss-resulting from the transfer thereof to the Board. The section then provides that if any question or dispute arises as to the sufficiency of compensation paid or proposed to be paid under Sub-section (1), the matter shall be referred to the Local Government, whose decision shall be final.

8. The learned Counsel for the Improvement Trust informed the Court that if the land in question had been acquired under the provisions of the Land Acquisition Act, 1894, the compensation which would be awarded to the Corporation would be considerably larger than the compensation, which the Corporation would recover u/s 54. Further, it was agreed that if Section 54 applied to these plots of land, the Corporation could not avail themselves of Section 78 which deals with "Abandonment of Acquisition," and the provisions of which might be of considerable value to the party or parties whose land has been taken for the purpose of recoupment.

9. The question, in my judgment, lies within a narrow compass : and it is this, whether the lands which were vested in the Corporation and which were included in the scheme, on the ground that they were "affected by the execution, of the scheme" within the meaning of Section 42(a) and for the purpose of recoupment can be said to be lands which were "required for executing the improvement scheme" within the meaning of the Section 54(1). The words which are used in Section 54 are "required for executing any improvement scheme." The words which are used in Section 41(a) are "required for the execution of the scheme." It was admitted that the words used in Section 41(a) "land which will be required for the execution of the scheme" referred to land which is in a different category to "land which will be affected by the execution of the scheme" as described in Section 42(a) and that the former description does not include the latter. The material words used in Section 41(a) and 54(1) are not quite the same, but I am unable to ascertain any difference in the meaning of them. The conclusion therefore, would naturally be that the provisions of Section 54(1) do not apply to land which is affected by the execution of the scheme, and which is included for the purpose of recoupment only. The learned Counsel for the Improvement Trust, however, argued that when the draftsman of this Act and the Legislature were considering Section 54, they were not thinking of the two categories of land which are described in Section 41(a) and Section 42(a) but that they intended to include in Section 54(1) all lands comprised in the improvement scheme, and that the words "land which is required for executing any improvement scheme" included not only land which was required for the execution of the scheme but also land which would be "affected by the execution of the scheme." In my judgment, the Court ought to give the material words in Section 54(1) their

natural meaning : and, if their natural meaning is applied to these words, in my judgment, they do not comprise lands which have been included by the Improvement Trust in the scheme, not because they are required for the execution of the scheme, but because in their opinion they are "affected by the execution of the scheme" and are included for the purpose of recoupment only. In my judgment it would be straining the natural meaning, if we were to hold that the words "required for executing any improvement scheme" would cover not only lands which were required for the actual execution of the scheme, but also lands which were not required for the execution of the scheme, but which were affected by the execution of the scheme.

10. It would have been easy for the Legislature to have inserted in Section 54(1) words which would have covered lands affected by the execution of the scheme if they had so desired. It may be that the Legislature may have considered that when the Board of the Improvement Trust was dealing with another public body such as the Calcutta Corporation, it would not be right to enable the Improvement Trust to acquire from the other public body lands, which were not actually required for the execution of the scheme, but which were included in the scheme for the purpose of recoupment only. This, however, is nothing more than speculation, and I do not base my judgment upon that ground, but upon the natural meaning of the words which are used in Section 54(1) to which I have already referred.

11. In my judgment the provisions of Section 62(5) are not inconsistent with the construction, which I have placed upon the material words in the above mentioned sections.

12. The question, which this Court has to decide, relates merely to Scheme IV-A and the plots, which I have already mentioned, and which are to be taken as land required for the purpose of recoupment, and in my judgment, the answer should be that the Improvement Trust were not entitled to deal with those plots u/s 54(1) of the Calcutta Improvement Act, 1911.

13. The result is that the learned Judge's decision and decree will stand as regards the schemes other than IV-A and with regard to Scheme IV-A the judgment and decree must be varied in accordance with our judgment. The decree, therefore, with respect to Scheme IV-A, will be that the Board are not entitled to proceed under the provisions of Section 54(1) in respect of land vested in the Calcutta Corporation and situated in the Calcutta Municipality, which is required for the purpose of recoupment only, and that the Board are not entitled to retain the plots 17 to 22 described in Exhibit D-3 and included in Scheme IV-A : and such plots are to be restored by the Improvement Trust to the Corporation, or if the same have been sold, the Board will pay the Corporation the net proceeds of such sales in accordance with paragraph 7 of the case stated.

14. We make no order as to costs.

Richardson, J.

15. I agree. The learned Standing Counsel appearing for the appellants, the Corporation of Calcutta, has abandoned the appeal so far as this case stated relates to Corporation land included in Improvement Schemes Nos. I, II, IV and V as being required for lay-out. The result is that we are concerned only with the land included in Scheme No. IV-A which the Board require for the purposes of recoupment. Scheme No. IV-A is a street scheme for the widening of the Russa Road South at its junction with the Hazra Road and the land in question is the land at the side of a road on which there are buildings or foundations of buildings.

16. Under Clause (a) of Section 41 of the Calcutta Improvement Act, 1911, every improvement scheme must provide for the acquisition by the Board of any land in the area comprised in the scheme which will in their opinion be required for the execution of the scheme. Under Clause (a) of Section 42 an improvement scheme may provide for the acquisition by the Board of any land in the area comprised in the scheme which will in their opinion be affected by the execution of the scheme. It is well-settled that under the latter clause it is open to the Board to make provision in an improvement scheme for the acquisition, for purposes of recoupment, of land which will, in their opinion, be affected or improved in value by the execution of the scheme - *Trustees for the Improvement of Calcutta v. Chandra Kanto Ghose* AIR 1920 P.C. 51. A distinction, therefore, is drawn in these sections between land comprised in a scheme because it is required for the execution of the scheme and land comprised in a scheme because it will be affected by the execution of the scheme and is required for the purpose of recoupment.

17. By Section 54 of the Act a short method is provided for the acquisition by the Board, of "any building, or any street, square, or other land, or any part thereof" which is vested in the Corporation and which the Board require "for executing any improvement scheme." The question put to us, with particular reference to the land in question in scheme No. IV-A, is-Does this section enable the Board to acquire by this short method instead of under the Land Acquisition Act, land vested, in the Corporation which the Board require for purposes of recoupment?

18. The draftsman, it is true, has not used precisely the same expression as that in Clause (a) of Section 41. It is said that the difference in the language shows that the draftsman when framing Section 51 was not thinking of the distinction between land which must be included in a scheme under Section 41 and land which may be included in a scheme u/s 42 for purposes of recoupment. It is accordingly argued that the words in Section 54 should be understood in a wide sense as including all land comprised in a scheme for whatever purpose it may be required. It is also said that some of the purposes for which provision may be made in a scheme u/s 42, such as raising, lowering, or levelling particular areas, or the formation of open spaces, would bring the land required for those purposes within the description, land required "for executing the scheme." In this appeal the latter point may be conceded without expressing a definite opinion

upon it. But land required for purposes of recoupment would still stand in a different category. And as to the differences in language between Section 41 and Section 54, the expression "land required for executing a scheme" is prima facie at any rate the equivalent in meaning of the expression "land required for the execution of the scheme." I can see no good reason. Why these equivalent expressions should receive a different interpretation. Both expressions, according to the natural meaning of the language, appear to me to exclude land comprised in a scheme because it is thought that it will be beneficially affected by the execution of the scheme and is accordingly required for purposes of recoupment. In my opinion, therefore, such land is not land required for the execution of or for executing the scheme within the meaning of the Act and cannot be acquired by the Board u/s 54.

19. On behalf of the Corporation some reference has been made in the argument to Section 78 under which the owner of land not required for the execution of a scheme may apply to the Board requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf. Application may be made under this section in respect of land required by the Board for purposes of recoupment, and it is said that owing to the terms of Sub-section (2)(a) the Corporation would be deprived of the benefit of Section 78 if Section 54 be construed as applicable to Corporation land required for purposes of recoupment. If the argument is correct, the result may furnish some ground, if not a strong ground, for rejecting the construction of Section 54 suggested by the Board. There seems no reason, why, as regards land required for purposes of recoupment, the Corporation should not have the same right u/s 78 as other owners of land.

20. The learned Judge who had to deal not only with land required for purposes of recoupment but also with land required for "lay-out," was influenced by the provision contained in Sub-section (5) of Section 62 and I will quote his words.

21. "The matter" he says, "is not I think free from doubt and if Section 54 had stood alone I should have been inclined to think that the contention of the Corporation was well-founded, but it seems to me that Section 62(5) does contemplate that after executing the scheme the Board may Shave portions of the land acquired u/s 54 still vested in them, and it is rather difficult to see what this land would be unless it is land acquired u/s 54 in excess of the land actually required for executing the engineering portions of the scheme, that is to say, land required for lay-out or for recoupment. I accordingly find, in view of what I have already stated, that in each of the instances set out in the schedule to the case before me, the Board is entitled to retain the land acquired by it under the provisions of Section 54 irrespective of whether such land is actually required for the engineering portions of each scheme."

22. Section 62 gives the Board Power to turn or close in whole or in part public streets or squares vested in them. And Sub-section (5) provides : "When any public street or square vested in the Board, or any part thereof, is permanently

closed under Sub-section (1) the Board may sell or lease so much of the same as is no longer required."

23. The reasoning seems to be that if, u/s 54, public streets and squares can only be required for executing what the learned Judge describes as the engineering portions of a scheme, then the power given to the Board by Section 62, Sub-section (5), when a public street or square is permanently closed, "to sell or lease so much of the same as is no longer required," would be meaningless. This reasoning, however, seems to raise questions of construction possibly of some difficulty, which it is not necessary for us in this appeal to decide. In the first place, the Act speaks not of the engineering portions of a scheme but of executing schemes, and a question may arise as to the different ways in which land may be required u/s 54 for executing a scheme. Something may depend on the mode in which a particular scheme is framed by the Board or sanctioned by the Local Government. Without expressing a definite opinion, it may be suggested that whatever limitation be put on the language of Section 54, cases may occur in which public streets or squares vested in the Board u/s 54 are closed and become "no longer required" within the meaning of Section 62, Sub-section (5). Another point occurs. It will be observed that Section 62 makes no express reference to Section 54. It speaks of public streets or squares "vested in them" that is, in the Board.

24. The words may mean - I do not say they do - vested in the Board u/s 54 or otherwise. Again this part of the Act does not deal only with public streets and squares vested in the Corporation but also in Section 55, with private streets and squares required by the Board, as in Section 54 "for executing any improvement scheme." In the case of a private street or square or part thereof, after giving the prescribed notice and considering objections, the Board may take over charge of such street, square or part from the owner thereof and the same shall thereupon vest in the Board. In the event of a private street or square or part thereof being altered or closed, Sub-section (3) provides for the payment of reasonable compensation to the owner for the loss of his rights, and Sub-section (4) for compensation in certain cases to the owners of adjacent property and residents in the neighbourhood. The consideration arises that a power of this summary nature ought not to be extended beyond what the language of the Act clearly warrants. On the whole, therefore, with great respect to the learned Judge, these provisions relating to streets and squares seem to favour rather than to militate against the construction of the Act which we adopt. We go no further than this, that to require lands for purposes of recoupment is not one of the ways in which land may be required u/s 54 for executing an improvement scheme. As the Board have large powers to acquire land under other provisions of the Act, the decision, it may be hoped, will not cause them any great inconvenience.

25. It was suggested that the Corporation was equally interested with the Board in the improvement of Calcutta and ought to facilitate the Board's operations.

Doubtless the schemes of the Board, when they come to fruition, enure to the benefit of the Corporation. Meanwhile, however, these high authorities are independent and they have separate interests. If they cannot agree, we must interpret the Act a" best as we can.

26. In the result, the decision of the learned Judge that the land included in the schemes Nos. I, II, IV and V as being required for lay-out is land required for executing the scheme within the meaning of Section 54, has not been effectively challenged and will stand. I agree that the appeal should be allowed as regards the land included in Scheme No. IV-A as required¹ for purposes of recoupment and I concur in the order which my Lord has proposed.