

(1920) 08 BOM CK 0033

In the Bombay High Court

Case No : O.C.J. Suits No. 910, 911, 912, 955, 956 of 1920

The Bombay Municipality

APPELLANT

Vs

M. Damodar Bros.

RESPONDENT

Date of Decision : 06-08-1920

Acts Referred:

City of Bombay Municipal Council Act, 1988 — Section 91
Land Acquisition Act, 1894 — Section 16, 31

Citation : AIR 1921 Bom 214 : (1921) 23 BOMLR 35 : 60 Ind. Cas. 571

Hon'ble Judges : Setalvad, J

Bench : Single Bench

Judgement

Setalvad, J.—In the year 1917, the Municipal Corporation of the City of Bombay adopted in its final form, a scheme for the widening of Churchgate Street and Armenian Lane within the Fort of the City of Bombay and for the development of that portion of the Fort, which was under their consideration ever since 1914, and determined for that purpose to acquire certain properties abutting on those streets. Having failed to acquire the properties by private agreement with the owners thereof, it was considered necessary to have resort to the provisions of Section 91 of the City of Bombay Municipal Act. The Municipal Commissioner with the approval of the Standing Committee moved the Government of Bombay to acquire these properties on behalf of the Corporation under the Land Acquisition Act. The Government of Bombay, thereupon, on the 23rd of July 1917, notified the acquisition of five plots in Armenian Lane called plots I to V (Exhibit A). On the 1st of December 1917 the Governor in Council issued the necessary notification for the acquisition of seven plots situated in Church-gate Street called the plots VI to XII in the said notification (Exhibit B). Exhibit H is the plan showing the nature of the scheme and the properties to be acquired. The plots marked I to V on the plan are covered by the notification Exhibit A, and the plots marked VI to XII on plan Exhibit H 8 are comprised in notification Exhibit B. The properties involved in this litigation are properties v and VI on the plan Exhibit H. Property V is situated in Armenian Lane and property VI is situated at the

junction of the Churchgate Street and Esplanade Road. Sir Mahomed Yusuf was the owner of both these properties and he had let the said properties to one Diveshwar Purshotam under the lease, dated 12th of December 1917, for a period of three years from the 1st of November 1917.

2. After the properties were notified for acquisition as stated above, the Collector proceeded to determine the compensation payable to Sir Mahomed Yusuf in respect of these properties. The persons claiming to share in the compensation to be awarded were, Sir Mahomed Yusuf, the Gresham Life Assurance Society, who claimed certain easements on the properties acquired, and Government, to whom certain annual payments were made for the land. The lessee Diveshwar had no claim to share in the compensation to be awarded, because by Clause 16 of his lease, it was provided that in case the buildings were required by any public body or Government, the lease was to be null and void.

3. By the time the proceedings before the Collector terminated, but before his award was actually published, the Executive Engineer of the Municipality and Sir Mahomed Yusuf came to an agreement that was embodied in the correspondence, Exhibit D, whereby in consideration of Sir Mahomed Yusuf agreeing to pay the portion of the compensation payable to the Gresham Life Assurance Society and to Government and his further agreeing not to claim from the Municipal Corporation the compensation payable to himself, the Municipality agreed to convey to Sir Mahomed Yusuf the residue of the land acquired from him after retaining the portion necessary for the purpose of widening the street and also in addition certain strip of land which the Municipality were to get under the arrangement with the Wadia Trust being the owners of property No. XI. Sir Mahomed Yusuf also agreed to pay the costs of any suit or suits that the Municipality might have to file for the purpose of ejecting the occupants of the said premises. The above arrangement was approved by the Municipal Corporation, but no conveyance has yet been given to Sir Mahomed Yusuf.

4. The Executive Engineer informed the Collector of the above arrangement and he, thereupon, on the 24th of November 1919, published his award (which was ready in July but the publication of which was postponed because of the negotiations that " Bros. were going on between the Municipality and Sir Mahomed Yusuf) whereby he fixed the amount of compensation at Rs. 19, 84, 948 and apportioned the same as follows:?

Sir Mahomed Yusuf....Rs. 19, 61,662. The Gresham Life Assurance Society ... 21,00. Government... .. 1,996.

5. By his letter of the same date, the Collector forwarded the award to the Municipal Commissioner and requested him to arrange to send his Surveyor, on the 4th of December 1919, to receive charge of the land from the Collector's Surveyor. On the 3rd of December 1919, the Executive Engineer forwarded to the Collector two cheques of Sir Mahomed Yusuf for the amounts payable respectively to the Gresham Life Assurance Society and to Government. The

Collector paid those amounts to the parties concerned.

6. On the 9th of December 1919, the Collector's Surveyor and the manager of Sir Mahomed Yusuf signed Exhibit M, wherein it is recorded that they had respectively handed over and taken charge of plots Nos. V and VI. On the same day the Collector's Surveyor wrote a letter (Ex. N 2) to Mr. Jamshedji Fitter, the Acquisition Officer of the Municipality, and sent along with it what is called a charge receipt for these properties and the same was signed by Mr. Fitter and the Collector's Surveyor (Ex. J) whereby it is recorded that they had respectively taken and handed over charge of the said plots.

7. The Municipality by their letter of the 22nd of December 1919 required the occupants of these properties who were monthly tenants of the said Diveshwar to vacate the premises in their occupation by the 31st of December 1919. Some of the occupants have vacated the premises in their occupation and others have remained on the premises on the understanding with the Municipality that they would vacate on a fortnight's notice. The defendants disregarded the said notices and the Municipal Corporation has filed these suits for recovery of possession from the present defendants, and the second plaintiff Sir Mahomed Yusuf has been joined as co-plaintiff, out of caution, as the plaint says, by reason of the agreement with him. The defendants in Suit No. 910, Messrs. M. Damodar Brothers, are the occupants of premises comprised in No. V on Ex. H, and the defendants in Suits Municipality Nos. 911, 912, 955 and 956 are occupants of premises comprised in No. VI. It was agreed that all these suits should be tried together as many of the points arising in these cases were common.

8. Several questions of law were raised and were argued at considerable length by counsel appearing for the various parties. It is contended on behalf of the 1st plaintiff that, by virtue of the provisions of Section 91(2) of the City of Bombay Municipal Act, the properties vested absolutely in the Corporation who thereby acquired all existing interests in the property, and that such vesting gets rid of everybody, that the provisions of the Rent Act do not apply in the case of the occupants of such premises and that, even if the Rent Act applies, there is satisfactory cause for the recovery of possession. It was contended for the defence (1) that there was no vesting of the premises in dispute in the Corporation, because the provisions of the City of Bombay Municipal Act and the Land Acquisition Act had not been complied with; (2) that when property vests in the Corporation u/s 91 of the City of Bombay Municipal Act such vesting is not of such an absolute character as the vesting in Government u/s 16 of the Land Acquisition Act; and (3) that in any event the Bombay Rent Act applied, and that under the circumstances of the case there was not sufficient cause for ejecting the defendants within the meaning of the Proviso to Section 9 of the Bombay Rent Act. The special circumstances regarding the different defendants were also gone into in support of the contention that if decrees were passed in favour of the Corporation, the defendants should be given considerable time for giving possession in order to enable them to make other arrangements.

9. u/s 16 of the Land Acquisition Act 1894, when the Collector has made the award, he may take possession of the land which shall thereupon vest absolutely in the Government free from all incumbrances; and u/s 47, if the Collector is opposed or impeded in taking possession of the land, he can enforce the surrender himself, if he is a Magistrate, or, if not a Magistrate, can apply to the Commissioner of Police to enforce such surrender. It is not denied that the interest of a monthly tenant comes to an end when the property vests in the Collector u/s 10. The effect of the acquisition and the resultant vesting must, to my mind, be equally effective and Complete in the case of acquisition undertaken by Government on the application of the Commissioner u/s 91 of the City of Bombay Municipal Act. Reliance was placed on the fact that while Section 16 of the Land Acquisition Act and Section 41 of the City of Bombay Improvement Trust Act spoke of vesting absolutely and free from all encumbrances, Section 91 of the City of Bombay " Bros. Municipal Act merely used the expression "vest." But I think that when the Municipal Act provides for acquisition by resorting to the Land Acquisition Act the vesting contemplated is such as would result under the latter Act.

10. It was contended that u/s 16 of the Land Acquisition Act the properties could only vest in the Government and as the Government had not conveyed the properties to the Corporation, the latter had acquired no title to the properties and reference was made to the provisions of Part VII of the Land Acquisition Act which deals with acquisition of land for companies and it was pointed out that Section 41 contemplated the transfer of the acquired land by Government to the company concerned. I think Section 91 of the City of Bombay Municipal Act pro tanto modifies the provisions in the Land Acquisition Act so as to vest the property in the Corporation on payment of compensation awarded, instead of in the Government and therefore no transfer from Government to the Corporation is needed.

11. It was contended further that, inasmuch as the Collector had not tendered payment of the compensation awarded to Sir Mahomed Yusuf and had not paid it to him as required by Section 31 of the Land Acquisition Act, the Collector was not entitled to take possession and hand it over to the Municipality. I do not think the provisions of Section 31 apply in the case of acquisitions made by virtue of the provisions of Section 91 of the City of Bombay Municipal Act and payment of the compensation amount by the Commissioner is enough.

12. It was next contended that in fact no possession was taken by the Collector and handed over to the Municipality and that Exts. 2, M, N and J were merely paper transactions. I am unable to regard these as merely paper transactions. Moreover, in the case of acquisitions u/s 91 of the City of Bombay Municipal Act I do not think the taking of possession by the Collector and his handing over the same to the Municipality is necessary. As I have pointed out above, the property vests directly in the Corporation without the intervention of Government or the Collector, and when the property is so vested in the Corporation, they are

entitled to take possession, which they are seeking to by these suits.

13. Then it is contended that, inasmuch as the compensation awarded to Sir Mahomed Yusuf has admittedly not been paid and the arrangement arrived at with him had the effect to avoid such payment, even if it was not entered into for that very purpose the provisions of Section 91, Clause 2, were not complied with and the property did not vest in the Corporation. When the Collector informed Sir Mahomed Yusuf of his award on the 24th of November, Sir Mahomed Yusuf replied to the Collector on the 23rd of December 1919 to the following effect:?

I beg to state that my claim for compensation amounting to Rs. 19,61,652-0-9 as mentioned in the award has been satisfied by reason of the arrangement arrived at between the Municipal Corporation and me and which is embodied in my letter to the Municipal Executive Engineer dated the 29th September 1919 and his letter to me dated the 5th November 1919.

14. I think the money was to all intents and purposes paid to Sir Mahomed Yusuf although the money did not actually change hands as the Municipality retained the same as the price of the land that they had agreed to convey to Sir Mahomed Yusuf. The Municipality could have given a cheque for the amount to Sir Mahomed Yusuf and he could have immediately returned it to them in fulfilment of his agreement. Such a formality was unnecessary. I, therefore, hold that the property, the subject matter of these suits, vested absolutely in the Municipal Corporation and that such vesting put an end to all interests in the property.

15. Then the question arises whether in such a case the provisions of the Bombay Rent Act apply. I think that the Bombay Rent Act was not intended to apply to premises acquired under the Land Acquisition Act for public purposes. The whole object of such an acquisition is to get the land immediately for useful public purposes and it would be defeating that object to lay down that the public body acquiring the land is not entitled to immediate possession. The general provisions of the Rent Act cannot be held by implication to repeal and override particular and special enactments like the Land Acquisition Act and the Municipal Act: *Dodds v. Shepherd* as already pointed out u/s 47 of the Land Acquisition Act the Collector is empowered to summarily enforce surrender of possession without the intervention of any Court and the Rent Act cannot override that provision. Moreover, the Crown is not bound by the provisions of any Act unless directly or by necessary implication referred to therein and for this purpose the Crown means not only the King but also Officers of State 1910 acting on behalf of the Crown in discharge of their executive duties. The provisions of the Rent Act, therefore, cannot affect the rights and powers of Government and their Officers under the Land Acquisition Act.

16. But whatever that may be, assuming that the Rent Act applies, I have no doubt that the premises are required by the Corporation for a satisfactory cause. The evidence of Mr. Mackison, the Executive Engineer of the Municipality, shows that the whole scheme of the widening of the Churchgate Street and Armenian

Lane hangs together and they cannot get on with the scheme till they get possession of the premises, the subject-matter of these suits. Plots Nos. I, II, III and IV are all cleared now and a good number of the tenants of plots Nos. V and VI have agreed to remain on the premises in their occupation on the understanding that they would vacate on forty-eight hours' notice and some of them to whom such notices have been served have already vacated. It is, therefore, absolutely necessary for the Municipality to get possession of the premises occupied by the defendants in these suits in order to enable them to carry out the whole scheme and to fulfill their obligations under the agreement with Sir Mahomed Yusuf. The plans submitted to the Municipality by Sir Mahomed Yusuf for the development of the areas that would go to him have been passed and the buildings according to these plans can only be constructed if the Municipality can obtain possession of the premises, the subject-matter of these suits.

17. There is no doubt that with regard to some of the defendants, it is considerable hardship that they are required to vacate the premises in their occupation. This is particularly the case with Messrs. M. Damodar Brothers, the defendants in Suit No. 910, and Messrs. D. Macropollo & Co., the defendants in Suit No. 912. But where any scheme of large public utility, such as the Municipality have undertaken in this instance, is to be carried out, individual hardship of this character is unavoidable. Mr. Mackison deposed that when the scheme is fully carried out, the Churchgate Street and Armenian Lane will be considerably widened, to the great convenience of the congested public traffic in those streets and the development of this quarter will provide double the letting space for Offices of what is available, at present.

18. It is contended that the notice given by the Municipality on the 22nd of December to vacate by the 31st of December 1919 was not a sufficient notice and that therefore these suits must fail and that the Municipality can sue for possession only after giving a month's notice to vacate. The lease of Diveshwar as Bros. already pointed out terminated on the acquisition and on such determination the monthly tenancies of the under-lessees, the defendants, also came to an end. Thereafter they remained on the premises merely as tenants on sufferance and they were not entitled to a month's notice.

19. It is contended that the Municipality should at present take possession only of the portions actually required to be thrown into streets to be widened. Even if this were practicable, it would upset and virtually make it impossible to carry out the whole scheme which involves re-selling of the areas not actually thrown into the streets for the purpose of carrying out the scheme economically and beneficially in the public interests. Section 298 of the City of Bombay Municipal Act expressly empowers the Municipality to acquire in addition to the land actually required for widening any public street all such land and buildings outside the intended regular line of such street as it shall deem expedient and to sell such additional land.

20. Only a small portion of the premises occupied by Messrs. Javeri & Co. the defendants in Suit No. 911, is to be utilised in widening the Armenian Lane, but the rest of the area the Municipality have agreed to give to Mongini Brothers in consideration of their removing the portion of their premises within the set-back line in the Churchgate Street, except a little strip which they have arranged to give to Sir Cowasji Jehangir, the owner of plots Nos. VII and VIII, as part of the arrangement with him. There is really no hardship in the case of Messrs. Javeri & Co. They have hired other premises into which they have already removed part of their offices and stock. With regard to Messrs. Dharamsi & Co., the defendants in Suit No. 955, and the Madras United Spinning and Weaving Mills Co., Ltd., the defendants in Suit No. 956, there is no particular hardship. With regard to Messrs. M. Damodar Brothers and Messrs. D. Macropollo and Co., as well as with regard to the other defendants, it must be remembered that they had ample warning about their being required to vacate their premises. The notifications for the acquisition of the properties occupied by them were promulgated as early as 1917, and they must be perfectly aware that the acquisition was being proceeded with. A petition on behalf of various occupants including some of the defendants in these suits was addressed to the Municipal Corporation praying that the time for demolishing the buildings in Churchgate Street be extended (Exhibit K). On the 9th of September 1919, the Standing Committee resolved not to comply with the request of the applicants and, on the 3rd of November 1919, the Corporation declined to interfere, and the applicants were informed of this on the 7th of November 1919. The applicants presented a petition to Government and, on the 5th of February 1920, the Government refused to comply with the request of the applicants to delay the scheme (Exhibit L). Under the circumstances, I think, that the Municipality must succeed and the defendants should be ordered to vacate the premises in their occupation and to hand over vacant possession thereof to the first plaintiff. In view of the fact, however, that there is monsoon at present, I direct that execution of the decrees be stayed till the 5th of October next. The defendants must pay to the first plaintiff compensation for use and occupation as prayed in the plaints in the respective suits from the 1st of January 1920 except in the case of the defendants in Suits Nos. 610 and 956 of 1920 who must pay such compensation from the 1st of February 1920. The defendants must pay the costs of the first plaintiff. The second plaintiff has, I believe, not incurred any separate costs, but if he has, he must bear his own costs. It was really not necessary to have joined him as plaintiff.

21. Findings on issues: (1). Yes. (2). Yes. (8). Yes, but not necessary for the Collector to give possession. (4). No. (5). No. (6). No. (7). Yes. (8). Not applicable. (9). Yes. (10). Yes. (11). Yes. (12) & (13). The defendants are at the highest only tenants on sufferance and the notice given was sufficient.