

(1916) 08 CAL CK 0030
In the Calcutta High Court

Trustees for the Improvement of Calcutta	APPELLANT
Vs	
Chandra Kanta Ghosh	RESPONDENT

Date of Decision : 22-08-1916

Acts Referred:

Citation : 36 Ind. Cas. 749

Hon'ble Judges : Cuming, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, J.—This appeal is directed -against a decree made in favour of the plaintiff-respondent, in a suit instituted by him against the Trustees for the Improvement of Calcutta. The allegations in the plaint, which form the basis of the claim, may be briefly summarised. The plaintiff is the owner of premises No. 40-10 Chaulpati Road within the Municipal limits of Calcutta, recently sub-divided into Nos. 40-10 and 40-10-1, The area comprised therein is more than one-and-a-half bighas and is situated at a distance of about 126 feet away to the west of the present Russa Road, whereof Chaulpati Road is a branch. Since his purchase of the land, the plaintiff had filled up a large tank that lay within the boundaries thereof, baa raised its level and made it fit for building purposes, had contracted, with the sanction of the Municipal Corporation, a two storied building on a portion of the land, and had collected materials for the erection of other suitable buildings thereon. While the plaintiff was thus in occupation and enjoyment of his land, the Trustees framed a street-scheme under the provisions of the Calcutta Improvement Act, 1911, for the purpose of widening Russa Road and published the same on the 13th November 1912 in the Calcutta Gazette. The list of properties proposed to be acquired under this scheme included a major portion of the above-named premises, although the lands would lie about 55 feet away from the western border of Russa Road even after it had been widened to a breadth of 100 feet as proposed. Objections to the scheme were invited u/s 43, and special notice was issued u/s 45 of the Calcutta Improvement Act, 1911. The plaintiff thereupon submitted his objections which, he asserts, were overruled by the Board of Trustees without consideration and examination. The Trustees next

submitted the scheme to the Local Government for sanction u/s 48. The sanction was notified in the Calcutta Gazette on the 21st January 1914; since then, the Trustees had taken steps preliminary to the acquisition of the land and had deputed officers to make a survey and prepare plans thereof. The plaintiff alleges that the proceedings adopted by the Trustees with a view to acquire his lands were illegal and ultra vires, that they had in fact acted in excess of statutory authority, that the inclusion of extensive surplus lands in the scheme had been made not bona fide for the purposes of the Act, but with a view to make profit by the sale thereof, and that there was no justification in law for the acquisition of the disputed lands under colour of providing building sites, as the lands already constituted a good building site. On these allegations, the plaintiff asked for a declaration that the defendants-Trustees had no power to acquire the lands in suit in pursuance of the Russa Road widening scheme, and that their acts in this behalf were ultra vires and illegal; he accordingly prayed that the defendants, their servants and agents, might be restrained by a perpetual injunction from interfering in any way with the plaintiff in his possession and enjoyment of the lands in suit. The Trustees put the plaintiff to the proof of his claim. They contended that it was not competent to the plaintiff to question the scheme or any portion thereof after notification of the sanction of the Local Government; they further asserted that the lands were required for the execution of the scheme and were affected by the execution of the scheme and that they were competent, in the exercise of their statutory powers, to take steps for the compulsory acquisition of the land. An objection was also taken that the suit was not maintainable without notice u/s 156. The Subordinate Judge overruled these contentions and came to the conclusion that the action of the Trustees, in including the land in suit within the scheme area on the basis of the resolution with which they started, was ultra vires and void, and consequently granted an injunction which directs the Trustees to refrain from the acquisition of the land in suit for the purposes of the Russa Road widening scheme. The Trustees have appealed to this Court and on their behalf the Advocate-General has contended that the decree of the Subordinate Judge should be discharged on the following grounds, namely, first, that the intended acquisition of the lands with a view to recoupment, that is to enable the Trustees to recoup themselves in whole or in part the costs of the scheme, is an act authorised by the Calcutta Improvement Act, 1011; secondly, that the lands are required for providing building sites within the meaning of Section 39(a) and are consequently liable to compulsory acquisition; thirdly, that the lands are required for the purpose of laying out or re-laying out within the meaning of Section 41(b), and are accordingly proper-subject-matter of compulsory acquisition; fourthly, that the lands will be affected by the execution of the scheme within the meaning of Section 42(a) and have accordingly been properly included for acquisition by the Trustees in the exercise of their statutory discretion; and, fifthly, that the suit is not maintainable, as u/s 49(2), the publication of the sanction of the Local Government is conclusive evidence that the scheme has been duly framed and sanctioned. The questions mooted are of first impression and their determination depends primarily upon

the construction of various provisions of the Calcutta Improvement Act, 1911, which must be interpreted as a whole and not isolated from each other. We shall accordingly first analyse the scheme of the Act and examine its principal provisions in so far as they are relevant for the decision of the questions raised before us.

2. The Preamble to the Act, which is described as "an Act for the improvement and expansion of Calcutta," consists of four paragraphs. The first paragraph enumerates the objects of the Act, namely,

(A) The improvement and expansion of Calcutta by-

- (a) Opening up congested areas,
- (b) buying out or altering streets,
- (c) Providing open spaces for purposes of ventilation or recreation,
- (d) Demolishing or constructing buildings,
- (e) Acquiring land for the said purposes.

(B) The re-housing of persona of the poorer and working classes displaced by the execution of improvement schemes.

3. This is followed by the words "and otherwise as hereinafter appearing," which are by no means easy to construe with what precedes; they are, we think, intended to be read with the phrase "to make provision"; if this be the true meaning, the term otherwise" may be taken as equivalent to in other ways," or, "in other respects," or with regard to other points", which are given in the Oxford Dictionary as significations of the word.

4. The second paragraph of the Preamble recites the expediency of the constitution of a Board of Trustees invested with special powers to carry out the objects of the Act.

5. The third paragraph of the Preamble recites that sanction of the Governor-General had been obtained, u/s 5 of the Indian Councils Act, 1892, to such of the provisions as affect Acts passed by the Governor-General of India in Council.

6. The fourth paragraph of the Preamble recites that the sanction of the Governor-General had been obtained, u/s 48 of the Indian Councils Act, 1861, to the enactment of the provisions of the Fifth Chapter which relate to Taxation.

7. It is worthy of special note that acquisition of land for purposes of recoupment is not specified as one of the objects of the Act, though acquisition of land for the purposes enumerated above as (a), (b), (c), (d) is expressly mentioned. The Advocate General, with characteristic candour, conceded that he could not support the position that acquisition of land for purposes of recoupment is one of

the objects of the Act, though it may be one of the means to attain the objects of the Act.

8. The Act is divided into eight Chapters. Section 2, which finds a place in the First Chapter, contains definitions of terms. Clause (f) lays down that, unless there is anything repugnant in the subject or context, the expression improvement scheme means a general improvement scheme or a street scheme or both. Clause (n) lays down that the expression "public street" has the same meaning as in Clause 37 of Section 3 of the Calcutta Municipal Act, 1899.

9. The Second Chapter makes provision for the constitution of the Board of Trustees, the conduct of business by them and the appointment and status of their officers and servants.

10. The Third Chapter, which treats of improvement schemes and re-housing schemes, comprises Sections 30 to 67. Sections 36 and 39 read together show that improvement schemes are of two kinds, namely, general improvement schemes and street schemes, while Section 52 shows that in addition to these two classes of schemes there may be re-housing schemes. We are not concerned in the case before us with either a general improvement scheme or a re housing scheme and we need, consequently, examine in detail only the provisions applicable to a street scheme. The first stage in a street scheme is described in Section 39 which is in these terms:

Whenever the Board are of opinion that for the purpose of

(a) providing building sites,

or,

(b) remedying defective ventilation,

or,

(c) creating new, or improving existing means of communication and facilities to traffic,

or,

(d) affording better facilities for conservancy,

it is expedient to lay out new streets or to alter existing streets (including bridge, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as they may think fit." The first step in a street-scheme is, consequently, taken, when the Board passes a resolution that it is expedient to lay out a new street or to alter an existing street, because the Board are of opinion that such a course is requisite for one or more of the four purposes enumerated in Clauses (a), (b), (c), (d) of Section 39. The second stage in a street-scheme is also described in Section 39, namely, the second step is taken when, after the resolution has been passed, the Board proceed to frame a street-scheme for such area as they may think fit. It is

obvious that before the scheme can be actually framed, the area must first be determined; such area is clearly the area which the Board, in their discretion, think should be improved by the carrying out of the purpose set forth in their resolution. Section 40 specifies the matters to be considered when an improvement scheme is framed in respect of any area. It is plain that when a street-scheme is framed u/s 40 in respect of an area previously determined upon u/s 39, regard must be paid to the three points mentioned in the section, with reference to the particular purpose specified in the resolution of the Board passed u/s 39. The three points specified in Section 40 are

- (a) the nature and the conditions of neighbouring areas and of Calcutta as a whole;
- (b) the several directions in which the expansion of Calcutta appears likely to take place; and,
- (c) the likelihood of improvement schemes being required for other parts of Calcutta.

11. There can be no dispute that the consideration of these matters will lead to different results according as the purpose specified in the resolution of the Board is one or other of those mentioned in Section 39; for example, if the object be the remedying of defective ventilation, the consideration of the matters mentioned in Section 40 may lead to conclusions very different from, what would be reached if the purpose were the affording of better facilities for conservancy. It may also be incidentally observed that Clause (a) of Section 40, which requires it obligatory on the Board to pay regard to the nature and the conditions of neighbouring areas, shows that the area for which the street-scheme is to be returned must have been previously determined; it would be unmeaning otherwise to speak of neighbouring areas." Sections 41 and 42 specify respectively matters which must be and which may be provided for in improvement schemes. Clause (a) of Section 41 lays down that every improvement scheme shall 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. Two points require to be noted in connection with this clause. First, the term "acquisition" does not necessarily mean "compulsory acquisition under the provisions of the Land Acquisition Act." This is clear from Sections 68 and 69, which refer respectively to acquisition by agreement and compulsory acquisition. Secondly, the area comprised in the scheme is obviously larger than the land to be acquired as required for the execution of the scheme in other words, the land required for what may be called the engineering works forms a part only of the area for which the improvement is made. Clause (b) of Section 41 lays down that every improvement scheme shall provide for the laying out or re-laying out of the land in the said area, (that is, the area comprised in the scheme). There has been much discussion at the Bar as to the precise meaning of the expressions, "lay out land" and re-lay out land." These expressions do not appear to have been used as words of art or technical words.

The expression "lay out" is explained in the Oxford Dictionary, Vol. VI, page 181, to mean to plot or plan out," "to plan or map out," "to apportion for a purpose." The expression re lay out" can be fittingly applied only to land which has been previously laid out. It is obvious that these expressions must be interpreted in view of the requirements of the particular Scheme in hand, which may be a general improvement scheme undertaken for one or more of the reasons specified in Section 33, or a street-scheme undertaken on one or more of the grounds enumerated in Section 39. For instance, it is conceivable that in the case contemplated in Section 36(b)(1) a large tract of land may come within the operation of a general improvement scheme, which may provide for demolition of the buildings and for laying out the land for reconstruction of buildings. In our opinion, Clause (b) of Section 41 lends no support to the theory that in every improvement scheme, for whatever purpose undertaken, the entire area comprised in the scheme must be acquired and re-laid with the exception of the area actually required for the engineering work. Section 41 specifies matters which may be provided for in improvement schemes. Clause (a) lays down that any 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. Three points require to be noted in connection with this clause, which is the counterpart of Clause (a) of Section 41. First, the term acquisition," as already observed in connection with Section 41(1), does not necessarily mean compulsory acquisition"; secondly, the land to be acquired is smaller than the area comprised in the scheme; thirdly, the land must be such as will, in the opinion of the Board, be affected by the execution of the scheme. There has been much controversy at the Bar round the expression affected." On behalf of the Trustees, the Advocate-General has maintained that the term "affected" means "beneficially affected," so that the Trustees are entitled to acquire compulsorily any land in the area comprised in the scheme, if they are of opinion that the land will be benefited by the execution of the scheme. This argument is based upon the fallacious assumption that Section 41 authorises compulsory acquisition of land; as we have seen, it does nothing of the kind. But, apart from this, the question does arise, what is the meaning of the expression "affected by the execution of the scheme." The plaintiff respondent contends that the term "affected" means "injuriously or prejudicially affected," The appellants contend, on the other hand, that the term signifies beneficially affected." There can be no doubt that the term "affected" taken by itself is colourless and is equivalent to acted upon," but, as pointed out in the Century Dictionary, the word is generally used to convey the sense "of acted upon or influenced injuriously" for instance, if one were to say that his health has been affected by the climate of India, "the obvious meaning would be that his health had been impaired and not improved." In our opinion, the word effected" is a word capable of a very large meaning, a word not of art but of ordinary English, which must be interpreted with reference to the context. We think that in Section 42 it means neither beneficially affected or improved in value" nor "prejudicially affected or impaired in value," but signifies acted upon physically or

materially." This, in fact, is one of the recognised meanings given in the Oxford Dictionary, Volume 1, page 153. There is an instructive discussion of the meaning of the term "affected" in the case of *Metropolitan Board of Works v. McCarthy* (1874) 7 H.L. 243 : 43 L.J.C.P. 385 : 31 L.T. 182 : 23 W.R. 115, to which reference may usefully be made in this connection. Land may well be said to be "affected by the execution of a scheme" within the meaning of Section 42(a), when by the construction of the improvement works, there is a physical interference with any right, public or private, which the owner is entitled to exercise in connection with that property. The interpretation suggested by the Trustees, namely, that "affected" means "beneficially affected," that is, benefited" leads to a curious result. The expression "area comprised in the scheme" in Section 42(a) is clearly the area for the benefit of which the street-scheme is made u/s 39; presumably, therefore, every inch of land within the area so determined upon u/s 39 will be benefited or, to use the expression coined by the appellants, "beneficially affected" by the execution of the scheme. How can it then be appropriately said, as Section 42(a) does, that the Board may select for acquisition such land only in the area comprised in the scheme as will, in their opinion, be affected by the execution of the scheme; the contention of the appellants practically is that the Trustees can acquire any or all land in the area, for the whole area would be benefited by the scheme. We are clearly of opinion that we should not adopt the forced and unnatural construction put forward by the appellants. The effect of that interpretation is that u/s 29, the Board may, in the first instance, arbitrarily fix the area which, in their opinion, will be benefited by the proposed improvement scheme, and, then proceed, u/s 42(a), equally arbitrarily to take away all land within such area from private owners on the plea that the lands will be benefited by the execution of the contemplated improvement scheme. On the other hand, the Section is at best an enabling provision; it gives no power of compulsory acquisition, though it may possibly authorise the Board to acquire land by private agreement. The interpretation we adopt puts a reasonable construction upon the section; it limits the application of the provision to cases of all lands within the area of the scheme, where by the execution of the scheme, that is by the construction of the improvement works, the lands will be affected, that is, in respect of those lands, there will be a physical interference with a right, public or private, which the owner is entitled to exercise in connection therewith. The reason for such a provision is not far to seek. Although the provisions of the Land Acquisition Act have been materially modified in various particulars in their application to cases of acquisition of land for the purposes of the Trust, Clauses (3) and (4) of Section 23(1) have been left untouched. Consequently, in cases of acquisition for the Trust as in all other cases, the owner of the land acquired is entitled to damages for what is compendiously described as "severance" and "injurious affection." The Board are placed in a position to escape from the payment of such damages by Section 42 by including in their scheme the lands which will be affected by the execution of the scheme. It is obvious that when a reasonable interpretation of Section 42 is possible, we should not adopt the construction suggested by the Trustees, which

is not only not in accordance with] the plain and natural meaning of the words used by the Legislature, but will also result in vesting the Board with arbitrary and unlimited powers of interference with private rights.

12. Section 43 describes the procedure for preparation, and publication, of notice as to the improvement scheme and its transmission to the Chairman of the Calcutta Municipal Corporation and of other Municipalities. Section 44 provides for the submission of representations to the Board by Municipalities. Section 45 provides for service of notice on owners of land as to the proposed acquisition of their land for executing the scheme. Section 47 requires the Board to consider objections, representations and statements of dissent; the Board may then either abandon the scheme or apply to the Local Government for sanction to the scheme with such modifications, if any, as the Board may consider necessary. Section 48 authorises the Local Government to sanction, either with or without modification, or to refuse to sanction, any improvement scheme submitted to it u/s 47. The first Clause of Section 49 requires the Local Government, when an improvement scheme has been sanctioned, to announce it by notification. The second Clause of Section 49 defines the effect of the publication of such notification in these terms: the publication of a notification under Sub-section 7 in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned." Section 50 authorises the Board to alter a scheme after it has been sanctioned by the Local Government, and describes the mode of exercise of such power; in particular, we may note that Clause (b) of the proviso requires that if the alteration involves the compulsory acquisition of further land, a fresh application has to be made to Government after compliance with the prescribed preliminaries. The remaining sections of the Third Chapter deal with topics which do not bear directly on the questions in controversy in the present case. The Fourth Chapter deals with the subject acquisition and disposal of lands. Sections 68 and 69 show that the acquisition may be either by agreement between the board and the proprietor of the land or compulsory proceedings taken at the instance of the Board under the provisions of the Land Acquisition Act, which are modified in important particulars by section read with the Schedule to the Act. In regards compulsory acquisition, the fundamental point to be borne in mind is that the Board is authorised, not to acquire whatever land they may choose, but only to acquire land for carrying out any of the purposes of the Act. This is manifest from the language used by the Legislature in Section 39. The Board may, with the previous sanction of the Local Government, acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of the Act." As has already been shown, the purposes of the Act are enumerated in the Preamble, and, consequently, in any concrete case, if the competence of the Board to compulsorily acquire a parcel of land is called in question, the test must be applied, whether the land is proposed to be acquired for carrying out one or other of the purposes of the Act. By no stretch of language can it be maintained that recoupment is one of the purposes of the Act; the Advocate-General, indeed, as previously stated, conceded this position.

Consequently, the Board is not competent prima facie u/s 69 to acquire land compulsorily for recoupment. An ingenious attempt, however, has been made to evade this conclusion by a forced construction of several of the provisions of the Act, which we shall hereafter consider. The only other provisions in the Fourth Chapter whereon stress has been laid by the Board is that contained in Section 78. That Section authorises the Board to abandon the acquisition of land in any area comprised in an improvement scheme, which is not required for the execution of the scheme; such abandonment is to be made in consideration of a sum of money which is to be paid by the owner of the land three years after the date of the agreement or is to constitute an outstanding charge on the land subject to payment of interest in perpetuity. It is plain that the provision; of Section 78 are applicable, only when the land is not required for the, execution of the scheme, but is yet within the area comprised in the improvement scheme as sanctioned by the Local Government. The contingency contemplated may obviously happen when the Board, u/s 50, alters the scheme after it has received the sanction of the Local Government u/s 48; it may well happen that land which was originally intended to be acquired as necessary for the acquisition of the scheme may turn out to be not actually required for the execution of the scheme by reason of an alteration in the scheme made u/s 50 or it may also be by reason of some mistake in the original scheme itself. In such a contingency, Section 78 comes into play. We have been invited, however, on behalf of the Trustees to hold that Section 78 shows by implication that the Board are competent deliberately to include in their scheme lands which they know are not required for the execution of the scheme, solely with a view to make profit from the owner u/s 78. We are clearly of opinion that there is no foundation whatever for this contention. The argument in substance is that the Board are competent to scheme whatever private property they may choose and include it in their scheme deliberately on purpose to levy contribution from the owner u/s 78, though the Board are fully aware all the time that the land can never be required for the execution of the scheme. If the Legislature had intended to invest the Board with arbitrary and unlimited powers of interference with private property of this description, the object should and would have been carried out by the insertion of a clause suitably framed in that behalf. It is further clear that Section 78, as interpreted by the appellants, might in essence be regarded as a provision for the imposition of a tax on the subject and should, consequently, have found a place appropriately in the Fifth Chapter after it had received the sanction of the Governor-General as required by Section 44 of the Indian Councils Act, 1861. We do not overlook the fundamental distinction between the power of the State to acquire private property for public purposes and the power to impose a tax upon its subjects. In the former case, the property ceases to be the property of the private owner, he is awarded compensation therefore measured by the market-value at the time of acquisition, and the loss he suffers is the prospective rise in value. In the latter case, the property continues to be the property of the private owner, but a burden is imposed upon him as his contribution to the cost of the benefit conferred upon his land by the improvement carried out in the locality. In

a proceeding u/s 78, if the application of the owner is refused and the land is acquired, no question of taxation, properly so-called, arises; but it must be established beyond doubt that the Board have authority to deprive the owner of his land in this manner, that is, that the Board are competent to acquire the land u/s 69 as required for carrying out one of the purposes of the Act. On the other hand, if the application of the owner u/s 78 is granted and the proposed acquisition is abandoned on payment by him to the Trustees of the agreed sum of interest thereon in perpetuity, a tax is in essence imposed on the land; the truth of the matter in this event is that a sum periodically payable is exacted out of the land, unless the capitalised value thereof is paid within the prescribed period. In this view of the true scope of Section 78, we cannot hold that the section was intended to be used as a cover for the arbitrary acquisition of private property for purposes of recoupment, such recoupment to be made either by way of levy of a lump sum from the owner or a periodical tax payable out of the property, or by way of acquisition of the land for profitable re-sale hereafter. Reference has also been made to Section 81, which authorises the Board to dispose of land vested in or acquired by them under the Act. This does not imply, however, a power in the Board to acquire land compulsorily, except for carrying out one of the purposes of the Act as provided in Section 69; for there may obviously be occasion for the Board to dispose of what may be called surplus land, that is, land not required for the execution of the scheme, under various conceivable circumstances. It is hardly necessary to enumerate exhaustively the various modes in which superfluous land may come into the hands of the Trustees, but instances will occur to everybody. Thus, land originally taken under the compulsory powers may have been taken upon a wrong estimate or calculation of the quantity of land which would be required for a purpose for which it is afterwards found out, by experience, that less land than was originally supposed will be sufficient. Or, again, the Board may have been forced to take superfluous land u/s 49 of the Land Acquisition Act by reason of wishing to take a part only of the premises. There may also be instances where land taken originally and required originally for a scheme may turn out to be superfluous by reason of abandonment or modification of the scheme see instances enumerated by Lord Cairns in *Great Western Railway-Co. v. May* (1874) 7 H.L. 283 : 43 L.J.Q.B. 233 : 31 L.T. 137 : 23 W.R. 141. When it is thus possible to imagine cases of application of Section 81, it would be wrong to infer therefrom a power of acquisition of land for purposes of recoupment. Consequently, neither in the case of Section 78 nor in that of Section 81 can we say that it necessarily implies a power of acquisition for recoupment, though the Sections may come into operation where the power exists; the essence of the matter is that there may be occasion for their use even if the power does not exist. As Ball, J., said in *Dickson v. Pape* (13) "a necessary implication is not guess, not probability, but an inference which by no reasonable intendment can be otherwise; it is a state of things excluding any reasonable conclusion but the one."

13. The Fifth Chapter deals with taxation under three heads, namely, a duty on

transfers of property situated within the limits of the Calcutta Municipality, a terminal tax on passengers by Railway and by Inland Steam Vessels and a customs duty on Jute exported by Sea from the Port of Calcutta. It is worthy of note that there is no provision for the imposition of a tax on property in Calcutta which may receive the benefit of and be enhanced in value by the improvement effected by the Board of Trustees. On the other hand, there are indications furnished by the evidence of the Chairman of the Trust that the Secretary of State for India in Council refused to accept a proposal to impose a tax by way of what is called frontage rates. The fact remains, at any rate, that only three taxes are imposed by the provisions of the Fifth Chapter, and it would be against well-known rules of construction of Statutes to hold that another tax has been, by implication, imposed upon the subject; the intention to impose a charge on the subject must be shown by clear and unambiguous language see the observations of Lord Brougham in *Stockton and Darlington Railway v. Barrett* (1844) 11 Cl. & F. 590 : 8 SN.R. 641 : 7 M & G 870 : 3 M & G. 950 : 3 SN.R. 11. 803 : 65 R.R. 261 : 8 E.R. 1225, referring to *Hull Dock Co. v. Browne* (1831) 21 B. & Ad. 43 : 36 R.R. 459 : 109 E.R. 1059.

14. The Sixth Chapter is devoted to Finance. Section 88 imposes an obligation upon the Calcutta Municipal Corporation to make a quarterly contribution to the funds of the Board subject to a minimum annual payment of seven-and-a-half lakhs of rupees. Section 89 and the following sections authorise the Board to raise money by loans and to make consequential provisions for payment of interest thereon, for the institution of a sinking fund, and other like matters. The remaining sections of the Chapter deal with the enforcement of liabilities, Budget estimates, Banking and Investments and Accounts. Reliance, however, has been placed upon Clauses (c) and (d) of Section 122 and Clause (b) of Section 123 as implying an authority in the Board to obtain funds for purposes of recoupment by acquisition and re-sale of land. In our opinion, the sections mentioned throw no light whatever on the question in controversy; they merely contain provisions as to the mode in which the accounts are to be kept; this is clear from the circumstance that they find a place in that portion of the Chapter on Finance which is headed Accounts "and comprises Sections 120 to 136. Reference may in this connection be made to Clause (f) of Section 122, which lays down that all lump sums received from the Government in and of the capital account are to be credited to the capital account; obviously, this does not create a right in the Board to demand an aid from Government; if such an obligation was intended to be imposed on the Government, an appropriate Section would have been inserted in the Sixth Chapter. This is made clear beyond dispute by reference to Clauses (b) and (e) of Section 124 which lay down that the proceeds of taxes imposed by the Fifth Chapter and the sums contributed from Municipal funds are to be credited to the Revenue Account. These provisions do not create a right in the Board to receive these sums; the right is created by Sections 82, 83 and 84 in the Chapter on Taxation and by Section 88 in the Chapter on Finance. Sections 122 to 125 merely prescribe the mode in which the accounts are to be kept; an

appeal to them to show that certain rights have been created in the Board is bound to be infructuous.

15. The two remaining Chapters comprise provisions as to the making of rules and supplemental provisions, which do not throw any light upon the matters which arise for decision in this case. We shall now proceed to determine the questions in controversy in view of the exposition given above of the principal provisions of the Act.

16. The first contention advanced on behalf of the Trustees is to the effect that they were authorised by the provisions of the Act to compulsorily acquire the land in suit for purposes of recoupment. The Advocate-General has conceded that there is no provision in the Act which authorises in express terms the compulsory acquisition of land for purposes of recoupment, and he suggested with almost cynical frankness that the Legislature had perhaps deliberately refrained from inserting in the Act an express provision to this effect with a view to avoid public claim and criticism. He would seem to suggest, however, that the Legislature had at the same time conferred the requisite authority in this behalf on the Trustees, surreptitiously as it were, by so framing some of the provisions of the Act as to leave no room for escape from the conclusion that the Trustees possess the power by necessary implication. We are emphatically of opinion that an Act of the Legislature should not be interpreted on the assumption that the Legislature has indirectly accomplished what it did not venture to undertake openly and directly. This principle applies with special force to Acts which confer on a Corporation extensive powers of interference with private rights; the extent of the right of interference must be assumed to have been explicitly and accurately defined in the Act and we decline to hold that wider powers than what appear on the face of the Act have been conferred in disguise of the Board of Trustees, Section 69 authorises the Trustees compulsorily to acquire land for carrying out any of the purposes of the Act; recoupment is admittedly not one of the purposes of the Act which are outlined in unmistakable language in the Preamble and are formulated in detail in Sections 36, 39 and 52. The conclusion follows that the Trustees have not been empowered to acquire land compulsorily for the purpose of recoupment. But it is said that the power may be spelt out of other sections of the Act. Assume that such a method of construction is admissible, what are the sections within which such a power is supposed to be hidden? Reliance is placed upon Sections 41, 42, 78, 81, 122 and 123. In our opinion, none of these Sections is of any real assistance to the appellants. Sections 41 and 42, as already explained, deal merely with matters which must be or may be provided for when an improvement scheme is framed; they do not, directly or indirectly, authorise the compulsory acquisition of any land. It is further clear that Clause (a) of Section 41 refers to the acquisition of land required for the execution of the scheme, while Section 78 authorises the abandonment of land not required for the execution of the scheme. It cannot reasonably be contended that Section 41 entitles the Board to include, in the scheme, land not really required for its

execution, on the pretence that it is so required, merely with a view to enable the Board to make a profit by subsequent abandonment u/s 78. The proceedings of the Board, no doubt, disclose that such a course was, at one stage, seriously advocated; but fortunately for the reputation of the Board, the good sense of the majority prevailed, and the Board escaped from what has been, not very inappropriately, described by Counsel for the respondent as a process of blackmail in the shape of levy of "exemption fees." We are of opinion that Section 41(a) does not authorise compulsory acquisition of land for recoupment. Section 42(a) also does not advance the contention of the Trustees in the least degree; that clause, as we have seen, authorises the inclusion, in the scheme, of land which will be affected by the execution of the scheme; this refers to cases where, by the execution of the scheme (that is, the construction of the contemplated works), there would be physical interference with any right, public or private, which the owner of the property is by law entitled to exercise in connection with such property. This clearly does not authorize the Board compulsorily to acquire any land they choose for the purpose of recoupment, on the assertion that the land is likely to be benefited by the proposed improvement and may, consequently be taken away from the owner. Sections 78 and 81 also are of no avail, for, as has already been shown, they have no connection with the compulsory acquisition of land and provide merely for the abandonment of proposed acquisition of land or the disposal of land acquired under the Act. Sections 122 and 123 only regulate the mode in which the accounts are to be kept and do not sanction the compulsory acquisition of land. Section 69 accordingly remains the only section in the whole Act which deals with compulsory acquisition. There is thus no foundation whatever, in our opinion, for the contention that the Legislature has resorted to what has been called an indirect method to deprive private owners of their property, by provisions in the Act which effectively confer on the Board a disguised authority to acquire land compulsorily for purposes of recoupment. The Legislature has carefully provided for the finances of the Trust; in addition to taxation, provision is made for Municipal contributions, loans and possible grants from the Government; if the Legislature had intended that profit from the acquisition and re-sale of land should be one of the recognised methods to aid the finances of the Trust, an express provision framed in suitable language would, no doubt, have found a place in the Fifth or Sixth Chapter. In the absence of such a provision, we must decline to read into the Act, a clause of this character. It is well known that in the case of similar Statutes in England, the land which the Corporation is authorised to acquire compulsorily is definitely set out either in a Schedule to the Act or in a Book of Reference and Plans, and even then the Corporation may only acquire what is necessary for the purposes of the Act it does not seem probable that in the case of the Calcutta Improvement Act, the Trustees were by implication invested with unlimited authority compulsorily to acquire whatever land they might choose, not for the purpose of execution of the scheme itself but for the purpose of recoupment. Such interference with private rights is, it is indisputable, permissible only under statutory authority. The Statute, which is

the source of the authority of the Trustees, does not, in express terms, confer such powers on them, nor does it do so by obvious and necessary implication. It may not be unprofitable to consider for a moment what is the real position if the contention of the appellants is sound. The Local Government are not entitled as such to interfere with private rights; so the State, in its legislative capacity, creates a Board of Trustees, and through them invests the Local Government with unlimited authority and unfettered discretion to interfere with private property and it is seriously suggested that this result has been achieved by provisions in disguise, with a view to avoid criticism and comment, which it is said would have been inevitably provoked by an explicit provision for this purpose. Now it need not be disputed that the Legislature has in times of peace, no less than in times of war, invested the executive authorities with extensive powers of interference with private rights; instances will readily occur to all familiar with modern legislation *Rex. v. Halliday*; *Zadig Ex parte* (1916) 1 K.B. 738 : 85 L.J.K.B. 953 which arose in connection with the Defence of the Realm Act, 1914, and *Ezra v. Secretary of State* 30 C. 36 : 7 C.W.N. 249 confirmed in 32 C. 605 : 32 I.A. 93 : 9 C.W.N. 454 : 1 C.L.J. 227 : 7 B.L.R. 422 : 2 A.L.J. 771 (P.C.), which arose in connection with Section 6(3) of the Land Acquisition Act, whereby a declaration by the Local Government that land is needed for a public purpose is made conclusive evidence of the existence of such purpose.] In all such instances, however, where unlimited powers of interference are intended to be conferred on the executive authorities, the Statute puts the matter plainly and beyond dispute. In this connection reference may usefully be made to the principle repeatedly recognised in a great variety of cases that where the objects of the Statute do not obviously imply such an intention, it must be presumed that the Legislature does not desire to confiscate the property or to encroach upon the rights of persons; it is expected that if such be its intention, it will manifest it plainly, if not in express words, at least by clear implication and beyond reasonable doubt *Western Counties Railway v. Windsor and Annapolis Railway* (1882) 7 App. Cas. 178 : 51 L.J.P.C. 43 : 46 L.T. 351 *Commissioners of Public Works (Cape Colony) v. Logan* (1903) App. Cas. 355 : 72 L.J.P.C. 91 : 88 L.T. 779; *Green v. Reg* (1874) 1 App. Cas. 513 : 35 L.T. 495; *Sowerby v. Smith* (1874) 9 C.P. 524 : 43 L.J.C.P. 290 : 31 L.T. 309 : 23 W.R. 79; *Wells v. London Tilbury and Southend Railway Co.* (1877) 5 Ch. D. 126 : 37 L.J. 302 : 25 W.R. 325; *In re Lundy Granite Co. Ex parte Jones* (1871) 6 Ch. App. 462 : 40 L.J. Ch. 588 : 24 L.T. 922 : 19 W.R. 609; *Ex parte Jones In re: Jones* (1875) 10 Ch. App. 663 : 44 L.J. Bk. 124 : 33 L.T. 116 : 23 W.R. 886; *Randall v. Milman* (1868) 4 C.P. 107 : 38 L.J.C.P. 81 : 17 W.R. 262; *Randall v. Blair* (1800) 45 Ch. D. 139 : 59 L.J. Ch. 611 : 63 L.T. 265 : 38 W.R. 680; *Devonshire Duhe v. O'Connor* (1890) 24 Q.B.D. 468 : 59 L.J.Q.B. 206 : 62 L.T. 917 : 38 W.R. 420 : 54 J.P. 740; In these circumstances, we are not prepared to accept an interpretation of the Calcutta Improvement Act which is not the natural construction of its provisions and which involves the consequence that an unlimited right of interference with private rights for purposes of recoupment has been conferred upon the Trustees by means of provisions which do not directly at least disclose such an object. We

hold accordingly that the Act does not authorise the Board of Trustees to acquire land compulsorily for purposes of recoupment.

17. The second contention put forward on behalf of the appellants is that the lands in suit are required for providing building sites within the meanings of Section 39(a) and are consequently liable to be compulsorily acquired. The plaintiff-respondent answers that this plea is an afterthought and that there is no foundation for it either in law or in fact. We are of opinion that the contention of the appellants cannot possibly prevail. There is no room for controversy that the improvement scheme was initiated, not for the purpose of providing building sites u/s 39(a), but for improving existing means of communication and facilities for traffic u/s 39(c). This is clear from the resolution of the Board passed on the 27th August 1912 u/s 39 in the following terms: The Board are of opinion, after local inspection, that the Russa Kniid between him Road and Hazra Road is too narrow to afford proper facilities for traffic and should be altered by being widened, and, therefore, resolve that a street-scheme be prepared to effect such widening." As already explained, the initial steps in the assumption of jurisdiction by the Board is the passing of the resolution u/s 39; it is obviously not a matter of form but of substance. We are surprised that in the case of a public Corporation when action has been taken under the Statute on one basis, an attempt should be made to justify that action as if it had been taken for an entirely different purpose. The scheme before us, as we know, was not initiated because the Board were of opinion that for the purpose of providing building sites it was expedient to alter an existing street, namely, the Russa Road between the points where it is intersected by the Elgin Road and the Hassra Road respectively. It is patent that there is a fundamental difference between providing building sites and improving existing facilities for traffic. It is not competent to the Board to initiate a scheme on one of the grounds enumerated in Section 39 and then to justify their action on the plea that the scheme might have been framed on the other ground; such evasion of compliance with statutory requirements is not permissible. It is further clear from the resolution of the Board passed on the 17th September 1912 that the scheme was to provide only for the widening of Russa Road and the taking up for recoupment purposes land unoccupied or occupied by buildings of small value." There was no assertion that the widening of Russa Road and the acquisition of lands on both sides thereof (though the road was to be extended on the western side alone) were necessary for providing building sites, although it was faintly suggested in the scheme outlined for the information of public [Exhibit I, page 6, 11. 2-5] that the land abutting on the widened road should be laid out in suitable building sites. It was only when doubts were raised as to the competence of the Board to take up land compulsorily for purposes of recoupment that the Board and their advisers found it convenient to rely upon the theory that the land in suit was required for providing building sites. The obvious answer is that that was not the purpose of the scheme. The respondent has also contended with considerable force that even if this were not so, even if it were competent to the Board to

initiate a scheme for one purpose and then proceed therewith as if it were undertaken for a different purpose, still there is no question of providing a building site here. The land in suit is a good building site; a new building has been erected on a part of the premises and the remainder was about to be used in the same manner. It is plain that "providing building site" u/s 39(a) does not mean buying up land already [it for building site or pulling down, houses and soiling the land for building site; in our opinion, it means making it possible to use as building site land which cannot, for various reasons, be now used as building site. In these circumstances, the plaintiff urges with good reason that it is not competent to the Board to Seize his building site and re-sell it at a profit on the pretence of providing a building site." There is little room for doubt that if the Board were permitted to take such a step under colour of statutory provisions, it would be an abuse of those provisions on the plea of nominal compliance therewith. We may observe incidentally that when the Board proceeded to frame the scheme after their resolution u/s 39 they did not determine the area for whom the scheme was to be framed; they merely determined the land which, they thought, should ha acquired, and overlooked that the land to be acquired, though included in the area for which the street scheme is framed, is not conterminous therewith; the area for the benefit of which the scheme is framed is plainly more extensive than the land required for the execution of the scheme. In our opinion, the assertion that the land in suit is required for providing building site furnishes no answer to the claim of the plaintiff.

18. The third contention of the appellants is that the lands in suit are required for the purpose of lay out and are consequently proper subject-matter of compulsory acquisition. Reliance is placed upon Section 41(6), which requires that every improvement scheme shall provide for the laying out or re-laying out of the land in the said area," that is, in the area comprised in the scheme. Reference is also made to the decisions in *Baker v. Portsmouth Corporation* (1878) 3 Ex. Div. 157 : 47 L.J. Ex. 223 : 37 L.T. 822 : 26 W.R. 303 *Galloway v. London Corporation* (1866) 1 H.L. 34 : 35 L.J. Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865 and *Hendon Local Board v. Pounce* (1889) 42 Ch. D. 602 : 61 L.T. 465 : 38 W.R. 377 to show that the word "street" includes the roadway as also the houses on both sides. In our opinion, this contention of the appellants must be deemed groundless for more than one reason. First it is plain, that Section 41(b) does not directly or indirectly relate to the acquisition of any land whether by private agreement or by compulsory process. Secondly, what is called "lay out" is not one of the objects of the Act as enumerated in the Preamble, nor even one of the purposes mentioned in Section 39 for which a street-scheme may be undertaken. Thirdly, the contention if well-founded proves too much, for as Section 41 (6) requires that every improvement scheme shall provide for the laying out of the land in the area comprised in the scheme, according to the view maintained by the appellants, the entire land included in the area determined as the area to be benefited u/s 39 must be acquired and laid out or re-laid out, as the case may

be. Fourthly, a reference to the interpretation of the term "street" in the Local Government Act, 1858, can serve no useful purpose and can be of no real assistance in the determination of the term "street" in the Calcutta Improvement Act, 1911. Section 2 in) shows that the expression "public street" has the same meaning as in Section 3(37) of the Calcutta Municipal Act, 1899; according to that definition, the term "street" does not include either the abutting lands on both sides or the houses thereon. Section 41(b) only contemplates that the scheme shall provide for the lay out or re-lay out of such land in the area comprised in the scheme as may be validly acquired by or become otherwise vested in the Board, The section does not imply an obligation on the Board and corresponding authority on their part to acquire compulsorily all the lands situated in the area comprised in the scheme.

19. The fourth contention of the appellants is to the effect that as the lands in suit will be affected by the execution of the scheme within the meaning of Section 42(a), they have been properly included for compulsory acquisition by the Trustees. There is no force in this argument; indeed, the proceedings of the Board and the course of this litigation show that this is a rather belated argument ingeniously devised to meet the exigencies of the situation. First, Section 42(a) does not authorise the compulsory acquisition of any land. Secondly, these lands will in no way be "affected by the execution of the scheme," in the sense in which we interpret that expression. It is not disputed that the lands will lie a considerable way to the west of the widened Russa Road, and if they can be the proper subject-matter of compulsory acquisition, there is no conceivable reason why lands even much further to the west should not be similarly acquired; indeed, it is difficult to imagine where a line could be drawn, because all improvement schemes may in one sense be supposed to increase the value of all land in the city. There is this further difficulty in the present case that the Board did not, as we have already shown, determine u/s 39 the area for the benefit of which the street-scheme was to be undertaken; they have simply selected the lands which they desired to acquire. In our opinion, Section 49 is of no assistance to the appellants.

20. The fifth contention of the appellants raises the question of the competence of the Civil Court to entertain this suit and to grant relief by way of injunction. Reliance has been placed upon Section 49(2), which provides that the publication of a notification under Sub-section (1) that the Local Government has sanctioned a scheme, shall be conclusive evidence that the scheme has been duly framed and sanctioned. The argument in substance is that this Section deprives the Civil Court of jurisdiction to determine whether the action of the Board is or is not ultra vires. In our opinion, this contention is entirely groundless. Section 49(2) merely provides that after the publication of notification of sanction, the scheme cannot be impeached on the ground that it has not been framed and sanctioned duly, that is, in conformity with the procedure prescribed by the Act; but there is nothing in the section which takes away the jurisdiction of the Civil Court to investigate whether the action taken by the Trustees has or has not been in

excess or violation of statutory authority. This follows from a plain reading of Section 49 and is confirmed by Sections 155 and 160, which would be entirely superfluous if Section 49(2) completely barred suits of all description in the Civil Court. This contention, consequently, must be overruled.

21. We may add that an objection was taken in the Trial Court that the suit was barred as no notice had been given u/s 156. This was overruled on the principle explained by Woodroffe, J., in *Ganoda Sundary Chaudhurani v. Nalini Ranjan Raha* 1 Ind. Cas. 514 : 30 C. 28 : 12 C.W.N. 1065, namely, that a section which bars a suit for an act done, does not prohibit a suit for an injunction to restrain the commission of an act not done but threatened to be done. The correctness of this view has not been questioned" in this Court, and the point, indeed, was not even so much as mentioned in the course of argument.

22. It may finally be observed that in the course of the elaborate arguments addressed to us on both sides, reference was made to judicial pronouncements upon the construction of other Statutes. Thus, the appellants relied upon the decisions in *Galloway v. London Corporation* (1866) 1 H.L. 34 : 35 L.J. Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865; *Lynch v. Sewars Commissioners* (1886) 32 Ch. D. 72 : 55 L.J. Ch. 409 : 54 L.T. 699 : 50 J.P. 548; *Quinton v. Bristol Corporation* (1874) 17 Eq. 524 : 43 L.J. Ch. 783 : 30 L.T. 112 : 22 W.R. 434; *Rolls v. London School Board* (1884) 27 Ch. D. 639 : 51 L.T. 567 : 33 W.R. 129 and *North London Railway v. Metropolitan Board of Works* (1859) 28 L.J. Ch. 909 : 1 Joh. 405 : 5 Jur. (N.C.) 1121 : 7 W.R. 640 to show that authority had been conferred upon them to acquire land compulsorily for recoupment. The respondents, on the other hand, relied strongly upon the cases of *Thomas v. Daw* (1806) 2 Ch. App. 1 : 36 L.J. Ch. 201 : 16 L.T. 200 : 15 W.R. 113; *Gard v. Sewers Commissioner* (1885) 28 Ch. D. 486 : 54 L.T. 699 : 50 J.P. 548; *Donaldson v. South Sheilds Corporation* (1899) 79 L.T. 685 : 68 L.J. Ch. 162 and *Denman v. Westminster Corporation* (1906) 1 Ch. 464 : 75 J.P. Ch. 272 : 94 L.T. 370 : 54 W.R. 345 : 70 L.J. 185 : 4 L.G.R. 422 : 22 T.L.R. 270 as laying down principles which supported their view of the matter. No useful purpose is likely to be served by an analysis of these decisions and of the special provisions of the Statutes interpreted therein. It is at no time a profitable task to seek to interpret one Statute by reference to another Statute which, however analogous in scope, is still couched in different terms and possibly constitutes a machinery of an entirely different type to effectuate its purposes. We may in this connection bear in mind the weighty warning given by Lord Haldane in *Kreglinger v. New Patagonia Meat and Cold Storage Co.* (1914) App. Cas. 25 : 83 L.J. Ch. 79 : 109 L.T. 802 : 68 S.J. 97 : 30 T.L.R. 114 against the abuse of judicial precedents; they are of binding force and of real guidance only in so far as they establish principles. What then are the true principles applicable to cases of this character; they will be found succinctly stated in paragraph 26 of the title on *Compulsory Purchase of Land and Compensation*" contributed by Lord Alverstone and Mr. Allan to the *Laws of England* edited by Lord Halsbury (Volume VI, page 25):

Municipal and other public bodies are sometimes given powers to take land beyond that which is necessary for the actual execution of the proposed works, in order that some part at least of the improved value of the adjoining lands may be secured in case of the burden upon the rate payers, These lands are said to be authorised to be taken for the purpose of recoupment, as the public body is empowered to sell or lease them at what may be an enhanced value *Galloway v. London Corporation* (1866) 1 H.L. 34 : 35 L.J. Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865; *Quinton v. Bristol Corporation* (1874) 17 Eq. 524 : 43 L.J. Ch. 783 : 30 L.T. 112 : 22 W.R. 434. Similarly, public bodies may be allowed to acquire land which they may exchange for other land in order to carry out the intended object more effectually or economically *Rolls v. London School Board* (1884) 27 Ch. D. 639 : 51 L.T. 567 : 33 W.R. 129, If the Act clearly authorises the land to be taken for the actual works only, a local authority or other public body will be restrained from taking more than is actually necessary for such works *Donaldson v. South Shields Corporation* (1899) 79 L.T. 685 : 68 L.J. Ch. 162, but if it appears that it is the intention of the Act that the public body are to be allowed to reimburse themselves, they will then be at liberty to take all the lands delineated on the plans. On the other hand, when local authorities are authorised to take lands from time to time for specific works, such as street widening, and the land is not specified in the Act, they cannot, in order by re-sale to reduce the expense to the rate payers, take more than is bona fide necessary for the purpose *Denman v. Westminster Corporation* (1906) 1 Ch. 464 : 75 J.P. Ch. 272 : 94 L.T. 370 : 54 W.R. 345 : 70 L.J. 185 : 4 L.G.R. 422 : 22 T.L.R. 270; *Fernley v. Limehouse Board of Works* (1899) 98 L.J. Ch. 344 : 80 L.T. 351 : 63 J.P. 310.

23. The substance of the matter, then, is that the object of the Legislature must be determined as expressed in the provisions of the Statute; it is not permissible to speculate about the unexpressed intentions of the Legislature; nor are we concerned with the difficulties, real or imaginary, which may arise from the adoption of the expressed intentions of the Legislature. We have, from this point of view, analysed and examined in detail the provisions of the Act which is the sole source of authority of the Trustees, and we see no escape from the conclusion that under the powers of compulsory acquisition defined in Section 69, they are not competent to acquire land compulsorily except "for carrying out any of the purposes of the Act," which do not include recoupment. It is of no avail to refer to decisions on English Statutes where the Legislature accurately defines the land liable to fall within the operations of the Improvement authorities. It is remarkable that even under such conditions *Lindley, M.R.*, speaking on behalf of the Court of Appeal, did not hesitate to hold in *Donaldson v. South Shields Corporation* (1899) 79 L.T. 685 : 68 L.J. Ch. 162 that although the lands in dispute were included in the Book of Reference, which formed in essence a part of the Act, still he had failed, after the most dexterous manipulation of the sections, to extract from them anything like an enactment to the effect that the, Corporation was at liberty to take lands simply for the purpose of enabling them to raise money, lands which they did not want for

widening streets and for engineering purposes. Much stress was naturally laid before him on the decision of the House of Lords in *Galloway v. London Corporation* (1866) 1 H.L. 34 : 35 L.J. Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865; but the Master of the Rolls disposed of this argument in his characteristic way as follows: "if you have to construe a document which will not do what you want, see if you cannot find an authority which will." We may add that at the close of the arguments addressed to us, mention was made of the decision of Greaves, J., in *Manilal Singh v. Trustees for the Improvement of Calcutta* Suit No. 1253 of 1915 unreported. From a perusal of that judgment it is plain that fundamentally important points of view, which have been placed before us, were not laid before the Court in that case. A question may also possibly arise, whether, upon the special facts of that case, the actual decision may not be supported, apart from the reasons assigned in support thereof. But it would clearly be not fair to express an opinion upon the judgment in that case, which is not binding upon us and may possibly form the subject of an appeal.

24. We hold for the reasons given above that the decree made by the Subordinate Judge is correct and that this appeal is dismissed with costs.