

Privy Council Appeal No. 50 of 1916.

Abdul Rahim Mahomed Narma and others - *Appellants*

v.

**The Municipal Commissioner for the City of
Bombay and others** - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 14TH MARCH, 1918.**

Present at the Hearing:

EARL LOREBURN.

LORD DUNEDIN.

LORD SUMNER.

[*Delivered by* LORD SUMNER.]

By the City of Bombay Municipal Act, 1888, § 289, the Municipal Commissioner for the City of Bombay has under his control all public streets within the city, and may from time to time widen, extend, or otherwise improve any such street, or cause the soil thereof to be raised, lowered, or altered, subject to the sanction of the Corporation in certain events. By § 297 he may prescribe a line on each side of any public street, and, subject to receiving the necessary authority, may from time to time prescribe a fresh line in substitution therefor, and the line so prescribed shall be called "the regular line of the street." If the line is so drawn that any land not vesting in the Corporation falls within it, the Commissioner may, by § 299, take possession of it on the Corporation's behalf, which has the effect of acquiring it for the Corporation, and thereupon the land so acquired shall thenceforward be deemed a part of the public street, and the former owner will be entitled to receive certain compensation as prescribed by § 301. The Commissioner further has power, under § 296, to acquire any land required for the purpose of widening, extending, or otherwise improving any public street, subject among other things to the payment of compensation in accordance with the Land Acquisition Act, 1894. The only question in this appeal is whether the compensation to be paid for certain land of the appellants, which the Commissioner has acquired, is to be calculated according to the provisions of § 301 of the City of Bombay

Municipal Act or according to those of the Land Acquisition Act.

Elphinstone Road, which is within the area of the Municipal Corporation of Bombay, intersects at right-angles and by level-crossings two railway lines, which run parallel with and close to one another at Parel station, namely, the Bombay, Baroda, and Central India Railway and the Great Indian Peninsular Railway. The appellants were the owners of a plot of land fronting the road and lying in the north-east angle between the road and the railways. In 1909 the Commissioner prescribed a line on the north side of the road as the regular line of the street, which was so drawn that part of the appellants' land, namely, the front part, fell within it, and he duly gave notices and took possession of this land in order that, within § 299, this part of the appellants' land might thus be acquired by the Corporation, and might thenceforward be deemed part of Elphinstone Road. In point of fact, the line so prescribed was in substitution for an earlier prescribed line, but, in the view of their Lordships, nothing now turns on this.

That the Commissioner meant to prescribe the regular line of the street under § 297, and that in form he purported to do so, and in fact actually did so, there can be no manner of doubt. The whole object of what he was doing depended on its being an exercise of the powers given by this section. Equally little is there any doubt why he did so. Even if he concerned himself to some extent with prescribing a regular line, simply in lieu of the somewhat irregular line which previously bounded Elphinstone Road on the north, his main object at any rate was a different one, and he has never made any secret of it. Whether what he did was in the circumstances within the Act or without it, whether or not the exercise of his powers was a harsh application of the section, unforeseen by those who framed it, their Lordships think it quite clear that he acted in good faith, for the benefit, as he supposed, of the Corporation which he represented, and as he conceived in the discharge of his duty. Sooner or later, Elphinstone Road must have been carried over these two railways by a bridge. A double level-crossing could not be indefinitely maintained there. Such a bridge involved approaches of considerable length and height, and the embankment with its retaining walls and the provision of access to land adjoining it would require a site considerably wider than the existing width of Elphinstone Road. For this purpose the Commissioner wished to acquire additional land, and to do so on the cheapest possible terms, and so he first of all prescribed a line and then took possession of the part of the appellants' land which fell within that line. Thus he avoided having to proceed under the Lands Acquisition Act.

The appellants' whole contention is that this exercise of the Commissioner's power was good or bad according as he acted with a single eye to the creation and preservation of a regular

boundary to Elphinstone Road as an end in itself, or with the ulterior object of extending the road in order to be able to raise it by an incline to the level of the necessary overbridge.

The contention must stand or fall on the construction of the Bombay Act. There is no word in the Act which prescribes the frame of mind in which the Commissioner is to exercise the powers given by § 297, or which restricts the objects for which he is to exercise them to the mere regulation of the street in question or to the creation or preservation of a regular line in it. Even if it were proved, as it is not, that the creation and preservation of a regular line on the north side of the road was no part of the Commissioner's object, though it certainly was an incidental result of his scheme, their Lordships can find nothing in the Act which either entitles the appellants to investigate his motives or has the effect of invalidating his action on account of the purpose, with which in fact he prescribed the regular line of the street in 1909.

Cases in which it has been held that powers conferred only for a statutory purpose cannot be validly exercised for a different purpose are not in point. Such an exercise of the powers is outside the Act which confers them. Here the exercise of the powers was within the Act, for it was in strict conformity with the terms of the Act. "Preservation of Regular Line in Public Streets" is the heading to the group of sections beginning with § 297, but this cannot be pressed into a constructive limitation upon the exercise of the powers given by the express words of the Act. The preservation of the line of the street is not laid down as the definite and sole object for which the power is to be exercised. It may be the immediate effect of that exercise, but certainly it is not more. The case was very fully and cogently dealt with by the learned Chief Justice of Bombay in the High Court of Bombay, and their Lordships think it unnecessary to discuss the matter further. They will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

ABDUL RAHIM MAHOMED NARMA
AND OTHERS

v.

THE MUNICIPAL COMMISSIONER FOR
THE CITY OF BOMBAY AND OTHERS.

DELIVERED BY LORD SUMNER.