

Privy Council Appeal No. 116 of 1920.

Bengal Appeal No. 3 of 1920.

Amulya Chandra Banerjea and others - - - *Appellants*

v.

The Corporation of Calcutta - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL DELIVERED THE 10TH APRIL, 1922.

Present at the Hearing:

VISCOUNT CAVE.

LORD SHAW.

LORD PHILLIMORE.

SIR JOHN EDGE.

[*Delivered by* LORD SHAW.]

This is an appeal from a decree, dated the 27th February, 1920, of the High Court of Judicature at Fort William in Bengal in its Appellate Civil Jurisdiction affirming a decree of the District Judge of 24 Pargannas dated the 12th March, 1919, which reversed a decree of the Subordinate Judge of that district dated the 13th December, 1917.

The suit was brought by the present appellants for a declaration that the Municipality of Calcutta "is not competent, according to law, to acquire" certain property, and for a permanent order of injunction against their doing so.

The duties and powers of the Corporation as far as this case is concerned are contained in the Calcutta Municipal Act (Bengal Act 3 of 1899). The piece of land which is the subject of this suit is said by the Corporation to lie in "the very congested and insanitary area surrounding the ancient and famous Temple of

the Goddess Kali of Kalighat." The area was added to and incorporated in Calcutta by the Bengal Act 2 of 1888. The condition and development of this area have been under the consideration of the Corporation for several years past. From the plans produced before the Board, it is clear that a system, *inter alia*, of widening of roads, involving the acquisition, and thereafter, the demolition of various buildings is in process of being carried out there.

On the 12th August, 1914, the Corporation passed the following resolution :—

"(1) That the proposed 20-foot road on the north of the passage leading to the gate of the Temple be constructed in the place of the 40-foot road originally proposed over the site of Sham Roy's Temple and that the rest of the road be made 40 feet wide as proposed.

"(2) That surplus land be acquired as shown on the plan.

"(3) That the estimate amounting to Rs. 77,330 be sanctioned.

"(4) That in addition to the surplus lands included in the estimate amounting to Rs. 77,330, the whole of the premises Nos. 92 to 92 (4) Kalighat Road be also acquired, and that the additional sum required for the purpose be reported to the Corporation at their next meeting."

On the 26th May, 1915, the following further resolution was passed :—

"(1) That the scheme for the construction of a colonnaded Dharamshala at a cost of Rs. 28,000 on the land to be acquired at Nos. 92 to 92 (4) Kalighat Road, and a Dispensary at a cost of Rs. 15,000 on the land acquired on the north of the 60-foot road near the Kalighat Police Out-post, be sanctioned."

To these resolutions this explanation may be added. In the area there stands the temple referred to—viz., that of Kali, the Goddess of Destruction. There resort to it at certain seasons of the year large numbers of worshippers, who crowd into this part of the City. They come from various parts of India, and their presence in such large numbers involves the provision of suitable and decent accommodation, and the avoidance of inconvenience or of danger to life or health. These inconveniences and dangers, to themselves and to the ordinary resident population, have required and obtained consideration at the hands of the Municipality.

The scheme which was formulated and is disclosed in these proceedings included the construction of roads adjoining the Temple of Kali. The property of the appellants is in the neighbourhood of that Temple and consists of a square block of land with buildings upon it. The scheme involved the construction of a 20-foot road running north and south, cutting off a large eastern slice from the appellants' land adjoining the temple, which lies to the east. Another 20-foot road cut off a considerable slice of its western side, and was added for the widening of an existing narrow road. It cannot be denied that these slices, in so far as the scheme was a road construction or widening scheme, fell within the powers of the Municipality. Section 357, after quoted, covers that case.

The remainder of the appellants' block thus forms a central plot within the two roads referred to. It was surplus land, and the Corporation had over it such powers of acquisition as the statute conferred.

As it turned out, a philanthropist was willing, out of his own private resources, to pay the expenses of constructing upon the plot a dharamshala, being a hostel or rest house with proper sanitary and other suitable accommodation, so that the needs of pilgrims and visitors, and particularly the worshippers of Kali, during the period of overcrowding and danger already mentioned should so far be met. There can be no doubt that the principal object of the acquisition by the Corporation of this land was to enable the City of Calcutta to become the possessor of this great public addition to its municipal resources and advantages.

The appellants, however, challenge the right of the Corporation to acquire the land compulsorily. The challenge was successful before the Subordinate Judge. Before the statutes are cited it is necessary to say that their Lordships fundamentally disagree with the proposition upon which his judgment is rested, viz., that the dharamshala is excluded from the term "public purpose" because the persons mainly interested would have been the worshippers and dignitaries of the temple. What the Municipality had to consider was not the religious beliefs and purposes of those assembling in such numbers, but what was the situation of the City in respect to this assemblage and to the citizens at large in view of the general questions of public convenience, proper sanitation, and the prevention of danger and disease. Any enlightened Municipality would carefully attend to these questions and endeavour to avoid the evils referred to. This is not to be ruled out by a consideration as to the particular form of belief or practice of those who would primarily benefit by the improvements made.

But, of course, the question of powers under the statute remains.

The following sections of the Act are material :—

"Section 14. In addition to the other duties and powers conferred or imposed on them by or under this Act or any other Act for the time being in force . . . the Corporation may, in their discretion, provide from time to time, either wholly or partly, for all or any of the following matters :—

(ii) The construction, alteration, maintenance and adornment of public halls, offices and other buildings under the control of the Corporation or required for municipal purposes ;

(v) The construction and maintenance of hospitals and almshouses ;

(xi) Any other matter which is likely to promote the public health, safety, or convenience or the carrying out of this Act."

By Section 357 it is provided :—

"(1) The Chairman, with the approval of the Corporation, may acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street, or of making any new public street, and the buildings (if any), standing upon such land.

"(2) The Chairman, with the approval of the Corporation and the sanction of the local Government, may acquire, in addition to land and buildings acquired under sub-section (1), any land outside the proposed street alignment, with the buildings, if any, standing thereupon, which the Corporation may, in the exercise of any of the powers conferred by sub-section (1), consider it expedient to acquire ;

“ Provided that, in any case in which it is decided to acquire any land under this sub-section, the owner of such land may retain it by paying to the Corporation an annual sum to be fixed by the General Committee in that behalf, or a lump sum to be fixed by the General Committee, not being less than twenty-five times such annual sum.”

It was stated that the appellants, as owners of the land, were desirous of exercising any power of retention by payment as provided for in this section, although they had not yet taken any steps for that purpose.

By Section 556 it is provided :—

“ Section 556.—In addition to the powers expressly conferred on any municipal authority by any other Chapter of this Act for acquisition and disposal of land or buildings, the Corporation may—

“ (1) Acquire, or pay rent for, or take on lease under such conditions as they may think fit, any land and buildings, whether situated in Calcutta or not, which may in their opinion be needed for carrying out any of the purposes of this Act.”

It is unnecessary to enter into the various points which are raised upon the statutes, and commented on in the judgments of the Court below, other than the one now to be mentioned. Their Lordships are clearly of opinion that the judgment of the High Court is right in one matter which is fundamental, and is entirely sufficient to dispose of the case.

In their Lordships' opinion, Section 556 of the statute plainly confers upon the Corporation power to acquire land and buildings which are, in their opinion, necessary for carrying out any of the purposes of the Act. This refers back to, *inter alia*, the various cases in Section 14. Those cited in argument are three in number, viz. : (ii) the construction and maintenance of buildings under the control of the Corporation or required for municipal purposes, (v) the construction and maintenance of hospitals and almshouses ; but there further remains, after a large category of no fewer than ten different items with much variety, sub-section (xi) : “ any other matter which is likely to promote the public health, safety or convenience, or the carrying out of this Act.”

It may be true that the acquisition of this block of land for a dharamshala would not fall under (ii) as being for a building under the control of the Corporation, or even under the general denomination of hospitals or almshouses in (v) ; but upon these nothing need be said, for their Lordships are clearly of opinion that the construction and maintenance of a dharamshala cannot be said to be ruled out of (xi), which covers “ any other matter which is likely to promote the public health, safety or convenience, or the carrying out of this Act.” This being so, their Lordships would be the last to question the opinion of, or the exercise of discretion by, the Municipality of Calcutta, even if they differed from it, which they certainly do not. The Act by Section 14 and Section 556 has expressly placed the discretion, not with this Board or with a Court of Law, but with the municipality itself.

The Corporation has the power of acquisition of land which may in their opinion be needed for carrying out any of the purposes of the Act. The resolutions come to clearly enough express that opinion. And the matter is thus at an end.

Their Lordships will humbly advise His Majesty that the appeal be dismissed with costs.

In the Privy Council.

AMULYA CHANDRA BANERJEA AND OTHERS

v.

THE CORPORATION OF CALCUTTA.

DELIVERED BY LORD SHAW.

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