

**(1918) 06 BOM CK 0004**

**Bombay High Court**

**Case No:** None

Ratanlal Choonilal Panalal

APPELLANT

Vs

The Municipal Commissioner

RESPONDENT

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**Date of Decision:** June 18, 1918

**Acts Referred:**

- City of Bombay Municipal Council Act, 1988 - Section 301, 42

**Citation:** (1919) 21 BOMLR 114

**Hon'ble Judges:** Walter Phillimore, J; Shaw, J; John Edge, J; Bart, J; Ameer Ali, J

**Bench:** Full Bench

**Final Decision:** Allowed

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### **Judgement**

Shaw, J.

These are consolidated appeals from two decrees of the High Court of Judicature at Bombay dated the Kith April, 1916, confirming decrees which are dated the 15th October, 1914, in two suits which were instituted in its original jurisdiction.

2. The object of the suit by the respondents, the Trustees for the Improvement of the City of Bombay, against the appellant, is for a declaration of the plaintiff's property in a certain piece of land, and for the ejection there from of the defendant, the present appellant, and for delivery forthwith by him of possession thereof. The land has been built over. The issue raised is serious, affecting as it may do many other frontage sites in Bombay.

3. The position of the block of property (of which the piece just mentioned forms a part) is as follows. It is a corner site having one frontage to the east--Kalbadevi Road, the other frontage to the north--to Princess Street, in the City of Bombay. Princess Street is made on the site of what was formerly Lohar Chawl Street, The piece of land from which the appellant is sought to be ejected faces Princess Street. The primary question for the consideration of the Board is,--who owns that piece of land?

4. The plaintiff, Ratanlal Choonilal Panalal, is the proprietor of the corner block of ground. In the year 1906 his mother and natural guardian, he being then an infant of nine years of age, wished to develop the property by erecting certain new buildings thereon. Steps were accordingly taken to give the notices required in the circumstances to the Corporation. No question arises as to the regularity of these proceedings. Building lines had been drawn up for the streets of Bombay by the Municipal authorities under statutory powers, and in the course of disposing of the application to put down the new buildings on the corner block in question, orders or requirements were issued that these lines should be conformed to.

5. With regard to the east frontage, namely, that to Kalbadevi Road, the order required that the line of new buildings to be erected should be set back. This was done. This involved the sacrifice to the owner of 2841 square yards of site. It is admitted by the respondents that the Corporation must pay for this ground under the Bombay Act No. III of 1888.

6. With regard to the frontage to Princess Street, formerly Lohar Chawl Street, it was required of the plaintiff not that he should set back his building line, but that that line should be carried forward. This also was done and the buildings were erected, according, in all respects, to the requirements made and to plans which were submitted to and sanctioned by both the authorities, namely, the Corporation and the Improvement Trust. Details of these points need not be given: the real facts are admitted.

7. The attitude of the Corporation appears to be that the one of these transactions is a legitimate set-off in law against the other. In this they are supported by the Bombay Improvement Trust, which puts forward the claim that it, under its Act of constitution, is the owner of that projecting piece of ground facing Princess Street, which had to be so to speak absorbed into the block so as to comply with the throwing forward of the building line. This would seem to be an answer to the plea of set-off, as the debt due by the Corporation could not be compensated in respect of a claim by the Improvement Trust. But these two authorities are hand and glove, and this not improperly. It is in the public interest that they should work together, if this can be done in conformity with the various statutes. The mode of co-operation adopted in the present case was somewhat unusual. The Corporation, claiming as owner, made a demand to be paid a price for the site fronting Princess Street over which the appellant had been forced to throw his building forward so as to conform with the required building line. At first there was an inclination to consider that demand; but differences, delays, and further enquiry ensued, and finally the plaintiff refused this demand. Thereupon the Trust instituted their suit, craving inter alia ejectment of the plaintiff. This if decreed, would of course mean the total destruction of a large and important section of the plaintiff's buildings, all erected according to plan and by the sanction and with the knowledge of the Corporation and Trust as stated.

8. This situation involves an investigation as to the important and fundamental question already stated, namely, who owns this piece of ground? Unless the Improvement Trust can establish its ownership of the site of the projection in question, namely, that facing Princess Street, it cannot of course have any title to eject the plaintiff there from.

9. By the City of Bombay Improvement Act, No. IV of 1898, the respondents as a Board of trustees were constituted. Among its powers are those of making street schemes, and by Section 1 it is provided that the street scheme "shall within the limits of the area comprised in the scheme provide for (a) the acquisition of any land which will in the opinion of the Board be necessary for or affected by the execution of the scheme; (b) relaying out all or any land including the construction of buildings and the formation and alteration of streets."

10. It is admitted that Lohar Chawl Street was in 1905 vested in the Corporation. The Trust state in their plaint that on the 17th January, 1905, they intimated to the Corporation that that street so vested in it was required by the plaintiff to form part of Princess Street, a street which was then about to be formed by the Trust under a scheme to be carried out by it as provided for by the City of Bombay Improvement Act. The meaning of this is that, to begin with, the Trust took over Lohar Chawl Street just as it found it.

11. This was two years before the appellant began to build. In point of fact, he began in February 1907 ; and he began upon lines prescribed by the Corporation, and known and approved by the Trust as so prescribed. His building line did de facto project over the old line of Lohar Chawl Street and come forward to a new line arranged by the authorities as that upon which Princess Street was to run.

12. How had this change from the old frontage of Lohar Chawl Street to a new frontage for Princess Street occurred? It had occurred for the simplest of all reasons, namely, that between 1905 and 1907 the Trust in working out its scheme of reconstruction, discovered that it would be more advantageous to run the line of Princess Street so as to carry it forward at certain portions, of which the bit of site in question is one, and to carry it back at other portions. The Trust accordingly communicated that new Princess Street line to the Corporation, sending a plan showing exactly the new and forward regular building line. To that line the Corporation officers duly worked, and to that line the appellant was ordered, most properly, to conform. And, most properly, he did so. In obedience to this requirement the buildings were erected, and they conformed exactly with the forward frontage demanded. As Mr. Delves, the Trust's Deputy Land Managar, testifies--

The Trust officers knew that the defendant's building was being contracted on this set forward land....The Trust took no objection to the construction of the defendant's building while the building work was going on....The Trust never

claimed nor thought of claiming the set-forward land back from the defendant till the Municipality asked us to do so.

13. It was in these circumstances that the suit for ejectment of the plaintiff was brought by the Trust, upon the averment that in 1907 his mother "unlawfully entered into and took possession thereof." This is how the matter stands in fact. How it stands in law depends upon the claim which the Trust puts forward and asks to be judicially declared, that the piece of land "is the property of and vested in it." This claim in law will now be examined.

14. As stated, the history of the buildings has been that they have been erected to conform to requirement, upon the new and forward Princess Street line and not upon the old Lohar Chawl Street line. The question is, what is the fate of the property between these two lines? The Trust maintains that when it gave its original intimation to acquire up to the Lohar Chawl Street line the effect of that was to vest in the Trust all the ground so embraced, that is to say, not only the ground on which Princess Street was in fact formed, but also the strips on which it was not formed. The Municipality for the purposes of this litigation appears to acquiesce in this view, and the learned Judges in the Courts below agree. In the opinion of the Board this is a mistake.

15. The effect of the mistake would be to produce in the City of Bombay an extraordinary situation. Many properties fronting ordinary streets belonging to the Corporation would find themselves front aging property belonging to the Trust by virtue, it is contended, of the mere intimation that the Trust required the old street for making the new. But when the new street came to be constructed it would be within the power of the Trust to throw the new and actual building line forward with the result that not only would it become the owner of the street as ultimately formed, but it would also become de facto the owner of all the strips between the line of the old street and the line of the new. All the frontages so situated in Bombay would consequently and de jure be put into the position of owning hinterland instead of frontage land and be subject to the dis-advantages for commercial and other purposes of all that this implies. It was contended by the learned counsel for the respondents that legally and logically the Trust being the owner of these strips it could do with them what it liked with the assent of the Corporation, that is to say, it could let them or build upon them as its own property, thus "blinding" all the old frontages" sites and buildings.

16. It is accordingly necessary to see what actually is the true extent of the powers of the Trust on this topic. These are contained in the City of Bombay Municipal Act No. III of 1888, which gave certain powers to the Corporation, which powers were by Section 42 of Act IV of 1898 declared to "apply to streets or parts thereof which may become vested in the Board under this Act during such period as the same shall respectively remain so vested and for the purposes of this Act." The language of this section reflects pretty clearly the main object of the Statute, which was to set up

with sufficient powers a street-making authority, and, when its function as such was expired, to have the street which had been reconstructed or made by the Trust thereupon handed back to the Corporation.

17. By Section 41 it was provided as follows:--

Whenever under any improvement or street scheme the whole or any part of an existing public street or other land vested in the Corporation is included in the site of any part of a street to be formed, altered, widened, diverted, raised, rearranged, or reconstructed by the Board, the Board shall give notice to the Commissioner that the whole, or a part as the case may be, of such existing street or other land (hereinafter called the "part required") is required by them as part of a street to be dealt with as aforesaid, and the part required shall thereupon, subject to the provisions of Sub-section (2) of Section 45, be vested in the Board ; provided that nothing in this section contained shall be deemed to affect the rights or powers of any Municipal authority under Chapters IX and X respectively of the Municipal Act in or over any Municipal drain or water-work.

18. By Section 45 (2) it was provided that "the Commissioner shall on being satisfied that any street formed by the Board has been duly leveled, paved," & c., and drained and lighted, and, in short, thoroughly completed and the work of the Trust as a street-making authority finished, then "such street shall thereupon vest or re-vest, as the case may be, in the Corporation, and the Corporation shall thenceforward maintain, keep in repair, light, and cleanse such street."

19. Not a word is said in these sections to indicate either (1) that the building line of the street must, once indicated, remain by reason of that original indication, and not be open to change or putting forward should experience suggest this to be for the best; nor (2) is anything said to indicate that the street taken over "to be formed" is anything different in dimensions from the street to be handed back when formed.

20. Upon the first point the Bombay Act No. III, and no doubt the practice of the Municipality there under confute it. The section referred to is as follows:--

297.--(1) The Commissioner may--

(a) Prescribe a line on each side of any public street;

(b) From time to time, but subject in each case to his receiving the authority of the Corporation in that behalf, prescribe a fresh line in substitution for any line so prescribed, or for any part thereof.

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(2.) the line for the time being prescribed shall be called "the regular line of the street.

21. It cannot be suggested that the Trust were, as compared with the Municipality, prohibited from "prescribing a fresh line."

22. As to the second point, their Lordships are clearly of opinion that these two sections, the one as to taking over a street "to be formed," and the other as to handing the formed street back are correlative to each other. The section does not mean merely "intended to be formed" when a notice is made, but it refers to that ground and no other which is used as a street and for the purposes thereof, and that no transfer from the Municipality is effected to the Trust of anything else. If, therefore, a line originally indicated is changed, the line of the street to be formed is changed and the whole transaction is modified in this sensible and practical manner. It is only in this way that the word "revest" in the Corporation becomes intelligible. What is to revest in the Municipality is just that which when formed as a street had been the subject of that interim divestiture to the Trust as the street forming authority. And the whole theory of the Trust's case, namely, that in virtue of a notice taking over from the Municipality a certain street of Bombay to be formed as a new street by the Trust, thereby vested the whole of the old street in it, although a strip of the old street never was formed as a new street, falls to the ground.

23. The Trust's action was--in conjunction with that of the officers of the Municipality--much more reasonable, namely, that when the line of the new street was made the frontager was required to put forward his building to conform to it. And this, in the opinion of the Board, was not only reasonable in practice but was correct in law and in accordance with a sound construction of the Statutes.

24. What then happened to the strip of old street which was never "formed" into the new street ". The answer is that nothing happened to it. It remained under the jurisdiction, and in all respects as before the property of the Municipality. To it as such accordingly when the frontager was required to put forward his buildings over it the third Sub-section of Section 301 of the Municipal Act of 1888 expressly applies. It is as follows :--

(3) If the additional land which will be included in the premises of any person required or permitted under the last preceding section to set forward a building belongs to the Corporation, the order or permission of the Commissioner to set forward the building shall be a sufficient conveyance to the said owner of the said land ; and the terms and conditions of the conveyance shall he set forth in the said order or permission.

25. The result is plain: the projection, that is to say, the site between the old street line and the new, ex adverso, of the appellant's property, became his in ownership. It is his now. The title of the Trust to it fails, and with it fails the suit, whether for declaration or ejectment.

26. There remains to be dealt with the suit by the appellant for the price of the ground taken from him as the result of the compulsory throwing back of his line of building facing Kalbadevi Road and absorption into that road by the Municipality of a portion of appellant's ground. Payment for this has been decreed and the decree in this respect will stand.

27. But two further questions arise in regard to that suit, viz., as to costs and as to interest on the price.

28. Costs were refused on account of the view entertained in the Courts below as to the conduct of the appellant in refusing to set off" against that price for the Princess Street projection. The question of whether a price is exigible for that projection does not arise directly as matter of suit; but it is necessary to express an opinion upon it because a determination upon it will govern the questions both of costs and of interest.

29. In the opinion of the Board while the Act makes provision for the compulsory expropriation of an owner, it makes no provision whatever for a payment by the owner in respect of what may be termed compulsory impropiation. Some reasons occur for the view that it might have been so, and some occur for an opposite view. These wore for the legislature. What the legislature has done, and all that it has done upon that subject, is contained in Section 310 (2) of the Municipal Act. It is as follows :--

(2) If, in consequence of any order to set forward a building made by the Commissioner...the owner of such building sustains any loss or damage, compensation shall be paid to him by the Commissioner for such loss or damage.

30. Such loss or damage may be easily figured: the compulsory projection may involve most serious cost; the whole foundations of the old building may be rendered useless, and the cost of new may be heavy; alterations of plans, levels, elevations, and the like might all be involved in particular cases, and, in short, the Legislature has recognized, not a price to be paid by the owner for compulsory impropiation, but damages to the owner if such can be qualified in consequence thereof. Their Lordships in these circumstances cannot look upon the suggested right in the Trust or the Municipality to receive a compulsory price for the Princess Street proprietors to be justified by the Statute. Accordingly, the alleged right or duty of set-off fails.

31. In these circumstances the plaintiff and his advisers were of course, entirely warranted in refusing to concede the set-off claimed. It was not, in the opinion of the Board, justified by law. This renders it unnecessary to deal in detail with certain derogatory observations, more particularly by Davar J., culminating in his assertion that the appellant's conduct "has been conspicuously unscrupulous and transparently dishonest." When it is remembered that in all the most important of these transactions the appellant was an infant of nine years of age, the suggestion

of such precocity in wickedness in Bombay seems sufficiently answered. But it may suffice to say that, hard to bear as these accusations must have been, they do not appear to their Lordships to have been in any respect warranted by the facts or by the law of either case. In the opinion of the Board the position taken up by the appellant in these suits has been completely justified, and was throughout in accordance with law. Costs will accordingly follow the event.

32. On the point of interest, on the price payable by the Municipality, two matters were agreed at the bar. In the first place, the rate of interest, should it be allowed, was arranged at 6 per cent. In the second place, it was agreed that the Municipality has been in possession of the ground since the 30th June, 1909.

33. The Board is of opinion that the right to interest depends upon the following broad and clear consideration. Unless there be something in the contract of parties which necessarily imports the opposite, the date when one party enters into possession of the property of another is the proper date from which interest on the up paid price should run. On the one hand, the new owner has possession, use, and fruits ; on the other, the former owner, parting with these, has interest on the price. This is sound in principle, and authority fully warrants it. See especially Sir W. Grant's judgment in *Fludyer v. Cocker* (1806) 12 Ves. Jn. 25 and also see *Greenock Harbour Trustees v. Glasgow and South Western Ry.* (1909) S.C. 1438, in which the judgment of Lord Cowan in *In re Stirting and Dunfermline Ry. Co.* (1857) 19 D. 598, is adopted. Also *Birch v. Joy* (1851) 3 H.L.C. 565, in the judgment of Lord St. Leonards at Page 590.

34. Their Lordships will humbly advise His Majesty that the appeals be allowed, and that in the first suit the decrees appealed from be varied, and that a decree passed in favour of the appellant for the sum of 5,682 rupees brought out in the judgment of date the 15th October, 1914, with interest thereon at the rate of 6 per cent, per annum from the 30th June, 1909, until payment; and that further in the second suit the judgment and decree be recalled, and that that suit stand dismissed ; the appellant to have his costs in both suits, here and in the Courts below.