

*Privy Council Appeal No. 41 of 1937.*

The District Local Board, Ahmedabad, and others - - *Appellants*

*v.*

The Secretary of State - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 6TH DECEMBER, 1937.

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*Present at the Hearing :*

LORD THANKERTON.

SIR LANCELOT SANDERSON.

LORD NORMAND (Lord President of the Court of Session).

*[Delivered by LORD NORMAND.]*

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This is an appeal from a judgment of the High Court of Judicature at Bombay reversing a judgment and decree of the First Class Subordinate Judge at Ahmedabad. The appellants are the District Local Board, Ahmedabad, and the Taluka Local Board, North Daskroi, Ahmedabad. They are the plaintiffs in the suit, and they ask for a declaration that a certain area of land, 11,384 square yards in extent, situated at Ahmedabad is their property. The defendant, the respondent, is the Secretary of State. The Subordinate Judge found in favour of the appellants and granted the decree craved, holding that the property in the lands in suit had been transferred by the Government to the Local Fund Committee at Ahmedabad in 1864 and had been thereafter transferred by force of subsequent enactments to the appellants. The High Court held that there was no vesting of the property in the appellants, and further that the respondent was not estopped from denying that the appellants are owners of the land in suit.

The salient facts are not in dispute, and it is upon the legal inference which arises from them that controversy centres. Before 1864 the area in suit, together with other areas later conveyed to a private party, belonged to the Government. On the disputed area there was a dharmashala or bungalow rest house together with out-houses and buildings, all of which were also the property of the Government. In the first half of the 19th century the Government initiated a plan for placing upon local bodies the responsibility for certain local services. Until the year 1869 the Government seems to have been feeling its way, and what was then done was tentative and provisional and

lacked clear formulation. About 1862 or 1863 the Government of the Presidency authorised the establishment of local funds for local objects to be managed by a committee of officials and non-officials with the Collector as president, but these arrangements rested upon an informal basis. In 1869, however, for the first time the scheme received formal legislative sanction. The Bombay Act No. 111 of 1869 (section 2) authorised the Government to create in every district a Local Fund Committee, one half of which were to be non-official persons, the Collector or Sub-Collector was to be *ex officio* president, and the Committee was to act under the control and general supervision of the revenue commissioner. All proceedings of the Committee were to be subject to the review and control and final decision of the Government. By section 3 the Committee was declared to be competent to hold property, moveable and immoveable, to convey the same, and to enter into all necessary contracts for the purpose of the Act. Section 4 placed on the Committee the duty of providing for the requirements of the district with respect to, *inter alia*, dharmashalas. By section 6 the Government was authorised to levy a cess for the purposes of the Act, and by section 9 the net proceeds of this cess were made available to the district local fund. Under section 10 the Committee were authorised to administer such other funds as might be placed at their disposal by the Government or by private individuals. The Act contains no provision for vesting any property in the Committee and the subsumption of the Act is that there were no pre-existing bodies to which the new statutory committees could be regarded as successors. In fact, however, a pre-statutory committee at Ahmedabad had the possession in and management of the bungalow built on the disputed lands, and of the disputed lands themselves, and of the lands subsequently sold, which together formed the site and compound of the bungalow.

The Act of 1869 was replaced by the Bombay Local Boards Act of 1884. It is here necessary to refer only to section 41, which enacts that all such immoveable and other property as was held by or in trust for any committee under the 1869 Act should vest in the district local boards and the taluka local boards established by the Act of 1884. The 1884 Act was in turn replaced by the Bombay Local Boards Act, 1923, from which the present appellants derive their powers. It is agreed that if the disputed lands were vested in the Local Funds Committee under the 1869 Act these lands are now vested in the appellants by force of the Acts of 1884 and 1923. The bungalow and compound were in the possession of the statutory committee and afterwards of the boards set up by the 1884 Act and are now in the possession of the appellants.

Considerable sums, presumably provided by the Government, were expended on the maintenance of this or other dharmashalas in the district between 1864 and 1878. In 1874 a portion of the lands which formed part of the compound of the dharmashala was sold to a private individual.

The conveyance has not been produced in evidence and it is therefore uncertain whether the Local Fund Committee, acting under the statute of 1869, were the grantors. But correspondence and documents which are in evidence show that the "Collector and President, Local Funds Committee," applied to the Revenue Commissioner, Northern Division, for sanction to the sale of this parcel of land and to the crediting of the proceeds to the local funds of the district. Another sale of a further area was made in 1876 in circumstances which are indistinguishable from the sale of 1874. There is produced in evidence an extract from the general index of sheet J, No. 1, of the map of the City of Ahmedabad dated the 11th November 1878, with entries showing the lands thus disposed of as private property. But the remaining area on which the bungalow stands is entered as the property of the Government.

In 1908 a lease of the bungalow was granted to the proprietors of the Grand Hotel for a period of 10 years, and this lease was renewed in 1918. Again the leases themselves are not in evidence, but an admission is made in the respondent's case that the Taluka Local Board of Ahmedabad, with the sanction of the Commissioners, Northern Division, let the bungalow to the proprietors of the Grand Hotel.

On these facts the appellants maintain that they or their predecessors, having long been in possession of the bungalow and disputed land, are entitled to the benefit of section 110 of the Evidence Act, 1872, which provides that "when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner." The *onus* is therefore on the respondent and the crucial question in the case is whether he has discharged it.

In the opinion of the Board, agreeing with the learned Judges of the High Court, it is demonstrated that the pre-statutory local funds committees had no power to acquire lands. That power was not conferred on any local funds committee till 1869 when the Act of that year conferred it on the new statutory committees. It necessarily follows that the lands in suit which originally belonged to the Government could not have become vested in the pre-statutory committee in 1864. Nor could they have become vested *vi statuti* in the statutory body created in 1869, for the statute merely conferred upon the new committee a power to acquire lands and transferred no property to it. That is sufficient to dispose of the finding in favour of the appellants made by the Subordinate Judge, who omitted to notice that the pre-statutory committee was not qualified to own land.

Faced with this difficulty counsel for the appellants put forward an alternative case, which had not been made in the Courts below. He maintained that the lands in suit must be deemed to have been transferred by the Government in

1864 to the individual members of the pre-statutory committee as trustees for that committee, and that the lands had vested by force of section 41 of the Act of 1884 in the District Local Board or the Taluka Local Board. This contention, even if it were now open to the appellants, is in the opinion of the board without foundation. Under section 41 of the 1884 Act lands "held in trust for any committee for the purposes of the Bombay Local Funds Act, 1869," vested in the boards set up by the Act of 1884. But it is impossible to hold that the individual members of the local funds committee in 1864 were trustees for a body which was then non-existent.

The argument therefore postulates that in 1864 the Government transferred lands owned by it to certain individuals subject to a verbal trust for behoof of the pre-statutory committee, though at that date the policy of the Government was still experimental and the supposed trust purposes had not been definitely settled and adopted. It further postulates that this verbal trust made provision for the death and resignation of trustees and for all the machinery of trust succession. It assumes without warrant that the trust in some way enured after the passing of the Act of 1869 to the benefit of the statutory committee. It fails to explain why the trust, instead of being terminated by a transfer of the trust property as soon as a competent transferee was created by the 1869 Act, was carried on till vesting automatically took place under section 41 of the 1884 Act, and it also fails to account for the fact that in 1874 and 1876 there is no mention of the trustees who *ex hypothesi* alone had a title to convey the lands which were then sold. This alternative case can be dismissed as extravagantly improbable in fact and unmaintainable in law.

The appellants founded on the expenditure upon the bungalow by the successive committees charged with its maintenance, and upon the circumstances attending the sales of portions of the compound attached to it in 1874 and 1876, and the leases granted in 1908 and 1918. They referred to these facts as evidence supporting the inference that the Government had transferred the property in the whole compound to the pre-statutory committee or to trustees in 1864. But as this transfer has been shown to have been a legal impossibility, this aspect of the facts founded on need not be further considered.

It remains, however, to consider the argument for estoppel. The learned Subordinate Judge did not find it necessary to deal with it. In the High Court it appears to have been based entirely upon the expenditure said to have been laid out on the bungalow. The appellants, however, now base the argument on the alienation by sale of parts of the compound in 1874 and 1876 and on the leases of the lands in suit in 1908 and 1918. The Board consider that no case of estoppel is established and that the opinion expressed by Broomfield J. in rejecting the case for estoppel

pleaded in the High Court is equally applicable to the case for estoppel now pleaded. The learned Judge says, "I do not find that there was ever any clear and unequivocal representation by Government that the committee or the board were owners of the land. It is not shown, I think, that any action of the committee was induced by any representation or conduct of the Government."

The conveyances of 1874 and 1876 have not been produced in evidence and it is therefore not established that the local funds committee were the grantors. But even if it be assumed that they were the grantors and that the Government were merely consenters, that would afford no ground for holding that the Government is estopped in a question with the appellants from asserting its ownership of the lands which were not alienated and therefore not dealt with in the conveyances. The correspondence and documents which are produced in evidence are ambiguous and inconclusive. The request for Government sanction to the sale and to the crediting of the proceeds to the local funds was signed by "the Collector and President of the Local Funds Committee." His position illustrates the ambiguity which underlies the whole evidence relative to this matter. The fact is that the question who was the owner of the land which it was proposed to sell did not arise in 1874 or in 1876 and no clear representation by words or conduct was made about it. Moreover, the sales were not induced by any considerations relating to the ownership of the lands. The Government's consent to the sales may have been required either because it owned the lands or because the proceedings of the committee, if it were the owner, were by the Act of 1869 subject to Government review. The consent of the Government to the application of the proceeds of the sale is equally ambiguous. The Government and the committee were concerned not at all with the question of ownership but with the question whether the sale of a portion of the compound would interfere with the comfort of travellers who used the dharmashala. The entries in the general index of the map of Ahmedabad are of much greater significance than the circumstances founded on by the appellants. These entries clearly show that the retained land on which the bungalow stood remained in 1878 the property of the Government.

The circumstances attending the grants of the leases of the bungalow are also equivocal, and no clear representation as to the ownership of the site can be deduced from them. The leases themselves are not produced in evidence, but there is the admission that the Taluka Local Board, with the sanction of the Commissioner, let the bungalow to the proprietors of the Grand Hotel. If, however, the Taluka Local Board were in possession of the bungalow for the purpose of maintaining it as a rest house, an arrangement by which the Taluka Local Board let it for a term of years to an Hotel company with the consent of the Government, is quite consistent with the Government's retention of the

property in the bungalow. There is no clear representation by the Government that the Taluka Local Board was owner of the bungalow or its site and the Taluka Board was not induced to alter its position by any such representation.

Nothing in the circumstances attending any of these transactions is in any degree inconsistent with the position which the Government took up when the question of the ownership of the disputed lands was raised in 1888. The Government's attitude then was that "the bungalow had been transferred for a specific purpose, but if it ceases to be used for that purpose the right of the Local Board to the use of the compound would cease."

In the opinion of the Board the bungalow and its compound were in 1864 possessed by the pre-statutory committee for the limited purposes of management and maintenance, and the character of that possession has remained unchanged till this day. The Government has discharged the onus laid on it by section 110 of the Evidence Act by showing that the possession enjoyed by the appellants rests on a basis inconsistent with a right of property. Such plausibility as attaches to the appellants' case depends on ambiguous expressions of opinion or intention given by Government officials at a time when the ownership of the lands in suit was not relevant to the questions under discussion. It ignores the fact that there was no statutory necessity and no necessity in the nature of things for any transfer of the property either of the bungalow or of its compound, for the whole duties of the committees and boards successively charged with the administration of the local funds for the purpose of maintaining dharmashalas could be adequately discharged without their acquiring any lands or buildings in property. When the Government provided an existing dharmashala all that was necessary was that the Local Board should have possession of it for the purposes of management and maintenance.

For these reasons the Board will humbly advise His Majesty in Council that the appeal should be refused and that the judgment of the High Court of Judicature at Bombay should be affirmed and that the respondent should be found entitled to the costs of this appeal.

THE END OF THE WORLD

In the Privy Council

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THE DISTRICT LOCAL BOARD,  
AHMEDABAD, AND OTHERS

21.

THE SECRETARY OF STATE

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DELIVERED BY LORD NORMAND

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