

Mani Lall Sing Vs. the Trustees for the Improvement of Calcutta

Mani Lall Sing Vs. the Trustees for the Improvement of Calcutta

SooperKanoon Citation : sooperkanoon.com/883334

Court : Kolkata

Decided On : Aug-14-1917

Reported in : 44Ind.Cas.770

Judge : Fletcher, ;N.R. Chatterjea, ;Teunon, ;Richardson and ;Asutosh Chaudhuri, JJ.

Appellant : Mani Lall Sing

Respondent : The Trustees for the Improvement of Calcutta

Judgement :

Fletcher, J.

1. The question referred to the Full Bench for determination is as follows:

Whether the case of the Trustees for Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 in so far as it holds that Act V of 1911 (B.C.) does not authorize the Board of Trustees to acquire land compulsorily for purposes of 'recoupment' i.e., by selling or otherwise dealing with the land under Section 81 or by abandoning the land in consideration of the payment of a sum under Section 78, was rightly decided.

2. The suit out of which the present reference arises was instituted on the Original Side of this Court by the plaintiff as the owner of the premises known as No. 10,

Halliday Street, against the Trustees for the Improvement of Calcutta and the Land Acquisition Collector for the purpose of obtaining an injunction to restrain the defendants from acquiring the said premises or doing any acts in furtherance thereof. From the statement given in the opinion of the learned Chief Justice in the order of reference it appears that No. 10, Halliday Street, lies on the west side of Halliday Street, the widening of which formed the basis of a street improvement scheme framed by the Trustees and known as Scheme No. VII A. There was some discussion during the argument before the referring Judges as to how much of No. 10, Halliday Street, had been taken for the actual street widening. It was, however, finally agreed between the Counsel engaged in the appeal that the strips of land to the north and south of No. 10 which had been taken for the purpose of widening Tara Chand Dutt Street and Zakaria Street had been taken under another scheme or schemes, and that only the portions of No. 10 required for rounding off the corners formed by the junction of these two streets with Halliday Street had been taken in Scheme No. VII-A so far as the actual widening of Halliday Street was concerned. The remainder, of No. 10, Halliday Street, the Trustees contend, they are entitled to acquire compulsorily under their improvement scheme as land--which will in their opinion be affected by the execution of the scheme.' The Trustees admit that the remainder of No. 10, Halliday Street, is being acquired by them for the purpose of what is called 'recoupment.' Greaves, J., dismissed the plaintiff's suit on the 17th of July 1916. Against that judgment the appeal out of which the present reference arises was preferred. On the 22nd of August 1916 Mookerjee and Cuming, JJ., sitting as a Division Bench delivered judgment in the case of the Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 in an appeal against a decree of the Subordinate Judge of the 24-Pergannahs. This is the judgment referred to in the order of reference, and in that judgment the learned Judges held that the Trustees had no power under Act V of 1911 (B.C.) to acquire land compulsorily for the purpose of 'recoupment.' The appeal against the judgment of Greaves, J, came on for hearing before a Bench consisting of Sanderson, C.J., and Woodroffe and Chitty, JJ., and they not being in accord with the decision of Mookerjee and Cuming, JJ., made the present reference.

3. A point has been raised in limine that we ought not to decide the question referred to us, as the point does not 'arise' for determination within the meaning of the rules of this Court in relation to references to a Full Bench. The foundation for this argument is certain observations made by the learned referring Judges. There is no substance in this argument. The learned referring Judges state that the question as to the correctness of the decision of Mookerjee and Cuming, JJ., does 'arise' in the appeal in which this reference is made, and it is obvious it does arise with regard to the whole of No. 10, Halliday Street, except the small portions taken for rounding off the corners of the road. Further this reference arises out of a regular appeal No case has been cited to us of a reference to a Full Bench in a regular appeal, where the Full Bench has refused to answer the question referred. The case reported in the Bengal Law Reports Full Bench Rulings *Prosunno Coomar Paul Chowdhry v. Koylash Chunder Paul Chowdhry* (1876) B.L.R. Sup. Vol. 759 (F.B.) : 8 W.R. 428 : 2 Ind. Jur. (N.S.) 327 which was relied on by the Advocate-General, when looked at is not an authority for this proposition. For it appears that in that case it was only the minority of the Bench that was of opinion that the question ought not to be answered--the majority holding on the other hand that the question referred must be answered. It is also to be observed that on the rules relating to references to a Full Bench this case might in certain circumstances be heard by a Division Bench other than that which made the present reference, and in that event if we were to decline to answer the question, that other Bench might send the case back on a fresh order of reference. I am clearly of opinion that we must determine the question referred to us. Now the question referred must be determined on the construction of the provisions of Act V of 1911 (B. C.). But before considering the sections of the Act I should like to make clear what is understood by the terms recoupment and 'betterment.'

4. This is best shown by the Report in 1894 of a Select Committee of the House of Lords on Town Improvement (Betterment). That committee had before them 'witnesses who have had experience in the actual working of betterment charges in various forms and they have also taken the evidence of other experienced witnesses and of gentlemen who have written on the subject.' They reported [paragraph 3 (1) of the report]: 'The principle of betterment, in other words, the principle that persons whose property has clearly been increased in market value

by an improvement, effected by local authorities should specially contribute to the cost of the improvement is not in itself unjust and such person can equitably be required to do so. But the effect of a public work in raising the value of neighbouring lands is shown by experience to be uncertain. Whether in any particular case it is possible for a valuer to pronounce that such an effect has been produced by the completion of any public work is a point upon which the evidence of eminent valuers differs greatly.'

5. [Paragraph 3 (10)].--'The Committee have received evidence upon what has been called 'recoupment', that is to say, powers given to a municipal or other public body to take land beyond what is necessary for the actual execution of the work, so that some part at least of the improved value may be secured by the improving public body in case of the burden on the rate payers. Some evidence was given by persons who had actual experience of the operations of such a system, the general effect of which was that it had not proved successful, but the Committee are not satisfied that it has ever been tried under circumstances calculated to make it successful, inasmuch as no sufficient power has ever yet been given to local authorities to become possessed of the improved properties without buying out all the trade interests, a course which is inevitably attended with wasteful and extravagant expenditure. '

6. I have set out these portions of the report of the Select Committee as I feel, with all respect that the learned Judges who decided the case of Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 have not kept clearly in view the object of 'recoupment' and 'betterment.' The vesting of a local authority with power to acquire land for the purpose of 'recoupment' cannot, I think, be described at the present day as 'vesting the Board with arbitrary and unlimited powers of interference with private rights.'

7. The question, therefore, as to whether or not a particular Statute authorises 'recoupment' or 'betterment' must be determined solely on a consideration of the terms of the Statute, and if it does so authorize, it must also be determined whether compulsory powers of acquisition have been conferred for carrying into

effect such purposes.

8. Mookerjee and Cuming, JJ., in their judgment proceed in the first instance to consider the preamble of Act V of 1911 and observe that 'recoupment' is not mentioned as one of the purposes of the Act. But one would not expect to find it there. The preamble usually only mentions the general object and intention' of the Legislature in passing the enactment. Further, it is well established that the preamble cannot restrict the enacting part of an Act, though it may be referred to for the purpose of solving an ambiguity.

9. Mookerjee and Cuming, JJ., in their judgment place considerable stress on the first paragraph in the preamble. Their reading of that paragraph is not, however, the literal and grammatical reading of it. The construction those learned Judges put on the paragraph was that the objects of the Act are:

A.--The improvement and expansion of Calcutta.

B.--The re-housing of the working classes displaced by schemes.

10. The learned Judges, however, remark that the words and otherwise hereinafter appearing' at the end of the paragraph are 'by no means easy to construe, with what precedes.' The plain reading of the paragraph is that the object is the improvement and expansion of Calcutta by the means specified 'and otherwise as hereinafter appearing.' The preamble, I think, affords us little assistance in the present case, only its terms cannot be used as in any way negating the power of recoupment claimed.

Turning then to the sections of the Act which I think are material:

'Improvement scheme' is defined by Section 2 as meaning a general improvement scheme or a street scheme or both.

'The duty' of carrying out the provisions of the Act, subject to the conditions and limitations contained therein, is by Section 3 vested in a Board to be called 'The Trustees for the Improvement of Calcutta.'

11. Chapter III of the Act is headed improvement schemes and re-housing schemes. Sections 36, 37, and 38 deal with general improvement schemes.

12. Then comes an important Section 39 in the following terms:

Whenever the Board are of opinion that for the purposes of:

(a) providing building sites, or

(b) creating new or improving existing means of communication and facilities for traffic, or

(c) affording better facilities for conservancy it is expedient to lay out new streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect and shall proceed to frame a street scheme for such area as they think fit.

Section 41 provides that every improvement scheme shall provide for (a) 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.

Section 42 enacts that 'any improvement scheme may provide for (a) 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.

13. Now it is quite clear that Section 42 (a) authorizes the acquisition of land lying within the improvement area but which is not required for the execution of the scheme. The question is, to what extent, and that must largely depend on what is the meaning of the word 'affected.'

14. Mookerjee and Cuming, JJ., held that affected 'means in the section' acted upon physically or materially, 'and that the power of acquisition given by Section 42 applied only where' (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. '

15. This definition is clearly taken from the judgments delivered in the House of Lords in the case of the Metropolitan i Board of Works v. McCarthy (1874) 7 H.L. 243 : 43 L.J.P.C. 385 : 31 L.T. 182 : 23 W.R. 115. That decision, however, was on the meaning of the word 'injuriously affected' as used in Section 68 of the Lands Clauses Consolidation Act, 1845, which is a very special section. A different meaning has been placed on the same words 'injuriously affected' occurring in Section 63 of the Lands Clauses Consolidation Act, 1845. It has also been held on more than one occasion that the decisions on Section 68 of the Lands Clauses Consolidation Act, 1845, are of little or no assistance in construing the words 'injuriously affected' in sections of Acts of Parliament not in pari materia with Section 68 of the Lands Clauses Act.

16. The decision of Mookerjee and Cuming, JJ., comes to this, that in Section 42 (a) of Act V of 1911 (B. C.) 'affected' means 'injuriously affected.' With this result I am unable to agree. I agree with the opinion of Woodroffe, J., in his opinion in making this reference that 'affected' in Section 42 (a) means affected in any way.

17. Next it was argued that as Section 42 (a) only authorizes the Board to acquire land which is affected 'by the execution of the scheme', that the Board has only power to acquire land affected during the execution and not by the completion of the scheme. The argument is based on the decision in the case of Hammersmith and City Railway v. Brand (1868-9) 4 H.L. 17 : 38 L.J.Q.B. 265 : 21 L.T. 238 : 18 W.R. 12 which turned on the meaning of the words 'execution of the works' used in Section 68 of the Lands Clauses Act, 1845. That case, however, is of no assistance in construing Section 42 (a) of Act V of 1911 (B.C.). The words 'by the execution of the scheme' used in Section 42 (a) simply mean through or owing to the execution of the scheme.

18. Then if that be so, for what purpose can the Board acquire land which is not required for the execution of the scheme under the provisions of Section 42 (a). The purpose is given in Section 81, which authorises the Board to retain or to let on hire, lease, sell or exchange any land vested in or acquired by them under the Act. That the Board have power to acquire land under Section 42 (a) for the purpose of 'recoupment' is strongly supported by the terms of Section 78 of the

Act. The view that Mookerjee and Cuming, JJ., took of that section, that it applied to land which was originally required for the execution of the scheme but was subsequently found to be unnecessary, cannot be supported. In such a case why should the owner pay money to the Board to get back his land?

19. The meaning of the section is perfectly clear. Under the scheme of the Act primarily the method provided for the Board securing for the public a portion of the 'unearned increment' is by the means of recoupment. The Legislature did not, however, absolutely shut out the principle of 'betterment', but provided by Section 78 that where land is about to be taken for recoupment' then on the application of the owner he and the Board may, if they agree as to the amount, deal with such owner's land on the principle of betterment' instead. Section 78, I think, says that in as clear terms as is possible.

20. Lastly Mookerjee and Cuming, JJ., were of opinion that even if the Board had power to acquire land for the purposes of 'recoupment', they had no power to acquire such lands compulsorily. The fact that the Board have power to acquire land for the purpose of 'recoupment' does not necessarily mean that they have power to acquire it otherwise than by agreement. The powers of compulsory acquisition are set out in Section 59 of the Act, which provides that 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.

21. Under the provisions of Section 49 (1) of the Act the Board are bound forthwith to execute a scheme sanctioned and notified by the Local Government. Surely one of the main purposes of the Act is the expansion and improvement of Calcutta by the execution of improvement schemes framed by the Board and sanctioned by the Local Government. With regard to land comprised in such schemes, the acquisition of which by the Board the scheme provides for, the Board with the sanction of the Local Government can exercise their compulsory powers of acquisition under Section 69 of the Act. In my opinion we ought to answer the question referred to us in the manner following, namely: That the case of the Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas.

749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 in so far as it holds that Act V of 1911 (B. C.) does not authorize the Board of Trustees to acquire land compulsorily for purposes of 'recoupment', i.e., by selling or otherwise dealing with the land under Section 81 or by abandoning the land in consideration of the payment of a sum under Section 78, was not rightly decided.

N.R. Chatterjea, J.

22. The question referred to the Full Bench is 'whether the case of the Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 in so far as it holds that Act V of 1911 (B. C.) does not authorize the Board of Trustees to acquire land compulsorily for purposes of recoupment by selling or otherwise dealing with the land under Section 81, or by abandoning the land in consideration of the payment of a sum under Section 78, was rightly decided.'

23. It is contended on behalf of the appellant that upon the statement of the case in the referring order, this reference does not arise.

24. The contention of the Trustees (as it appears from the statement of the case) is that they are entitled to acquire the land compulsorily under their improvement scheme as land 'which will, in their opinion, be affected by the execution of the scheme' within the meaning of Section 42, and the learned Judges who made this reference are also of opinion that it is so 'affected.'

25. Woodroffe, J., observes: 'There is no question but that the land in suit was affected so as to justify its acquisition by the Board, whether we limit the term as the appellant suggests, or give it its full meaning as I think should be done. As, however, I am in disagreement with the decision in Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 in that it holds that Act V of 1911 (B. C.) does not allow the compulsory acquisition of land for recoupment, I agree that the question whether it is good law or not should be referred to a Full Bench in terms of the Chief Justice's judgment.'

26. Chitty, J., observes that: 'There is no doubt on the facts, which are not in dispute,' that the land in question is 'affected' by the execution of the scheme, 'as two small portions have been cut off for rounding off the corners of Halliday Street and streets running into it. To this extent the case is distinguishable from Chandra Kanta Ghosh's case 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8, The question of law, however, in both cases is the same, and as we are in disagreement with the decision in that case I agree that the question should be referred to a Full Bench.'

27. In Chandra Kanta Ghosh's case 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 the learned Judges were of opinion that the word 'affected' in Section 42 means 'physically or materially affected,' and the land proposed to be acquired in that case not having been physically affected was held not to have been affected' within the meaning of Section 42 (a). They had, therefore, to consider whether the Board has power to acquire land for the purposes of recoupment by including it in a scheme under Section 42 (a), or under the other provisions of the Act. In the present case the learned Judges are of opinion that the land is 'affected' within the meaning of Section 42 (a) of the Act even according to the interpretation placed upon the section in Chandra Kanta Ghosh's case 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8. It is true the Board in the present case also stated that the land was included in the scheme for the purpose of recoupment, but they also stated that in their opinion the land was affected by the execution of the scheme. If the land is properly included in a scheme under Section 42 (a) as land 'affected' by the execution of the scheme, it can be compulsorily acquired under Section 69 of the Act, and it is immaterial what object the Board have in acquiring the land. No doubt in Chandra Kanta Ghosh's case 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 the learned Judges were of opinion that Section 42 (o) does not authorize compulsory acquisition of land but in their view the land, in that case was not 'affected.' The question whether land can be compulsorily acquired in a case where the land is properly included in a scheme under Section 42 (a) did not, therefore, arise in that case. In the present case the learned Judges being of opinion that the land is affected' even according to the view taken of the word in that case, I think the question whether the Act authorizes the Board to acquire land compulsorily for purposes of recoupment

does not arise in the present case.

28. There is no doubt that in many cases Full Benches have declined to answer the questions referred to them on the ground that the reference does not arise. A number of earlier cases on the point are referred to in the case of *Prosunno Coomar Paul Chowdhry v. Koylash Chunder Paul Chowdhry* (1876) B.L.R. Sup. Vol. 759 (F.B.) : 8 W.R. 428 : 2 Ind. Jur. (N.S.) 327 which was referred to the Full Bench by Peacock, C.J., and Loch, J. Three of the learned Judges (Peacock, C.J., Glover and Jackson, JJ.) were of opinion that the questions did arise. The other two Judges (Macpherson and Kemp, JJ.), 'following the practice acted upon frequently by Full Bench Courts' held that no answer should be given to the first question referred on the ground that it did not arise. Jackson, J., (although he was of opinion that the question did arise) entirely agreed with Macpherson, J., that the Full Bench, if looking into the case as far as is necessary for the purpose it should find that the point does not arise, ought to desist from answering it and pointed out the serious inconvenience arising from following the opposite course. Peacock, C.J., and Glover, J., were of a different opinion; and the former even went so far as to hold that 'if uniformity of decision in the High Courts is desirable as it undoubtedly is, one Division Bench ought not to decide contrary to a dictum of another Division Bench without referring the question to a Full Bench.' The opinion of Peacock, C.J., however, has not been followed by Full Benches, and Full Benches have in many cases declined to answer the question referred where in their opinion it did not arise. For instance, see *Julmati Bewa v. Sheik Nayan* 4 C.W.N. 803 : 28 C. 137 note *Bala Ram v. Mangta Das* 34 C. 941 : 6 C.L.J. 237 : 11 C.W.N. 959 and *Prafulla Krishna Deb v. Nosibannessa Bibi* 37 Ind. Cas. 425 : 24 C.L.J. 331. It is said that the rule does not apply to regular appeals, as the case may go to a Division Bench other than the Bench which referred it, and specially where as in the present case the Division Bench have not come to a decision on questions of fact, but may apply to second appeals where the whole case is referred to the Full Bench for decision. But the reference in *Prosunno Coomar Paul's case* (1876) B.L.R. Sup. Vol. 759 (F.B.) : 8 W.R. 428 : 2 Ind. Jur. (N.S.) 327 arose out of a regular appeal, and in the present case, upon the statement of the case in the referring order itself, *Chandra Kanta Ghosh's case* 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 is distinguishable. I am accordingly of

opinion that the question of the correctness of that case does not arise. As, however, the majority of the Full Bench are of a different opinion, I proceed to state my views upon the question referred to us.

29. The first paragraph of the preamble to the Act (Act V of 1911) states, the objects of the Act. It says--Whereas it is expedient to make provision for

(1) the improvement and expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, acquiring land for the said purposes and (2) for re-housing of persons of the poorer and working classes displaced by the execution of the improvement schemes.

30. It is contended on behalf of the Trustees that in order to read it in this way there should be a comma after the word purposes.' But as pointed out by the Judicial Committee in the case of *Maharati of Burdwan v. Krishna Kamini Dasi* 14 C. 365 at p. 372 : 14 I.A. 30 : 11 Ind. Jur. 275 : 4 Sar. C.P.J. 772 : 7 Ind. Dec. (N.S.) 242 'it is an error to rely on punctuation in construing Acts of the Legislature.' The omission of a comma, I think, does not affect the reading of the preamble in the way stated above. Then follow the words and otherwise as hereinafter appearing.' It is contended on behalf of the appellant that the words should be read with the words 'to make provision,' on the other hand it is said that these words mean 'by other means and methods as hereinafter appearing.' It is difficult to construe the words with reference to the earlier portion of the preamble, but whatever they may mean they have no reference to the acquisition of land, because acquisition of land has already been provided for in the earlier part and is restricted to the 'said purposes', i. e., the purposes expressly mentioned therein. It is to be observed that the acquisition of land for the purposes of recoupment is not one of the purposes of the Act enumerated in the preamble. The second paragraph states that it is expedient that a Board of Trustees should be constituted and vested with special powers for carrying out the objects of the Act. The fourth paragraph recites that the sanction of the Governor-General has been obtained to the enactment of the provisions of Chapter V relating to taxation.

31. Before dealing with the important sections which have any bearing upon the question referred I will briefly refer to the provisions of the Act.

32. Section 2 gives the definitions of words used in the Act, and it is only necessary to notice Clause (f) which says that 'improvement scheme' means a general improvement scheme or a street scheme or both. Chapter II relates to the constitution of the Board, conduct of business, and the appointment of their officers and servants and such other matters. Chapter III deals With improvement schemes and re-housing schemes, and comprises Sections 36 to 67. Section 36 provides for the framing of a general improvement scheme and Section 39 provides for the framing of a street scheme. Section 40 mentions the matters to be considered when framing improvement schemes in respect of any area, and which include 'the nature and the conditions of neighbouring areas and of Calcutta as a whole.' Sections 41 and 42 lay down matters which must and may be provided for respectively in improvement schemes. Section 43 provides for the preparation by the Board of a notice of the scheme and of the boundaries of the area comprised therein and for the publication of such notice, and Section 45 provides for the service of notices on persons whose land is proposed to be acquired in execution of the scheme. Section 47 provides for the application by the Board to the Local Government for the sanction of the scheme, and for the particulars to accompany the application. Section 48 provides for the sanction of the scheme by the Government; and Section 49 (1) provides for the notification by the Local Government of the sanction, and Sub-section (2) lays down that the publication of a notification shall be conclusive evidence that the scheme has been duly framed and sanctioned. Section 50 provides for alteration of the scheme after it has been sanctioned.

33. Chapter IV, which consists of Sections 68 to 81, deals with acquisition and disposal of land. Section 68 provides for the acquisition by the Board of land by agreement and Section 69 provides for acquisition of land by the Board for carrying out any of the purposes of the Act. Section 70 and the following section provide for the constitution of a tribunal for the purpose of acquiring land. Section 78 provides for the abandonment of land the acquisition of which has been sanctioned but which is not required for the execution of the scheme.

34. Chapter V relates to taxation which comprises duty on transfer of property, terminal tax on passengers and customs duty on jute.
35. Chapter VI deals with finance. Section 88 provides for Municipal contributions, and Section 89 gives power to the Board to borrow money. Sections 122 and 123 respectively deal with the crediting of moneys to capital account and with the application of moneys credited to the capital account.
36. The most important sections to be considered in connection with the question referred to us are Sections 41, 42, 68, 69, 78, 80 and 81.
37. Section 41(a) says that every improvement scheme shall provide for the acquisition by the Board of any land which will in their opinion be required for the scheme, whereas Section 42 (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.'
38. There is no question that the land 'required for the scheme' means the land which is actually required for what may be called the engineering or construction works, for instance, in a street scheme the land necessary for laying out the street. The main controversy has centred round the expression 'affected' in Section 42 (a). In Chandra Kanta Ghose's case 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 it was held that the word 'affected' in Section 42 means 'neither beneficially affected or improved in value, nor prejudicially affected or impaired in value, but signifies acted upon physically or materially.' On the other hand in the opinion of the referring Judges it means affected in any way and not merely 'physically affected,' 'affected in value prejudicially or beneficially or so forth.' The dictionary meaning of the word is 'acted upon' and it is capable of a very large meaning. It may be conceded that it may mean affected beneficially as well as prejudicially, although it is generally used in the latter sense. But the meaning to be attached to the word would vary according to the context, and the question is in what sense the word has been used in Section 42(a), and whether it has any reference to value of the land. According to the contention of the respondents the object of inclusion of land under Section 42 (a) is recoupment. But the acquisition of land prejudicially affected cannot be any means of recoupment. The word,

therefore, could not have been used in the sense of 'depreciated in value.' It is true that the Board is not bound to include any land in the scheme under Section 42 (a), it is merely optional with them to do so, and, therefore, they would not include any land depreciated in value within the scheme. But what I mean to say is that the object being recoupment, the word 'affected' could not have been used in the sense of 'prejudicially affected in value.' Then does the word refer to land beneficially affected or improved in value? When an improvement scheme is framed with respect to any area, the whole of it would be beneficially affected in value by the scheme. For instance in a street scheme, the properties fronting a street would be more beneficially affected in value, the other portions of the area may be less beneficially affected in value by it, but every portion of it will be more or less beneficially affected in value. If, therefore, the word 'affected' in Section 42 (a) has reference to value, the whole of the area may be acquired by the Board under Section 42 (a). But if that was the intention of the Legislature, I do not see the necessity of the words 'which will in their opinion be affected by the execution of the scheme,' because every portion of the area is affected more or less. In that case after providing in Section 41 (a) that the 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 scheme,' it would have been sufficient to say in Section 42 (a) that any improvement scheme may provide for the acquisition by the Board of any land in the area comprised in the scheme,' and the words 'which will in their opinion be affected by the scheme' would be wholly unnecessary. Then again, if the word 'affected' has any reference to value and if recoupment is the object of inclusion of land not actually required for the scheme, (the inclusion of lands prejudicially affected in value being out of the question) it is difficult to see why the ambiguous word 'affected' was used instead of 'increased in value,' which would have expressed the intention which, according to the respondent, the Legislature had in framing the section. It is not as if such an expression is never used in similar Statutes. Section 58, Sub-section 3, of the House and Town Planning, etc. Act 19G9 (9 Edw. 7, Chap. 44) provides: 'Where by the making of any town planning scheme, any property is increased in value, the responsible authority...shall be entitled to recover from any person whose property is so increased in value one-half of the amount of that increase.'

39. In this connection it may be pointed out that under Section 24 of the Land Acquisition Act the Court, in determining the amount of compensation to be awarded for land acquired under that Act, shall not take into its consideration 'any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put.' That gives the benefit of any rise in the value of other lands of the person whose land is taken up, to him, and Section 24 has not been repealed by the Calcutta Improvement Act.

40. I am accordingly of opinion that the word 'affected' has no reference to value in Section 42 (a). The only sense, therefore, in which the word could have been used is in the sense of 'acted upon physically or materially.' That is one of the recognized meanings as given in the Oxford Dictionary, and in the case of *Metropolitan Board of Works v. McCarthy* (1874) 7 H.L. 243 : 43 L.J.P.C. 385 : 31 L.T. 182 : 23 W.R. 115 the House of Lords in construing the words 'injuriously affected' held that 'where by the construction of works there is a physical interference with any right, public or private, which the owners or occupiers of property are by law entitled to make use of, in connection with such property apart from the uses to which any particular owner or occupier might put it, there is a title to compensation, if by reason of such interference, the property as a property is lessened in value.' It is true that the question in that case was as to the meaning of the words 'injuriously affected' in Section 68 of the Land Clauses Consolidation Act, 1845, under which the plaintiff claimed compensation, and not merely 'affected' as in the present case. But if the word 'affected' does not signify physical interference, the mere addition of the word 'injuriously' would not do so, because when land is depreciated in value, it may also be said to be 'injuriously affected.' The words, no doubt, had to be construed with reference to the provisions of that particular Statute, and it was held that in order to found a claim to compensation under that section for an interest in land 'injuriously affected,' there must be an injury affecting the house or land itself in which the person claiming compensation has an interest, and that a mere personal inconvenience, obstruction and damage to a man's trade or the goodwill of his business will not be sufficient. It was further held that the property must be lessened in value by the physical interference, but that was because they had to deal with the question of compensation claimable under the section in respect of land injuriously affected.

41. The passage quoted above, however, shows that the word 'affected' may appropriately be used with reference to physical interference with rights. In fact, it is not disputed on behalf of the respondent that it may mean 'physically affected,' their contention being that it means affected' in any way, whether 'physically affected' or affected in value.' I think, however, that although the value may also be affected by physical interference, the word as stated above has no reference to value in Section 42 (a). That being so, the word must in Section 42 (a) mean 'physically or materially affected.' It is true that those words are not in the section, but the word 'affected' must be construed having regard to the context.

42. Land may be physically 'affected' by the execution of a scheme in a variety of ways, for instance, a building near the improvement may suffer from the construction of works, by subsidence, or by having easements affected or by reason of severance', in which case the Board may have to pay heavy compensation, and it may be more advantageous to the Board to acquire the building or land affected, and then to dispose of it, rather than pay compensation for the injurious affection, although such building or land is not required for the execution of the scheme under Section 41 (a). Section 49 of the Land Acquisition Act provides that a part only of any house or building cannot be acquired, if the owner desires that the whole of it should be acquired. Now if only a part of a house or building is necessary for the execution of a scheme, the remaining portion of it may be affected by the execution of the scheme. The latter portion cannot come under Section 41 (a) and must, therefore, come under Section 42 (a); and if there were no provisions such as are contained in Section 42 (a), the whole elaborate procedure prescribed in Chapter III of the Act would have to be repeated for acquisition of such land, because although no fresh declaration is necessary, a fresh sanction of the Government would be required. The word 'affected' may properly apply to all such cases as are stated above, and I do not see how it can be said that 'physically or materially affected' is not a natural meaning of the word.

43. It is contended on behalf of the appellant that even if 'affected' means 'beneficially affected in value' the expression used in Section 42 (a) being not merely 'affected' but 'affected by the execution of the scheme,' the affection must be due to the actual execution of the scheme itself, and not due to any use to

which the land is put after the execution of the scheme. In Section 41 (a) the words land 'required for the scheme' admittedly mean land required for the work actually to be done on it, i.e., the land required for engineering or construction works. The land affected by the execution of the schemes in Section 42 (a) must, therefore, mean land affected by the engineering or construction work itself, and I think it must be shown that in any particular case the rise in value is due to the execution of the scheme itself, and apart from the use to which it might be put.

44. I think it unnecessary, however, to consider the point further, or to discuss the cases decided under the Lands Clauses Consolidation Act and the Railway Clauses Consolidation Acts which were cited before us, because I am of opinion that the word 'affected' has no reference to value in Section 42 (a).

45. Section 42(a) does not by itself give the Board power to acquire land. The power of acquisition is given by Sections 68 and 69. Section 68 provides that the Board may enter into an agreement with any person for the purchase or leasing by the Board from such person of any land which the Board are authorized to acquire or any interest in such land; and Section 69 provides that '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 this Act.' No practical difficulty arises in a case of purchase by agreement under Section 68, because although in such a case also, the acquisition must be one which the Board are authorized to make, the transaction being by consent of parties, there is no one to raise the question. But where the land is to be compulsorily acquired, it must be shown that it is to be acquired for 'any of the purposes of the Act.' It is true that the scheme submitted to Government for sanction would include both lands under Sections 41 (a) and 42 (a), but the mere fact that the land is included in the scheme framed under Section 42 (a) will not justify its acquisition unless it be for the purposes of the Act, otherwise it would have been sufficient to say in Section 69 that the Board may acquire any land sanctioned by the Government without the addition of the words for carrying out any of the purposes of the Act.' So that Section 42 (a) alone does not help us in deciding the question whether land can be acquired for recoupment. The purposes of the Act are mentioned in the preamble. Recoupment is not stated to be one of the purposes of the Act. It is said

that recoupment, being only one of the means by which the purposes are to be accomplished, does not find a place in the preamble. That may be so, but when the preamble states 'acquiring land for the said purposes' and the purposes such as 'opening up congested areas,' etc., are expressly mentioned in the preamble, the power given to the Board under Section 59 to acquire land for "any of the purposes of the Act' must be taken to have reference to the purposes' enumerated in the preamble and those only.

46. It is also contended on behalf of the respondent that 'purposes' include the means by which the object is to be attained and recoupment being one of the means, is one of the purposes of the Act. But I am unable to hold that 'means' which are the instruments for accomplishing the purposes of the Act are purposes' of the Act. If, however, the body of the Act gives power to acquire land for the purposes of recoupment, expressly or by necessary implication, then the mere fact that the preamble does not state it would not matter. There is no express provision in the Act that any land can be acquired for the purposes of recoupment. Then is the power given by necessary implication? It is said that the words 'for carrying out' any of the purposes of the Act in Section 69 imply such power, but I think that 'carrying out' merely means 'giving effect to.' The Board has the power to acquire lands for giving effect to the purposes of the Act mentioned in the preamble such as opening congested areas' and the other purposes enumerated therein, as no other purpose is mentioned in any other part of the Act. Section 80 shows that if any land, in respect of which an agreement has been executed or payment has been accepted under Section 78, is subsequently required for any of the purposes of the Act, it may be acquired under a fresh declaration. Now if recoupment is one of the purposes of the Act, the same land, which has already paid what may be called the exemption fee, may again be included in a scheme for the purposes of recoupment and the process may be repeated any number of times--a result which I think could never have been contemplated.

47. In Chandra Kanta Ghosh's case 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 the learned Judges held that Section 42 does not authorize compulsory acquisition of land, though it may possibly authorize the Board to acquire land by private agreement.' As stated above, Section 42 (a) by itself does

not confer the power of acquisition of any land either compulsorily or by agreement. The question whether any land included in the scheme under Section 42 (a) can be compulsorily acquired under Section 69, depends upon whether the acquisition of the land is for 'carrying out any of the purposes of the Act.' Section 42 (a) may be satisfied merely by voluntary acquisition. But if any land is 'physically' or 'materially affected' by the execution of a scheme, the acquisition of such land would be necessary for carrying out the "purposes of the Act.' In such a case the Board have the power to compulsorily acquire such land under Section 69, as well to acquire it by agreement under Section 68, and I do not see any reason why in such a case, land mentioned in Section 42 (a) cannot be compulsorily acquired.

48. Section 49 provides that whenever the Local Government sanctions an improvement scheme it shall announce the fact by notification, and the Board shall forthwith proceed to execute the same, and that the publication of the notification shall be conclusive evidence that the scheme has been duly framed and sanctioned. It is contended on behalf of the respondents that a scheme submitted for sanction under Section 47 includes lands proposed to be acquired under Section 42 (a), and when it is sanctioned under Section 48, it becomes a statutory duty of the Board to execute it. But that assumes that the scheme has been sanctioned for the purposes of the Act and that the Act contemplates acquisition of land for the purposes of recoupment. If acquisition of land for the purpose of selling it and making profit therefrom is a purpose of the Act, the carrying out of a schema sanctioned by the Government would no doubt be carrying out a purpose of the Act, but that is begging the very question to be decided. The second Clause of Section 49 says that the publication of the notification shall be conclusive evidence that the scheme has been framed and sanctioned. But the mere fact that it is sanctioned does not show that the land is required for carrying out any of the purposes of the Act.

49. The next important section is Section 78. That section relates to the abandonment of land, the acquisition of which has been sanctioned but which is not required for the execution of the scheme, and great reliance is placed upon it as showing that the Board have the power of recoupment. That section provides

that 'in any case in which the Local Government has sanctioned the acquisition of land in any area comprised in an improvement scheme which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.'

50. It is contended on behalf of the appellant that it contemplates land which was originally considered necessary for the execution of the scheme, but which is subsequently found not to be so required. On the other hand, the respondents contend that it refers to land which was not and was never required for the scheme, but which was included in the scheme for the purposes of recoupment. The words used in the section, however, are 'which is not required for the execution of the scheme,' and that implies that the lands were originally considered necessary for the execution of the scheme, but were subsequently found not to be so required. The words, I think, do not refer to the time when the sanction of Government is applied for, but to the time when the abandonment is applied for by the owner under Section 78. A comparison of the words used in Sections 41(a) and 42 (a) with those used in Section 78 indicates this. When framing a scheme under Section 41 (a) or 42 (a) it is a mere opinion of the Board that the land 'will be required' or 'will be affected.' It is only in the further stages of the proceedings that it may turn out that the land is not required, and it is then that the application under Section 78 is made. The section may apply to a case where a scheme having been sanctioned was subsequently altered under Section 50. It may also apply to a case where a certain quantity of land was entered in the scheme as being necessary for the execution of the scheme but it was subsequently found that a lesser quantity would suffice for the purpose. It is contended that it cannot apply to surplus lands, because surplus lands can be ascertained only after acquisition. But a scheme may be altered after sanction and before acquisition, and there may be cases where surplus lands are ascertained after sanction and before acquisition. The strongest argument against the applicant's contention is that if it is well founded, the owner has to pay for retaining his own land which on a more correct estimate of what was required should never have been taken from him.' It is to be borne in mind, however, that the Board

cannot of their own motion abandon the acquisition of any land. It is only upon the application of the owner that the Board can do so. If no application is made for abandonment under Section 78, the Board must acquire the land (except as provided in Section 48 of the Land Acquisition Act), and Section 81 provides that the Board may retain or may let on hire, lease, sell, exchange or otherwise dispose of any land vested in or acquired by them under this Act.

51. The Board are to admit the application under Section 78, if it reaches them before the time fixed by the Collector under Section 9 of the Land Acquisition Act for making claims in reference to the land. It would appear from Sub-section (3) of Section 78 that the section has application after the Collector has started proceedings under the Land Acquisition Act. It says that if the Board decide to admit any such application they shall forthwith inform the Collector, and the Collector shall thereupon stay for a period of 3 months all further proceedings for the acquisition of the land. It appears, therefore, that the proceedings under Section 78 take place after the declaration and before the notice under Section 9 of the Land Acquisition Act. But as soon as the declaration is made under Section 6 of that Act, the power to acquire the land is absolute whether the land is required or not. The Government can withdraw from the acquisition, but it cannot do so except on payment of compensation under Section 48 of the Land Acquisition Act, and Section 48(a) of the Improvement Act provides for payment of compensation for delay if the Collector does not make an award within 2 years of the declaration under Section 6 of the Land Acquisition Act. The Board, therefore, incur a liability, as soon as a declaration is made under Section 6 of the Land Acquisition Act.

52. On the other hand as soon as a declaration is made, the owner has no longer any right to get back the land and cannot compel the Government to give it up. The land having been made the subject of declaration, the value of it may go up, in some cases may go up enormously. It is not reasonable that the Board should incur a liability to the owner for damages, and at the same time be deprived of the benefit of the rise in value of the land, and in these circumstances it is not inequitable that the owner should pay for the retention of the land. He is under no compulsion to apply to the Board for abandoning the acquisition, but if he chooses to do so, he must pay the sum fixed by the Board for the abandonment of the land

which, if he had not applied for its retention, the Board might have acquired and sold to others at a profit. This, however, does not show that lands may be deliberately included in the scheme for the express purposes of recoupment as contended on behalf of the respondent. The lands are not to be included in the scheme originally for the purpose of thereafter making profit, but if they are included because considered necessary for the scheme, and it is subsequently found not to be required either by reason of an alteration of the scheme, or by reason of less lands being actually required, the Board have the power to dispose of such lands. The provisions of Section 81 apply to such lands. That section gives to the Board the power to dispose of lands vested in or acquired by them under the Act, and that of course means properly acquired by them. It is contended that cases of alteration of scheme or mistake in estimate must be rare, and that it is not likely that the elaborate provisions of Section 78 should have been framed for such stray cases, and that under the circumstances the construction contended for on behalf of the respondent should be preferred. But the Act contemplates alteration of schemes and Section 50 makes express provisions for it, and there may be some oases of wrong estimates. Once it is held that such cases may come under the section, it cannot be said that the section gives the power of acquisition of lands for the purposes of recoupment by necessary implication. It appears that Greaves, J., by whom this case was originally tried, did not attach much importance to the argument founded upon Section 78, and he was of opinion that the words of the section would be satisfied by applying them to 'surplus lands', and that he should be loath to spell out of these words so large a power as is claimed by the defendant. I agree with what Greaves, J., says on this point. The question is, not whether the power of acquisition of land for the purposes of recoupment can possibly be spelt out of the section, but whether the power is given by necessary implication. If the construction put forward on behalf of the appellant can reasonably be placed on the section, in other words, if the words of the section can be satisfied by reference to lands subsequently found unnecessary, it cannot be said that the power of recoupment is given by necessary implication. As pointed out by Bell, J. in *Dickson v. Pape* (1845) 7 Irish L.R. 107 at p. 123: '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.' The powers claimed by the Trustees are very large; according to their contention they may acquire any land within the area for which an improvement scheme is framed, for the purpose of recoupment. Now, when there are two possible constructions of the words defining their powers, if on the one construction the Board would have almost unlimited power of interference with private rights, and in the other they are not clothed with such power, but with a power more convenient and limited, the latter construction should be preferred.

53. It is not and cannot be disputed that the power of recoupment may be given to Municipal and other public bodies. As stated in Halsbury's Laws of England, 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 out 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. 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) 68 L.J.Ch. 162 : 79 L.T. 685 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: *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. On the other hand, when local authorities are authorized 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 resale to reduce the expenses to the rate-payers, take more than is bona fide necessary for the purpose: *Denman and Co. v. Westminster Corporation* (1906) 1 Ch. 464 : 75 L.J.Ch. 272 : 94 L.T. 370 : 54 W.R. 345 : 70 J.P. 185 : 4 L.G.R. 442 : 22 T.L.R. 270, *Fearnley v. Lime-house District Board of Works* (1899) 68 L.J.Ch. 344 : 80 L.T. 351 : 63 J.P. 310. It will serve no useful purpose to discuss these cases which

turn upon the provisions of the particular Statutes with which they deal, I will only notice two cases upon which the parties respectively placed some reliance. On behalf of the respondent reliance was placed on the case of *Galloway v. London Corporation* (1866) 1 H.L. 34 : 35 L.J. Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865. where it was pointed out that there is a distinction between powers given to a body of adventurers for a certain purpose (as for example the formation of a railway) and powers given to an existing public body such as the Corporation of a city of making public improvements in its city, and that the powers thus entrusted to it for such a purpose will not be subject, as in the other case, to a strict and restrictive construction. But even such public bodies authorized to make large improvements cannot exercise their powers except for the purposes of the Act. It is to be borne in mind that in England Statutes authorizing public bodies to acquire land compulsorily generally contain a schedule or a plan or a book of reference defining the land to be acquired. In the case of *Gard v. Sewers Commissioners* (1885) 28 Ch. D. 486 : 54 L.J.Ch. 698 : 522 L.T. 827 Kay, J. in construing the Statute 57, Geo. III, C. XXIX, which empowered a public body to alter and widen the streets, and for that purpose to compulsorily acquire lands and houses which might be adjudged by them to prevent or obstruct such widening or alteration, after stating that the Commissioners (in that case) were a body, like the Corporation of London in the case of *Galloway v. London Corporation* (1866) 1 H.L. 34 : 35 L.J. Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865 armed with powers for the purpose of making improvements in this great city; and that it is part of the scheme of the Act that they may take, in carrying it out at some time, more land than is actually wanted for the physical purpose of widening the streets, and, therefore, the Court will deal very liberally with them--will give a most wide interpretation to, and will not interfere with, their powers--although it may appear that they are taking more lands than will be wanted for the actual widening, and intending, all along, to sell the portion which they will not use for that purpose, and by the sale to raise money to enable them to carry out. the purposes of the Act', observed as follows: 'I was referred to the 96th Section of the Act, to show that they have the power, subject to the right of pre-emption, of selling any land which they may have taken and which they really do not want for the purpose of widening the streets, and that the moneys which they obtain from such a sale may be used for the purposes of the

Act, and it was urged that this is within the case of *Galloway v. London Corporation* (1866) 1 H.L. 34 : 35 L.J.Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865. Now there is a very wide distinction between this and the case of *Galloway v. London Corporation* (1866) 1 H.L. 34 : 35 L.J. Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865. In that case the lands which were to be taken were all put in a schedule to the Act; they were actually defined by boundaries and quantities, and the words of the Act were that they might take all those lands, which not only shewed the extent to which they were to go, but placed a limit within the four corners of the Act, upon the quantity of land which they were to take. There is nothing of that kind in this Statute. It contains no schedule. There is no limit whatever upon the lands which are to be taken, save such as is comprised in the words which I have read, and that makes an enormous difference between the two oases. Suppose, for example, that the Commissioners were to desire to widen one of the main thoroughfares of London--the whole of Fleet Street or one of the great arteries of London, or so much as came within their jurisdiction--and to say 'We will take lands on both sides of the street,' if the argument be right, they could adjudge that every house and every piece of vacant land on both sides of the street obstructed it, however wide these might be, and they might take the whole of every such house and piece of land. Suppose the street passed the Bank of England, they might, if they thought fit, take the whole of the Bank, although they might only want two feet of it for the purposes of widening the street. Suppose there was a large frontage of land, a quarter of an acre, in the city of London vacant, with no building upon it, then although they might only want a yard of such frontage, they might if they chose take the whole, according to the argument. That would be giving a very much greater power to the Commissioners having the control of pavements than was given in *Galloway v. London Corporation* (1866) 1 H.L. 34 : 35 L.J. Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865; and that is a distinction between the two oases which would make me hesitate very much indeed before I could hold that under the Acts such bodies as the Commissioners are entitled to such power as that.' In the Court of Appeal (which affirmed the decision of Kay, J.) Baggallay, L.J., referring to *Galloway's* case (1866) 1 H.L. 34 : 35 L.J. Ch. 477 : 12 Jur. (N.S.) 747 : 14 L.T. 865 observed: 'The circumstances in that case, as has been pointed out in *Thomas v. Daw* (1866) 2 Ch. 1 : 36 L.J. Ch. 201 : 15 L.T. 200 : 15 W.R. 113

were very different. In that case the Corporation were not merely authorised to take what they might adjudge to be necessary for the purpose of improvement they were about to effect, but lands were specified in the schedule to the Act of Parliament and power to deal with them was given by the Act to the Corporation.' I have quoted the observations of Kay, J., at length, for the purpose of showing that there is a wide distinction between a Statute in which the Legislature has expressly defined the lands to be acquired, and a case like the present where the lands are not defined in the Act and a public body have been given power to acquire land only for the purposes of the Act. The scheme when framed under Section 42 (a) of the Calcutta Improvement Act would define the area out of which the acquisition is to be made, but the area is not defined by the Statute itself. The Board may frame a scheme of improvement either under Section 36 or Section 39 for such area as they may think fit, and if the respondent's contention is correct, they can include any land within the schema they think proper, with the deliberate object of recoupment and then acquire any such land for the purposes of recoupment. That is a power wholly different from the power to acquire land for the purpose of recoupment within an area defined by the Statute itself. It is said that the principle of recoupment is well known in this country, and reference is made to the Calcutta Municipal Act, and the Bombay City Improvement Act, though the word 'recoupment' is not expressly used in any Act. But whether any Statute gives the power or not depends upon the construction of the particular Statute, and the intention must be gathered from the language used in the particular Statute. With regard to the Acts referred to above, however, it may be observed, that in the first place it does not appear that the question whether the public body concerned has the power of acquiring land for the purpose of recoupment has ever been raised or decided. In the next place the words used in those Acts are different from those used in the Calcutta Improvement Act.

54. Section 357(1) of the Calcutta Municipal Act III of 1899, after providing for the acquisition of any land required for the purpose of widening, extending or otherwise improving any public street and the buildings, if any, standing upon such land,' provides in Sub-section (2) for the acquisition of any lands in addition to those mentioned in Sub-section (1) outside the proposed street alignment with the building thereupon, which the Corporation may in the exercise of any of the

powers conferred by Sub-section (1) consider it expedient to acquire. It is to be noted that whereas under Section 42 (a) of the Calcutta Improvement Act, in order to enable the Board to acquire any land in the area comprised in the scheme, it is necessary that the land must in their opinion be 'affected by the execution of the scheme,' Section 357 (2) of the Calcutta Municipal Act empowers the Corporation to acquire any land outside the street alignment which it may consider expedient to do so in exercise of the powers conferred by Sub-section (1) of that section. Section 25 of the Bombay City Improvement Act (Bombay Act V of 1898) provides that an improvement scheme which may exclude any part of the area in respect of which an official representation is made or include any neighbouring land if the Board are of opinion that such exclusion or inclusion is expedient, shall, within the limits of the area comprised in the scheme, provide for the acquisition of any land which will in the opinion of the Board be necessary for or affected by the execution of the scheme. Section 29 provides that on receipt of the sanction of the Government a declaration is to be notified under the signature of a Secretary to Government stating the fact of such sanction, and that the land proposed to be acquired by the Board for the purposes of the scheme is required for a public purpose, and that the declaration shall be conclusive evidence that the land is needed for a public purpose and the Board shall thereupon proceed to execute the scheme. The publication of a notification under Section 49 of the Calcutta Improvement Act, however, is conclusive evidence only of the fact that the scheme has been duly framed and sanctioned. However that may be, as I have said already, one Act cannot be construed with reference to the provisions of another Act. The question whether the Calcutta Improvement Act gives power to the Board of compulsory acquisition of land for the purposes of recoupment, must be determined with reference to the provisions of that Act.

55. The Calcutta Municipal Act gives wider powers to the Corporation than those given to the Board by the Calcutta Improvement Act. But it may be pointed out that when land is acquired under the Calcutta Municipal Act, the market value of the land or building under Section 557 (d) of that Act shall, until the contrary is shown, be presumed, for the purposes of Clause first of Sub-section (1) of Section 23, to be twenty-five times the annual value of the property as entered in the assessment book prescribed by the Act, and when land is acquired under the Land Acquisition

Act the owner is entitled to the 15 per cent. statutory compensation in addition to the market value of the land. Under the Calcutta Improvement Act there is no such presumption, nor is the owner entitled to any statutory compensation.

56. Chapters V and VI of the Act relate to taxation and finance. In addition to the duty on transfer of property, terminal tax on passengers and customs duty on jute there is provision for Municipal contributions and Section 89 gives the Board the power to borrow any sum necessary for the purpose of meeting expenditure debitable to the capital account under Section 123. Section 123 lays down that the money credited to the capital account shall be held by the Board in trust and shall be applied to (among others) meeting all costs of framing and executing improvement schemes and re-housing schemes, and meeting the costs of acquiring land for carrying out any of the purposes of the Act. If the acquisition of land for the purpose of recoupment was intended to be one of the means for carrying out the objects of the Act (and the intention must be determined as expressed in the provisions of the Act), the Legislature would have expressed it in clear language so as to put it beyond reasonable doubt, as it has done in the case of other means for carrying out the objects of the Act, and would not have left it to be spelt out of Section 42 (a) or 78 of the Act.

57. The order of reference to the Full Bench refers also to Section 81 of the Act. But that section comes into operation only when land has been acquired by or vested in the Board. Where land has been acquired by or vested in the Board properly, or in cases properly coming under Section 78, the Board have the power of disposal of such lands or of requiring the owner to pay for abandonment, as the case may be, and disposal of every land vested in the Board may not result in profit. But as already explained, that is very different from including land in a scheme (which is neither required for nor affected by the scheme) with the deliberate object of acquiring it for the purpose of recoupment.

58. I have the misfortune to differ from the majority of the Full Bench, but after an anxious consideration of the provisions of the Act, I am unable to hold that the case of Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 in so far as it holds that Act V of

1911 B. C. does not authorise the Board of Trustees to acquire lands compulsorily for the purpose of recoupment, was wrongly decided, and I would accordingly answer the question referred in the affirmative.

Teunon, J.

59. This reference arises out of the proposed acquisition by the Board of Trustees for the Improvement of Calcutta of a plot of vacant land, being premises known as No. 10, Halliday Street.

60. It appears that the Board of Trustees have decided to make or open out in the northern part of Calcutta a main thoroughfare spoken of as Central Avenue, and that the making of this avenue involves the widening of the street known as Halliday Street. With this chief object in view, and in pursuance of a resolution in terms of Section 39, Clause (c), of the Calcutta Improvement Act, 1911, the Trustees have framed their Scheme No. VIIA in the manner contemplated in Sections 39 to 42 of the Act. The scheme has been duly published as required by Sections 43 to 45 and, on submission, in accordance with the provisions of Section 47, has been sanctioned by Government under Section 48.

61. The scheme thus sanctioned comprises a considerable area and provides, inter alia, for the acquisition of a part of such area including premises No. 10. The said premises are said to measure 2 Bighas 15 Cottahs, and though a small portion is required for the widening of the street, i.e., for rounding off the corners at the junction of Halliday Street with 2 side streets, the major portion avowedly has been included within the area of acquisition under the provisions of Section 42 (a), as land which, in the opinion of the Board, will be affected by the execution of the scheme. In other words, in the opinion of the Board, by the widening of Halliday Street, this land will be enhanced in value, and in so far as it is not within the street alignment and so required, it is to be taken for purposes of recoupment.

62. The owner, one Mani Lal Singh, accordingly brought his suit substantially to restrain the Trustees from acquiring the said major portion falling outside the street alignment, on the ground that acquisition for purposes of recoupment is not within their statutory powers. On the 17th day of July 1916, the question thus arising was

decided against the plaintiff by Greaves, J., sitting in the exercise of the Original Civil Jurisdiction of this Court.

63. Meanwhile in the case of Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 the same question had arisen in respect of premises No. 40/10, Chaulpati Road, which lie within the District of the 24-Pargunnahs and outside the limits of the Original Civil Jurisdiction. In that case the question was decided in favour of the plaintiff and against the Trustees by the Subordinate Judge of the 24-Per-gunnahs, and, on appeal by the Trustees, on the 22nd of August 1916, his decision was affirmed by a Divisional Bench,

64. Against the decision of Greaves, J., the plaintiff Mani Lal Singh next appealed, and the learned Judges constituting the Bench before which this appeal came, finding themselves in disagreement with the decision of the 22nd August 1916, have consequently referred to the Full Bench the question which may be stated in effect as follows, namely, whether the case of the Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 in so far as it holds that Bengal Act V of 1911 does not authorise the Board of Trustees to acquire land compulsorily for purposes of recoupment, was rightly decided.'

65. In the case of Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 the premises 40/10, Chaulpati Road, lay wholly outside and some 55 feet away from the street alignment there proposed. In the case of Mani Lal Singh, as I have already pointed out, a small portion of the area or premises proposed to be acquired falls within, and the major portion without, the proposed street alignment. At the hearing of this reference it was consequently suggested, though, as it appeared to me, in a half-hearted manner, that on the facts the two cases should be distinguished and that the reference to the Full Bench was, therefore, unnecessary and incompetent. To this contention I am unable to accede. As regards the major portion of the premises in question, the portion falling outside the proposed street alignment, the Divisional Bench making the reference found themselves, as I understand, unable

to distinguish between the case before them and the case of Chandra Kanti Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8. In my opinion, in so far as that area is concerned, the two cases cannot be distinguished, and the question referred should, therefore, be answered.

66. The decision of that question depends, in my opinion, on the construction to be placed on Section 42, Clause (a), of the Act, which reads thus--'Any improvement scheme may provide for (a) 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.'

67. The argument before us has been somewhat discursive, but the considerations advanced, in support of the plaintiff's contention that Section 42, Clause (a), should not be construed as authorising acquisition for purposes of recoupment, may be summarised as follows: In the preamble, and again in Chapter V dealing with taxation, there is no reference or no specific reference to recoupment. In other Acts, in which acquisition by local authorities for purposes of recoupment is authorised, for instance in the Calcutta Municipal Act; 1899, Section 357, and in the recent Town Planning Act of the Imperial Parliament, we find express reference to expediency' or to increase in value.' Inasmuch as the Act is one which gives large powers of interference with private rights, its provisions should be strictly construed: In construing the words [section 42 (a)] 'affected by the execution of the scheme' we should be guided by the decisions of the Courts in England under the Lands Clauses Consolidation Act in the case of lands 'injuriously affected by the execution', of the authorised 'works' or undertaking' and we should further have regard to the analogy afforded by the sixth Clause of Section 24 of the Land Acquisition Act, I of 1894. Lastly, it is contended that Section 78 of the Improvement Act, regarded by the referring Judges as embodying a distinct reference to, and therefore as of special importance in construing Section 42 (a), should itself be construed as referring merely to lands which, for some cause or other, for example by reason of some 'mistake or some alteration in the original scheme, have become superfluous' or surplus lands:

68. For these reasons, it is contended, we should construe the word 'affected' as having no reference to value but as implying some physical interference resulting in either a decrease or an increase in the rights which the owner of the land in question is entitled to exercise in connection therewith. In this view we should, therefore, hold that recoupment is not a purpose for which, under Section 69 of the Act, the Board may, with the sanction of the Local Government, acquire land under the provisions of the Land Acquisition Act.

69. To the argument based on the omissions from the Chapter on Taxation and from the preamble, on the use of other language in other enactments, and, on the sixth Clause of Section 24 of the Land Acquisition Act, I am unable to attach importance. A provision for recoupment is not a form of taxation. In the preamble the main object of the Act, namely, 'the making of provision for the improvement and expansion of Calcutta' is set out. There is no exhaustive enumeration of the ways or methods in which, far less of the means whereby, the end in view is to be attained, and it cannot be said by reference to the preamble alone that power to secure to the Trustees the improved value, or part of the improved value, resulting from their expenditure of public funds, is not one of 'the special powers' with which they may be invested. In any case the operative provisions of the Act are not to be controlled or restricted by the preamble.

70. No doubt when in an enactment authorising public bodies to execute improvements and to acquire the lands necessary for the same we find that they are further authorised to take such additional lands as 'they may think it expedient to take,' or such lands as in their opinion will be 'increased in value' by the improvements made, it becomes clear that in such enactment the Legislature has recognised and embodied the principle of recoupment. But no stereotyped form for the conferment of this power of acquisition for purposes of reimbursement has yet been evolved, and the question is whether by the language used in the enactment under consideration that power has been given.

71. Similarly the analogy afforded by the sixth Clause of Section 24 of the Land Acquisition Act does not appear to me to assist the appellant. In the Improvement Act the plans, schedules and books of reference required by English Statutes, are

replaced by a description of the area 'comprised in the scheme.' Such scheme is framed in the first instance by the Board, after consideration of objections and representations, is submitted with plans and full particulars to Government for approval, and is finally sanctioned, if approved, by Government. The area fixed and sanctioned as 'the area comprised in the scheme' may be said to correspond with the lands delineated on the plans' in England. The Board must provide [section 41 (a)] for the acquisition of all lands falling within that area and 'required for the actual execution of the scheme,' that is, I take it, for the construction of the proposed improvements. As in England the promoters may, if so empowered by the Act, take all the lands delineated on the plans,' so here the Board [section 42 (a)] may take the whole or any part of the remaining area comprised in the scheme if, in their opinion, such whole or part 'will be affected by the execution of the scheme,' that is, by the proposed improvements when executed or completed. No doubt the sixth Clause of Section 24 of the Land Acquisition Act has not been modified by the provisions of this Act, but the clause embodies merely a principle of valuation, and the 'other land' referred to therein must, in cases such as the present, be lands outside the area comprised in the scheme, or land which, though within that area, the Board does not propose to acquire.

72. It is then said that in Acts authorising the taking of private property doubtful provisions should be construed in favour of the landowner. But the oases of *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 and *Rolls v. London School Board* (1884) 27 Ch. D. 639 : 51 L.T. 567 : 33 W.R. 129 would seem to be authority for holding that to public bodies acting for the public benefit the principle above enunciated is not to be applied so strictly as in the case of companies seeking their private profit. However that may be, the question, to use the language of Chief Justice Erle, is what meaning and intention 'is conveyed to the rational mind' by the words used in the present Act.

73. The argument based on the Lands Clauses Consolidation Act, and on the meaning placed by the Courts in England on the words 'injuriously affected by the execution of the work' in the said Act is possibly the one on which, on behalf of the

appellants, has been laid most stress.

74. The argument is two-fold. In the first place it is said that the words 'by the execution of the scheme' restrict the Board of Trustees and the Court to the effect produced by the acquisition of the lands required for the actual execution of the work, that is, in this case, for the construction of the widened thoroughfare. We may not, it is said, take into consideration the use to which the land so required is to be put. This branch of the argument appears to be based partly on the analogy afforded by the 5th and 6th clauses of Section 24 of the Land Acquisition Act and partly on the English decisions which, in the case of persons from whom no land is taken, limit compensation to damage caused by the construction ' of the undertaking, and exclude damage arising from the subsequent authorised user. This branch of the argument is, in my opinion, fallacious. We are here dealing with an improvement scheme as a whole, and the prospective user, or the possibility of such user, is of the essence of the matter.

75. The argument in its second branch is that we should give to the word 'affected' in Section 42, Clause (a), the meaning given in the Lands Clauses Consolidation Act and in the decisions thereunder to the words 'injuriously affected.'

76. I am not of opinion that the said Act and the cases cited are of any assistance to us. The Act and the cases, in so far as we are now concerned with them, deal only with damage sustained by reason of 'injurious affection,' and the title to. and assessment of compensation in respect thereof. A distinction is drawn between cases in which other lands of the claimant have been taken and cases in which no other lands of the same owner have been acquired. The rules or principles laid down as applicable in the two cases are not in all respects the same. No such distinction appears to be drawn in Section 42 of the present Act. Moreover, the word used is 'affected,' not 'injuriously affected.' The omission of the word 'injuriously' cannot be supposed to be otherwise than of intention. Indeed, the words 'injuriously affected' were before the framers of this Act in the Land Acquisition Act, under which proceedings for compulsory acquisition have to be taken. I am, therefore, unable to assign to the word 'affected' now under consideration the meaning or meanings that have been placed upon the words

'injuriously affected' in the Lands Clauses Consolidation Act.

77. Indeed, as has been affirmed by the learned Judges who decided the case of Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8, the word 'affected,' as used in Section 42, Sub-clause (a), of the Improvement Act, is not a word of art' to which a technical meaning must be given. It must be construed in its ordinary acceptations, and with reference to the context. When that is recognised, its interpretation in the present case does not to my mind present much difficulty. Land upon which an effect of some sort or kind has been produced, whether for the better or for the worse, would seem to have been 'affected.' If by the widening of Halliday Street, and the consequent improvement in means of access and in other amenities, these lands will, in the opinion of the Board, be appreciated in value, the Board is in my judgment entitled to say that these lands 'will in their opinion be affected by the execution of the scheme,'

78. In this conclusion I am fortified by the provisions contained in Section 78 of the Act, and with all respect I am unable to agree with Greaves, J., in attaching no importance to that section. The section provides in substance that on application by the owner and on payment by him of a sum 'to be fixed by the Board,' that is, a sum arrived at apparently by a process of negotiation or haggling,' the Board shall abandon the proceedings for the compulsory acquisition of any land, not being land required for the execution of the scheme. The appellant contends that this section should be construed as dealing only with land which, for any reason, has become superfluous.' Any such construction appears to me to be strained and unnatural. The applications have in fact to be made at a time when in ordinary course it could not be predicated that any land originally required' had become superfluous. The words 'required for the execution of the scheme' appear clearly to refer to Section 41, Clause (a), and the lands that may be dealt with under this section are the additional lands which the Board had proposed to acquire as being lands 'affected' within the meaning of Section 42, Clause (a). In other words, if in respect of such lands the Board and the owner can arrive at an agreement as to the measure of the 'affection' or appreciation, the Board, instead of completing the acquisition and dealing with the lands thereafter under the provisions of Section 81, may realise forthwith the improved value, or a reasonable share in the

improved value, resulting or likely to result from their expenditure. It is contended that the provisions of Section 80, which render the land, in respect of which such payment has been made, liable to inclusion in subsequent improvement schemes, militate against the construction which I place on Section 78. I am unable to agree. In any such subsequent scheme, the value determined by the first scheme becomes the starting point, and there is nothing inequitable in including the land in the second, whether by reason of its being required for, or by reason of its being still further appreciated in value by, such second scheme.

79. In conclusion, I should say that the equity of the principle which requires contribution from private owners in respect of an increase in the value of their properties resulting from improvements effected out of public funds, has now long been recognised. Such contribution may be obtained by the imposition of a 'betterment' or 'improvement' charge; or of a 'frontage rate,' or by the method of recoupment. It would indeed have been matter of surprise if in an Act passed in the year 1911, in order to the carrying out of large measures of town improvement, the Legislature had omitted to secure any portion of the improved value 'in case of the burden upon the rate-payers.' In this Act we find no indication of frontage rates or improvement charges. We might, therefore, reasonably expect to find recognition of the system of recoupment. That system may in practice result in heart-burning as between A whose land has been included in the acquisition area and his neighbour B whose land has been left out. Doubtless it is this result which has led to the charges levelled against the system, and against this Act if construed as sanctioning the system, namely, that it is arbitrary, unjust, authorises confiscation and the levy of blackmail and leads or may lead to oppression. There may be particular instances of hardship but as between the private owner and the general body of rate-payers or tax-payers the method, in my opinion, is essentially just. Farther, in the Act, against the abuse or misuse of the powers conferred, ample safeguards have been provided. I am not, however, to be understood as saying that these considerations have weighed with me in construing the Act.

80. In my judgment, in Sections 42, 78 and 81 of the Act, clear and plain provision has been made for the taking of additional or excess lands for the purpose of securing to the rate-payers, or their representatives the Board of Trustees, the

increase in value or part of the increase in value resulting, or likely to result, from the improvements effected. It follows that the acquisition of such lands is in furtherance of the objects of the Act, and that under Section 69 the Board may with the previous sanction of the Local Government acquire such lands under the provisions of the Land Acquisition Act, 1894.

81. In this view the answer to the question referred to the Full Bench, in my opinion, should be in the negative.

Richardson, J.

82. The clause on which the answer to this reference mainly depends is contained in an Act of 1911 for the improvement and expansion of Calcutta in various ways, involving the acquisition of land either by agreement or, subject to the payment of compensation to the owner by compulsion. The machinery set up is a Board of Trustees, invested with special powers for carrying out the objects of the Act. The full name of the Board is 'The Trustees for the Improvement of Calcutta' (section 8). The short name which is generally used, is 'the Board' [section 2 (c)]. Chapter II relates to the constitution of the Board and cognate matters. The principal function of the Board is to prepare and execute 'improvement schemes' and 're-housing schemes' which are dealt with in Chapter III. By definition (section 2) the term 'improvement scheme' means a 'general improvement scheme or a street scheme, or both' Chapter IV headed 'acquisition and disposal of land' includes four sections with some bearing on the matter in hand They are Sections 68 and 69 and Sections 78 and 81. The remaining chapters have little relevancy. Their headings are Chapter V 'Taxation',; Chapter VI 'Finance' Chapter VII 'Rules' and Chapter VIII 'Supplemental Provisions.' There is also a schedule which, in conjunction with Section 71, modifies in some particulars the Land Acquisition Act, 1894. Land is compulsorily acquired under the provisions of the latter Act as modified.

83. Chapter III, which includes the disputed clause [section 42 (a)], is the most important in the Act. It forms the constructive part to which the rest of the Act is subordinate Sections 36 and 39 indicate the conditions under which the Board are empowered to frame 'general improvement schemes' and 'street schemes.' The

next few sections apply to improvement schemes generally Section 41 indicates what an 'improvement scheme' must comprise and Section 42 what it may comprise. When such a scheme has been framed, provision is made (a) for its publication in the Government Gazette and in local newspapers 'with a statement of the period within which objections will be received' (section 43), (b) for notice to the Chairman of the Corporation, in case the Corporation may think fit to make any representation with regard to the scheme, and (c) for service of notice individually on the owners and occupiers of land 'which the Board propose to acquire in executing the scheme.' The notice to an owner or occupier shall, inter alia, 'require such person, if he dissents from such acquisition, to state his reasons in writing within a period of sixty days' [section 45 (b)]. By Section 47 the Board is required to consider all objections, representations and statements of dissent received under the preceding sections and to hear all persons making them who may desire to be heard. By the same section, when the prescribed procedure has been followed, the Board may either abandon the scheme or submit it to the Local Government for sanction. If sanction is applied for and granted, then by Section 49, the fact is to be announced by notification and 'the Board shall forthwith proceed to execute the scheme.' Section 50 makes provision for the alteration of a sanctioned improvement scheme before it has been carried into execution. The rest of the chapter need not be further noticed.

84. As Mr. Das argued, Clause (a) of Section 42 must clearly be read with Clause (a) of Section 41. There are two categories of land, land required for the execution of the scheme for the acquisition of which provision must be made in the plans, and land affected by the execution of the schemes for the acquisition of which provision may be made. The controversy relates to the words "affected by the execution of the scheme' and the extent or nature of the discretionary power which the clause confers. The words are no doubt wide and general and, because of their generality, may seem subject to possible limitation, should the context require it.

85. There is no presumption, however, that general words are not used in a general sense. The presumption is the other way. The general rule for the construction of Statutes is that the Legislature means what it says. The words best

declare the intention: *Sussex Peerage case* (1844) 11 Cl. & Fin. 85 : 8 Jur. 793 : 8 E.R. 1034 : 65 R.R. 11. But owing perhaps to the imperfection of language as an instrument, or to the fact that language is sometimes misused even in legislative enactments, it may not always be easy to say what the meaning is. The language may be doubtful or ambiguous. The Courts may have a choice between different possible constructions,' and in such cases there may be subsidiary rules or principles more or less controlling the choice according to the nature of the, subject-matter, whether the Act is penal or remedial and so forth. Beyond that there is more delicate ground where the strict literal meaning would lead to a result so absurd as to be irrational, and it may be found possible to modify the meaning so as to avoid that result.

86. These observations merely echo what has been so often and so forcibly laid down by Judges of the highest authority in England--never perhaps more forcibly than in the case relating to the Trade Disputes Act, 1906: *Vacher and Sons v. London Society of Compositors* (1913) A.C. 107 : 82 L.J.K.B. 232 : 107 L.T. 722 : 57 S.J. 75 : 29 T.L.R. 73. In another case in the same volume [*Inland Revenue Commissioners v. Herbert* (1913) A.C. 326 : 82 L.J.P.C. 119 : 108 L.T. 850 : 11 L.G.R. 865 : 57 S.J. 516 : 29 T.L.R. 502] Lord Haldane re-states the law, with particular application to legislation of a novel kind, in a passage which I venture to quote:

In approaching the controversy as to, the meaning of these sections, I think it worth while to recall a principle which must always be borne in mind in construing Acts of Parliament, and particularly legislation of a novel kind. The duty of a Court of law is simply to take the Statute it has to construe as it stands, and to construe its words according to their natural significance. While reference may be made to the state of the law, and the material facts and events with which it is apparent that Parliament was dealing, it is not admissible to speculate on the probable opinions and motives of those who framed the legislation, excepting in so far as these appear from the language of the Statute. That language must indeed be read as a whole. If the clearly expressed scheme of the Act requires it, particular expressions may have to be read in a sense which would not be the natural one if they could be taken by themselves. But subject to this the words used must be

given their natural meaning, unless, to do so would lead to a result which is so absurd that it cannot be supposed, in the absence of expressions which are wholly unambiguous, to have been contemplated.

87. Now if that be the spirit in which a question of this nature, should be approached, it seems desirable to determine the ordinary and natural meaning of the words used in the clause before us before considering whether by any legitimate process of construction those words can or should be made to yield some other meaning.

88. In the first place, the only limitation, imposed by the clause itself, on the locality of the land affected, is that the land must be in the area comprised in an improvement scheme which has been subjected, or laid open, to the fire of criticism which the Act allows and invites.

89. Then as to the word 'affected,' 'affect' in its primary or dictionary sense is an extensive but colourless word. But it is a word which easily takes colour from the context in which it is used. According to the context, it may mean affect in one way or the other, for the worse, or for the better. It may be that it often has the secondary sense of affecting adversely. An illustration will be found in the third paragraph of the preamble. An Act which affects a previous Act is an Act which alters or is inconsistent with the previous Act.

90. In the present context, the scheme is an improvement scheme. The full phrase is 'land affected by the execution of the improvement scheme.' To my mind at any rate that suggests land affected for the better; and in my opinion, though the words may be wide enough to include land prejudicially affected, should the Board choose to acquire such land, they specially include and signify land beneficially affected.

91. As to the words "by the execution of the scheme," which qualify the word affected, I cannot doubt that they naturally and obviously refer not only to the period of construction but also to the period immediately following when the improvement scheme is completed and in operation and a going concern 'Harding v. Board of Land and Works (1886) 11 A.C. 208 : 55 L.J.P.C. 11 : 55 L.T. 225 Mr.

Mitter suggested that 'the execution of the scheme must mean the same in Section 42(a) as in Section 41(a). But the two expressions required for the execution of the scheme and 'affected by the execution of the scheme' must each be construed as a whole.

92. It follows then that in my opinion, the whole clause is wide enough to embrace a discretionary power, on the part of the Board in framing an improvement scheme, to make provision for the acquisition of land in the area specified which will, in their opinion, be beneficially affected by the execution of the scheme as an accomplished fact

93. If that be so provision may clearly be made for the acquisition of land for purposes of recoupment. It is said, that introduces a novel power to which the Act makes no express reference But if the power comes within the ambit of the phraseology, the criticism is at best conclusive. No one denies the generality of the words and it is the function of general words to include things not specially named. The source of the words appears to be the similar but not in all respects identical Act in force in Bombay (Bombay Act IV of 1898), though Counsel was stopped by the Court from arguing that what may have been done in Bombay under that Act was of any assistance in interpreting the Calcutta Act. The clause in the Calcutta Act fills a prominent place and means something. As it stands, there is no restriction on the purposes which the Board may have in view in exercising their discretion The purpose of recoupment is not excluded Undoubtedly the power to acquire land for that purpose is a large power, but that fact by itself is not a sufficient reason for limiting and cutting down general words, still less for putting in words which are not there.

94. The construction of the disputed clause thus arrived at, while it conflicts with nothing in the preamble or any other part of the Act, seems to me supported and confirmed by the provisions of Section 78 and Section 81.

95. The preamble even if it controls the enacting provisions, which it does not, creates no difficulty. Recoupment may not be directly a method of improvement on the same plane with the method specified in the first paragraph, but indirectly it may be a method of great, and possibly indispensable, service. The power to

acquire land for that purpose may easily, without straining the language at all, be included among the special powers with which the second paragraph contemplated that the Board should be armed for carrying out the objects of this Act.'

96. Whatever may be the true construction of the disputed clause Sections 68 and 69 can present no difficulty. They give a merely subsidiary power to acquire land just as Sections 24 and 25 give the subsidiary powers of making contracts and spending money, and these subsidiary powers are conferred in order that improvement schemes (whatever they may comprise) and re-housing schemes may be carried out.

97. Under Section 69 the power to acquire land compulsorily is given in the wide terms used in Sections 24 and 25, 'for carrying out any of the purposes of the Act.' If that is a limitation, it is a limitation so wide in its extent, that if not expressed it would have to be understood. Anything which the Act permits or directs to be done will come within the phrase. Improvement schemes which the Board shall forthwith proceed to execute' are within it, and as regards acquisition there is no difference between land included under Section 41 (a) and 'affected' land (whatever the expression means) included under Section 42 (a). Land of both kinds is acquired for carrying out one or other of the purposes of the Act and may for that reason be acquired either by agreement or compulsorily. It is said Section 68 does not mention the purposes of the Act but empowers acquisition by agreement of any land which the Board are authorised to acquire.' Possibly those words were employed so as to include not only all the lands which may be acquired compulsorily under Section 69, but also land which under Clause (6) of Section 50 may be acquired by agreement but not--without the formalities attendant on framing a scheme--by compulsion. However that may be, Section 68 cannot authorize the acquisition, even by agreement, of any land for carrying out some purpose which is not a purpose of the Act. The suggestion that 'affected' land included in a framed and sanctioned scheme may be acquired by agreement under Section 68 but not by compulsion under Section 69 seems to be unfounded.

98. Section 78, with which must be read Section 13 of the schedule, provides for the abandonment (in consideration of a special payment) of the acquisition of land, the acquisition of which has been sanctioned in connection with some improvement scheme, but 'which is not required for the execution of the scheme.' These words read with Sections 41 (a) and 42 (a) seem to point to land entered for acquisition in a sanctioned improvement scheme, not as land 'required for the execution of the scheme' under Section 41 (a) but as land not required but 'affected' under Section 42 (a). Section 78 seems to pre-suppose that persons interested will know from the outset, or as soon as a scheme is published, what lands are 'required' and what lands are 'not required.' This they will do if land 'not required' signifies or includes 'affected' land.

99. It is suggested that the section refers to land which is not required for carrying out a scheme because of some alteration made under Section 50. But apart from the result of this interpretation to which I shall presently advert, the special provisions of Section 78 seem too elaborate to be adequately accounted for in that way, inasmuch as it cannot be predicted that alterations will be numerous or important. Moreover, if it is the interest of the Board to withdraw from the acquisition of any land, the withdrawal will presumably take place at their own initiative under Section 48 of the Land Acquisition Act. No owner is compelled to make an application under Section 78 of the principal Act, and if he knew that the Board meant to withdraw he would probably refrain from doing so in order to escape from the special payment and in order to obtain any damages to which he might be entitled under Section 48 of the Land Acquisition Act.

100. After land has been acquired or the title has vested, the Board may proceed under Section 81, and this applies to all land--including affected land--which comes into the hands of the Board and is not required for the actual execution of a scheme.

101. Now if 'affected' land includes land beneficially affected acquired for purposes of recoupment, it will appear that such land might well be the special object of the powers conferred by these two sections.

102. If the relevant provisions be fairly construed, apart from any preconceptions as to what the Legislature ought or ought not to have done, they show, I think, with reasonable certainty, that the board were intended to have power to take land for purposes of recoupment and that Section 78 and Section 81, particularly the pre-emption clause, were enacted principally--though perhaps not wholly--for the benefit of the owners of such land. This construction leads to no inconsistency or repugnancy and gives the Act as a whole a reasonable and intelligible meaning.

103. The reference to this Bench has been occasioned by a difference of opinion in the Court on a pure question of construction, and that being so and this Bench not being altogether unanimous, I state my own opinion with diffidence. I am not, however, led to alter that opinion by any merits apparent in the alternative construction of the disputed clause which is offered. As Greaves, J., has said, it all turns on the word 'affected.' If the significant word 'injuriously' be in effect prefixed and the expression 'affected by the execution of the scheme' be read as if it occurred in a section relating to the payment of damages, and not in a section relating to the framing of an improvement scheme, the meaning so obtained is not the meaning of the words as they stand. This violent treatment of the clause seems to rest entirely on the series of English cases by which the true meaning of the words 'injuriously affected by the execution of the works' in Section 68 of the Lands Clauses Consolidation Act, 1845, was settled (Cripps on Compensation, 5th Edition, page 136).

104. According to this view the only purpose of Section 42 (a) was to enable the Board to acquire land, in respect of which they might otherwise have to pay damages for injurious affection in cases in which such damages are claimable. But this is already partly provided for by Clause (2) of Section 49 of the Land Acquisition Act. This view, again, involves the interpretation of Sections 75 and 81 in the manner already touched upon, according to which they were designed to enable the Board to make a profit out of the abandoned parts of their various undertakings, or to finance themselves out of land entered in their plans through errors of calculation or judgment.

105. The construction of Section 42 (a) on which this result depends does not appear to be admissible and the result itself compares unfavourably in point of probability with the result, so much canvassed, of giving to the words their natural scope and effect.

106. If an Act of this kind is to achieve its objects, the powers which must be taken are necessarily large and, *inter alia*, means must be furnished for raising the money required. At the present day there can be no initial improbability in finding in such an Act provision made for what is known as betterment, or for what is known as recoupment. Some such provision, if it exists, need create no surprise. The principle underlying betterment and recoupment has received legislative recognition in various Acts and in many ways. In practice it may be difficult to combine contribution with equality of treatment. In a case already referred to *Harding v. Board of Land and Works* (1886) 11 A.C. 208 : 55 L.J.P.C. 11 : 55 L.T. 225 some violence was done to the strict grammatical meaning of the enactment there in question in order to prevent an inequality which might have extended to some land being taken without any compensation at all. It is one thing, however, to determine the true antecedent of a relative word like 'such,' and quite another thing to alter the language of the Act in the manner which is suggested as proper in the present case. Our duty is to construe the Calcutta Act as it stands, without entering into questions of policy and expediency further than the language necessitates. In that Act no attempt is made to frame an elaborate and possibly costly scheme of contribution. The method adopted is an extension of the power to take land compulsorily, and there is at least this to be said, that a man whose land is taken for purposes of recoupment is in no worse case than the man whose land is taken for the actual execution of a scheme. The former has the benefit of Sections 78 and 81 and though it is a benefit at which he may look with somewhat jaundiced eyes and may be pardoned for so doing, there it is.

107. Hardship in some degree may be inevitable in connection with any scheme or set of schemes involving the taking of land on a considerable scale in a great city. But the Act deprives no man of his property without compensation. The presumption that the Legislature will not interfere with private rights without compensation is not in question.

108. I do not know what the position is, but it is at least conceivable that without the aid of recoupment the operations of the Board, entailing an expense commensurate with the size and importance of Calcutta, would come to a standstill, so that there would be no improvement and expansion of the city in the interest of the present and future generations of citizens and the Act would be a dead letter. If the construction of the Act is to depend on results, this consideration cannot be entirely neglected.

109. In conclusion I may be permitted to emphasize that if the power in question is discretionary, the duty and responsibility of carrying out the provisions of the Act and giving effect to the statutory purpose and directions are laid upon a Board of Trustees, specially constituted, and that, among other safeguards, the Act has been careful to ensure full publicity and full opportunity for the ventilation of objections to any improvement scheme which may be proposed.

110. I should also add that as regards the preliminary objection to the hearing of this reference, I agree with what has been said by my brother Fletcher. So long as the judgment in Chandra Kanta Ghosh's case 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 stands the Board cannot, as I understand that judgment, acquire any land compulsorily for purposes of recoupment.

111. In the circumstances, looking at the language and the objects of the Act, I am respectfully of opinion that this power to acquire land for purposes of recoupment was within the contemplation of the Legislature. I agree with Fletcher, J., and concur in the answer which he proposes to give to the question referred.

Chaudhuri, J.

112. I think this reference to a Full Bench of this Court is competent, although one of the referring Judges considers the case of Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 distinguishable to the extent that small portions of the land have been cut off in this case, whereas in that case no portion of the land was similarly treated, and another learned Judge may be said to have implied as much. The main question is whether the decision in Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh 36 Ind. Cas. 749 : 44 C.

219 : 24 C.L.J. 246 : 21 C.W.N. 8 that the Calcutta Improvement Act V, of 1911 (B.C.) does not allow the compulsory acquisition of land for recoupment, is good law or not, and the reference is properly before as.

113. The question has been elaborately argued and practically the whole of the Act beginning from the preamble has been analysed and examined, but it seems to me that it is really a question as to the meaning of the word 'affected' in Section 42 of the Calcutta Improvement Act. Section 41 deals with matters which must be provided for in improvement schemes under the Act and Section 42 with what may be provided for. 'Improvement scheme' is defined in Section 2, Clause (f), as meaning a general improvement scheme, or a street scheme, or both. Section 36 lays down when a general improvement scheme and Section 39 when a street scheme may be framed. In this case we are concerned with a street scheme, but Sections 41 and 42 deal with improvement schemes generally and no separate provision has been made in the Act for acquisition of land in respect of street schemes, whereas in the Bombay Act IV of 1898, acquisition of land necessary for or 'affected' by the execution of a street scheme has been dealt with together in Section 51, Clause (a). These are dealt with separately in Sections 41 and 42 of the Calcutta Act. The expression 'affected' has apparently come from the Bombay Act and although there is no express provision in the Bombay Act authorising recoupment, the same question has apparently not arisen under that Act.

114. It is quite clear that Section 42 provides for acquisition of land which is not covered by Section 41, namely, of land other than that required for the execution of the scheme. It provides 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. The learned Judges in Chandra Kanta Ghosh's case 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 have said that 'affected' is not a word of art, but of ordinary English, capable of very large meaning, adopting the language of Wills, J., in *Buckinghamshire County Council & Hertfordshire In Re: County Council* (1899) 1 Q.B. 515 : 68 L.J.Q.B. 417 : 80 L.T. 85 : 63 J.P. 356 : 15 T.L.R. 138. They think that having regard to the context it means neither beneficially affected or improved in value, nor prejudicially affected or impaired in value,' but signifies 'acted upon physically or materially.' They say that in this section affected

land means land in respect of which there has been 'physical interference with any right, public or private, which the owner is entitled to exercise in connection therewith.' The words physically or materially acted upon' quoted from the Oxford Dictionary have little to do with the physical interference in the passage above quoted, which has been taken from the argument of Mr. Thesiger on behalf of the defendant in error in Metropolitan Board of Works v. McCarthy (1874) 7 H.L. 243 : 43 L.J.P.C. 385 : 31 L.T. 182 : 23 W.R. 115 who used those words in connection with his definition of the right to compensation in respect of property injuriously affected, when he sought to reconcile and explain the various cases on the subject. The test submitted by the learned Counsel was accepted by Lord Cairns (page 243) and by Lord Chelmsford with qualification (page 256) for purposes of the case before them. The words were used to define the expression 'injuriously affected' in connection with property. The word 'physical' was used to distinguish the case from cases of that class, where the interference complained of was not of a physical but rather of a 'mental nature or of an inferential kind.' The words 'a right, public or private, which the owner of the property is entitled to make use of' were used to distinguish the case from such cases as the Hammersmith & City Railway v. Brand (1868-9) 4 H.L. 17 : 38 L.J.Q.B. 265 : 21 L.T. 238 : 18 W.R. 12. Although the learned Judges have said that affected' in Section 42 does not mean prejudicially affected or impaired in value,' they have really adopted the definition of injuriously affected' given in Metropolitan Board of Works v. McCarthy (1874) 7 H.L. 243 : 43 L.J.P.C. 385 : 31 L.T. 182 : 23 W.R. 115. Section 42 does not deal with compensation, nor does it in any manner indicate that it relates to compensation. It supplements Section 41 and provides for what may be included in an improvement scheme, in addition to what must. The sections relating to compensation come much later in a different chapter, viz., Chapter IV and schedule. Section 69 deals with compulsory acquisition under the provisions of the Land Acquisition Act, 1894, modified as indicated in the schedule referred to in Section 71 (6). If it was intended to place the Board in a position to escape from the payment of damages' by allowing them to acquire severed or injuriously affected land in their improvement schemes, Chapter IV' or the schedule would have been the proper place for providing for it. Section 42 merely permits the inclusion of land in the scheme which in the opinion of the Board may be affected

by the execution of the scheme. It does not say land affected by the execution of the scheme must be acquired. Whether the land will be affected or not is left to be considered by the Board. They have liberty to include what in their opinion may be affected, which may include more than what may be actually affected. They have, it is said, been so empowered 'to escape from the payment of damages', namely, damages for such physical interference with the land or its incidents which may lessen its value. The definition adopted includes interference with rights, public or private, which give an additional market value to the property apart from the uses to which the owner or occupier might put it; public rights such as the right of access to premises by a public highway, and private rights such as the obstruction of easements such as rights of way, of light, of support are included. The breach of restrictive covenants for the benefit of other land and the prevention of the carrying out of covenants relating to land also come in. It seems to me that the definition adopted is vague and indefinite, and may include a great deal more than what the Land Acquisition Act as modified by this Act provides for in respect of damages or compensation. It strikes me that if it were intended to safeguard the Board in respect of injuriously affected property, the Act would have clearly defined the matter and not left it so vague. There can be no damages unless the property is impaired in value. The learned Judges have, therefore, really held that affected means prejudicially affected or impaired in value,' although they say at the outset of their judgment that the word does not mean it. They say the opposite view may include 'any land or all land in the area, for the whole area may be considered benefited by the scheme.' They look upon this as a forced and unnatural contention. I did not understand the learned Advocate-General who appeared for the appellant to go so far. He conceded that the section may be read as providing for the acquisition of land, either beneficially or prejudicially affected, but his argument was that it related only to such land as the Board considered affected by the execution of the scheme, which he said were the governing words of the section. Section 41 deals with the land required for the scheme and Section 42 with land affected by the execution of the scheme. If it is unnatural to hold that the Legislature intended the Board to benefit by the acquisition of property beneficially affected or improved in value, it is also unnatural to hold that in discharging a public duty for the benefit of the public, the Board was provided with power to take

up property prejudicially affected or impaired in value.

115. Sections 41 and 42 merely provide for the framing of schemes, which have to be notified under Section 43. Notice as to the proposed acquisition has to be served under Section 45 on persons interested, inviting their objections. The objections have to be considered by the Board under Section 47, and then the sanction of the Government has to be obtained after setting out the objections. Sanction may then be given by the Government with or without modification under Section 48. The sanction has to be notified by the Government (section 49) and then the Board is authorised to execute the scheme. Publicity of the scheme is provided for, objections have to be considered, and submitted to the Government and sanction can then be obtained. These are undoubtedly safeguards against undue interference.

116. The Board cannot proceed to acquire any land until the sanction has been notified as above.

117. Chapter IV deals with the acquisition and disposal of land. Section 68 deals with acquisition by agreement, and Section 69 with compulsory acquisition, that is to say, the Act provides for acquisition in two ways, namely, by private treaty and compulsorily under the Land Acquisition Act. They both cover the same ground. They do not deal with different classes of land, namely, land necessary under Section 41 or land considered affected under Section 42. It seems quite clear that lands under both these heads may be acquired in either way. The learned Judges in Chandra Kanta Ghosh's case 36 Ind. Cas. 749 : 44 C. 219 : 24 C.L.J. 246 : 21 C.W.N. 8 have emphasised the words for carrying out any of the purposes of the Act occurring in Section 69, as distinguishing it from Section 68 where those words do not occur. They have in this overlooked the provision in Section 24 which has to be read with Section 68, which empowers the Board to enter into contracts necessary or expedient for carrying out any of the purposes of the Act, which really means necessary under Section 41 or expedient under Section 42. In discussing the purposes of the Act the preamble has been considered by them. I am unable to agree that 'the re-housing of persons of the poorer and working classes displaced by the execution of improvement schemes' is a separate head

of the objects of the Act. It comes under the head: 'The Improvement and Expansion of Calcutta.' The punctuation shows that it is part of the sentence beginning with the words 'acquiring land for the said purposes, etc.' The sentence following it is 'and otherwise as hereinafter appearing' which does not run with it, if it is treated as a separate head, but it grammatically follows the portion governed by the preposition 'by' after the words 'expansion of Calcutta.' Acquisition of land for purposes of recoupment is not specified as one of the objects of the Act. It is a means for effecting an object. It is not mentioned as an object in the preamble of the Acts which have been brought to our notice which explicitly provide for recoupment. It is scarcely to be looked for in the preamble. So far as the Calcutta Improvement Act is concerned, Section 42 clearly provides for acquisition of land other than that required for the execution of improvement schemes. 'Affected land' may be sanctioned by the Government to be acquired, but what it is to be done with such land? The acquisition may be 'to escape payment of damages,' but what is the Board to do with such property? Power of disposal by them is provided for by Section 81, by which also the right of pre-emption is given to the owner of the land. Section 78 provides for abandonment of acquisition of land which is not required for execution of the scheme even after sanction, in consideration of payment by the owner of a sum to be fixed by the Board, which clearly comes under Section 42. This section may be compared with Section 48 of the Land Acquisition Act, which provides for payment of compensation when the acquisition is not completed. Section 78 provides for exaction of payment for abandonment, if the owner applies for it after the sanction for acquisition has been given and before the time fixed by the Land Acquisition Act for making claims in reference to the land. It clearly provides for recoupment. I think Sections 78 and 81 taken together show that power to acquire land for recoupment has been given by the Calcutta Improvement Act, and in Section 42, the word 'affected' was deliberately used as a word having a very large meaning, 'to give large powers of acquisition of land outside immediate requirements.' Sections 89 and 91 deal with the power of the Board to borrow, including the power to grant mortgages of property vested in the Board, and Sections 122 and 123 deal with credits to capital account and the application of the capital account. The Act gives power to acquire superfluous land, to demise and sell it, to return it on payment by the owner. For the above

reasons I agree with the view taken by the learned Judges who have referred this case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com