

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Bombay Tramway Company, Limited, v. The Municipal Corporation of the City of Bombay and others, from the High Court of Judicature at Bombay; delivered the 3rd June 1904.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The questions raised by this Appeal arise out of a purchase by the Corporation of the City of Bombay of the undertaking of the Bombay Tramway Company. The purchase was made under the provisions of Section 30 of the Bombay Tramways Act, 1874 (Act I. of 1874). This Section is as follows:—

“ The said Municipal Corporation of the City of Bombay  
“ shall have the right of purchasing the said tramways with  
“ the plant, stores, rolling-stock and everything connected  
“ therewith after the expiration of twenty-one years from the  
“ 12th day of March 1873 upon declaring its intention so to  
“ do within six months after the expiration of the said twenty-  
“ one years, and shall have a renewed right of purchase at the  
“ end of every seven years after the expiration of the said  
“ twenty-one years upon similar notice being given; the  
“ amount to be paid in the event of such purchase shall be the  
“ actual *bonâ fide* value (exclusive of any compensation for  
“ goodwill, premium, or compulsory sale or other consideration  
“ whatsoever) of the tramways and of the works and materials  
“ connected therewith and of the lands and buildings and  
“ all other the property of the Grantees, such value in case  
“ the parties do not agree to be decided by arbitration as  
“ provided by the said Agreement of the 12th day of March  
“ 1873 ; and as compensation for the good-will, premium, or

“ compulsory sale and other consideration, the Grantees shall  
 “ be paid an amount equal to twenty-one years’ purchase  
 “ calculated on the average profits of the previous three years  
 “ next preceding the purchase, 4 per cent. per annum on the  
 “ *bonâ fide* value mentioned above being first deducted from  
 “ such profits.”

On the 11th March 1901 the Corporation served notice of their intention to purchase the Tramway Company’s undertaking; but there being some doubt whether this notice was regular in point of time two other notices, dated respectively the 12th and 13th March 1901, were afterwards served, and it is now admitted that no objection on the ground of date has to be considered.

The Tramway Company, however, contend that the notice is altogether invalid because the Corporation are acting beyond their powers, viz., not for themselves but for and on behalf and on account of a person named Bingham. When the facts are investigated it appears that although the Corporation have made arrangements with Bingham by which he is to find the money for the purchase, and to work the tramways when acquired by the Corporation, yet the Corporation are acting as principals and not as Bingham’s agents. There is nothing in the Tramways Act which expressly or impliedly prohibits such a transaction; nothing to show that if the Corporation exercise the power conferred on them by Section 30 and acquire the tramways, they are bound to keep them in their own hands and to work them themselves. Whether they can carry out their agreement with Bingham without obtaining further powers is a matter which does not concern the Tramway Company. This point was elaborately dealt with both by the Judge of First Instance and by the learned Chief Justice of Bombay; and their Lordships think it unnecessary to say more than that they are satisfied that on this

point the Judgment appealed from was perfectly correct.

Then another question was raised by the Tramway Company which was that the date to be fixed as the date of taking the purchase ought to be later than that mentioned in the Judgment. If the proper date had to be determined by their Lordships unembarrassed by what took place in India, their Lordships would have thought that the proper date to be fixed would have been when the relation of vendor and purchaser was definitely created by the service of a proper notice to purchase, *i.e.*, in this case the 14th March 1901. This was the view taken by the Judge of First Instance, Mr. Justice Fulton. But for some reason, which their Lordships do not appreciate, both parties appealed against his decision and contended before the Appellate Court for a different date. Having regard to the course taken by both parties in the Court below, their Lordships do not consider that either party without the consent of the other can fairly insist now that the above date ought to be adopted. Under these circumstances their Lordships see no reason for disturbing the date fixed by the Appellate Court, *i.e.*, the date of the award fixing the value of the corporeal property of the Tramway Company. As pointed out both by Mr. Justice Fulton and the Chief Justice, to fix the date of the execution of the conveyance would lead to great practical difficulties. The profits would vary from day to day and the average profits for three years could never be ascertained.

Another point contended for by the Tramway Company was that what is called Track rent payable to the Corporation ought to cease on the 14th March 1901. This contention is, however, disposed of by the fact that in March 1901 it was expressly agreed between the Tramway

Company and the Corporation that the Tramway Company would continue to work the tramways pending the ascertainment and payment of the purchase money on the understanding that they received "the income and profits of the tramway business during such period." It is plain that so long as the Tramway take the profits, they must pay the ordinary expenses of workings and the rent in question.

Their Lordships will therefore humbly advise His Majesty to dismiss this Appeal and the Appellant Company must pay the costs of the Corporation.

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