

PRIVY COUNCIL

Hamabai Framjee Petit

Vs.

Secretary of State for India

P.C.A. 139 and 140 of 1913
(Lords Dunedin CJ, Shaw and Mr. Ameer Ali JJ)

18.11.1914

JUDGMENT

Lord Dunedin CJ.

1. The same general point is raised in these two appeals.
2. The first appellant was lessee under the Government as successors of East India Company under a lease of date 18th April, 1854, which lease contained a power of resumption in favour of the lessor if "the Company, their successors or assigns, shall, for any public purpose, be at any time desirous to resume possession of the premises granted" upon certain terms as to notice and compensation.
3. The second appellants are holders of land under Government in virtue of a sanad originally granted to one George King on 6th April, 1839, by the said East India Company, which declares the ground given in occupation is to be "at any time resume able by Government for public purposes" upon certain terms as to notice and compensation.
4. The Government gave notice in both cases to resume for a public purpose. On being challenge as to what that public purpose was, they explained that they wished for the ground in order to erect dwelling houses, which they could offer to Government officials at adequate rents for their private residence. Suitable houses for Government servants are not easily obtainable in Bombay; but it is not said that obtaining quarters of some kind is an impossibility. The whole question, therefore, is: Is such a scheme a "public purpose" within the meaning of the contracts contained in the lease and the sanad?
5. The learned Judge of First Instance in the High Court of Judicature at Bombay and

the Appeal Court of the same Court has both held that it is. The learned Judges in the Courts below have, in deference to citations made before them, elaborately considered many of the decisions which construed the words "public purposes," as used in the Statute of Elizabeth with reference to exemptions from rating. In the end, however, they came to the conclusion that those decisions afforded no help as to the proper construction to be put on the words of these contracts; and in that conclusion, their Lordships unhesitatingly agree.

6. The argument of the appellants is really rested upon the view that there cannot be a "public purpose" in taking land if that land when taken is not in some way or other made available to the public at large. Their Lordships do not agree with this view. They think the true view is well expressed by Batchelor, J., in the first case, when he says:-

"General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purposes' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

7. That being so, all that remains is to determine whether the purpose here is a purpose in which the general interest of the community is concerned. Prima facie the Government are good judges of that. They are not absolute judges. They cannot say: "*Sic volo sic jubeo*", but at least a Court would not easily hold them to be wrong. But here, so far as from holding them to be wrong, the whole of the learned Judges, who are thoroughly conversant with the conditions of Indian life, say that they are satisfied that the scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servants. From such a conclusion their Lordships would be slow to differ, upon its own statement it commends itself to their judgment.

8. Their Lordships are therefore of opinion that on the general point the view of the Courts below was right.

9. A special point was taken in the second case as to sufficiency of notice. It is enough to say that the view of the Courts below was clearly right in this matter.

10. Their Lordships will humbly advise His Majesty to dismiss the appeals, but there will be no costs to either party before this Board.

Appeal dismissed.