

LAHORE HIGH COURT

Administrator

Vs

Abdul Majid

(Mahajan, Bhandari and Achhru Ram, JJ.)

07.02.1945

JUDGMENT

Mahajan, J.

1. The facts which have led to this reference to the Pull Bench may briefly be stated. One Ghulam Dastgir was owner of a considerable area of land on the Mayo Road. In the year 1932 he submitted a layout plan to the Municipal Committee of Lahore and that layout plan was sanctioned by a resolution of the committee dated 4th November 1932. Ghulam Dastgir wished to plot out this area owned by him for the purpose of building sites and the layout plan indicated the various plots and roads which he proposed for this area. The plaintiff Abdul Majid purchased a plot of land according to the sanctioned layout plan but subsequent to his purchase the committee revoked its resolution sanctioning the layout. This resolution revoking the earlier resolution of 4th November 1932 was passed because the Government objected that the committee could not sanction a layout plan without framing a scheme with the sanction of the "Local Government for this area.

2. On 25th July 1934, Abdul Majid submitted a building plan to the committee for sanction on the plot of land that he had purchased. This the Executive Officer acting under the provisions of Section 193, Punjab Municipal Act, refused to sanction on 14th August 1934 because the question of layout of the area was still under consideration. The plaintiff preferred an objection in the nature of an appeal from the decision of the Executive Officer to the committee, and on 31st October 1935 the committee set aside the order of refusal that had been passed by the Executive Officer and accorded its sanction to the plan submitted by Abdul Majid. It may be observed that this sanction was given a considerable time after the resolution of 4th November 1932 had been revoked. It is admitted that similar sanctions were given to other persons who had like Abdul Majid purchased plots of land from Ghulam Dastgir in this area and at the time of this sanction some houses had been built on those plots. Abdul Majid constructed a boundary wall on this plot according to the plan and also filled the foundations and constructed the building up to the plinth but he failed to complete the building within the time allowed by law and the result was that the sanction lapsed on 16th November 1937. On 24th May 1940, Abdul Majid re-submitted the same plan for renewal of the sanction. This time the committee refused its sanction to the proposed building. The resolution of refusal is dated 6th July 1940. The reason for the refusal was stated in these terms: "As the area is low lying and cannot be properly drained off." By this time

admittedly about two hundred houses; had been built on the plots sold by Ghulam Dastgir.

3. On 22nd March 1941, Abdul Majid instituted the present suit for an injunction restraining the defendant municipal committee from interfering with the construction of his proposed building on the plot in question and in accordance with the plan submitted by him. This suit was decreed by the Subordinate Judge and the decree granted to Abdul Majid was affirmed on appeal by the Senior Subordinate Judge. The learned Senior Subordinate Judge held that in pursuance of the sanction dated 31st October 1935 the plaintiff had already filled up the foundations and, constructed a chardiwari, that it was in evidence that even after the revocation of the layout several houses had been constructed in this locality with the permission of the committee, and that being so, there was no justification in extending discriminative treatment to the plaintiff. It was further held that the residents of this locality had constructed sumps for filthy water and that the building plan should not have been rejected on the ground on which it was thrown out. The order of refusal was held ultra vires, arbitrary and oppressive, the Courts below followed a decision of this Court in *Administrator Lahore Municipality v. Munir-ud-Din*¹ Against the concurrent decrees of the two Courts below a second appeal was preferred to this Court on behalf of the municipal committee and this appeal was heard in the first instance by a learned Single Judge. The learned Single Judge referred the case to a larger Bench, with the following observations:

A civil Court, is not a Court of appeal from the decisions of the Administrator of the Corporation of the City of Lahore and the decision on the authority of which the plaintiff's suit was decreed makes them really so. I have grave doubts as to the soundness of the decision in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(SUPRA)* would ask my Lord the Chief Justice to place it before a larger Bench, if he agrees, for a further consideration of the matter which is of considerable importance and has been frequently arising in the High Court as well as in the Subordinate Courts.

4. It is in these circumstances that the matter has come up to this Bench. It will be convenient at this stage to mention the relevant provisions of the Punjab Municipal Act, which concern this question. The relevant portion of Section 193 of the Act is in these terms:

- (1) The committee or Executive Officer shall refuse to sanction the erection or re-erection of any building in contravention of any bye-law made under Sub-section (1) of Section 100 or in contravention of any scheme sanctioned under Sub-section (3) or Sub-section (4) of Section 192, unless it be necessary to sanction the erection of a building in "contravention of such a scheme owing to 2 the committee's inability to pay compensation as required by Section 174 for the setting back of a building
- (2) The committee or Executive Officer may refuse to sanction the erection or re-erection of any building for any other reasons, to be communicated

¹ A.I.R. 1941 Lah. 200

in writing to the applicant, which it or he deems to be just and sufficient as affecting such building, or if the land, on which it is proposed to erect or re-erect such building, is Government property or vests in the committee, and the consent of Government or the

committee has not been obtained, or if the title to the land is in dispute between such person and the committee or the Government.

Section 225 runs thus:

(1) Any person aggrieved: (a) by the refusal of a committee under Section 193 to sanction the erection or re-erection of a building, or...may appeal within thirty days from the date of such prohibition, notice or order to such officer as the Local Government may appoint for the purpose of hearing such appeals or any of them, or, failing such appointment, to the Commissioner in the case of a committee of a first class municipality...

(3) The order of the appellate authority confirming, setting aside or modifying the refusal, notice or order appealed from shall be final...

5. On behalf of the appellant, the Administrator of the Lahore Municipality, it is contended that Sub-section (2) of Section 193 vests the committee with unfettered powers to refuse to sanction the erection or re-erection of any building for any other reason which it deems to be just and sufficient as affecting such building and that the only control that can be exercised on this power is by the appellate authority mentioned in Section 225 of the Act, which, lays down in clear terms that no refusal of a committee under Section 193 to sanction the erection or re-erection of a building shall be liable to be called in question otherwise than by such, appeal. It is argued that when in a special. Apt a special remedy is provided for the aggrieved persons, it is that remedy alone which can be availed of by them and that recourse to civil Courts cannot be had in the circumstances. It was further contended that powers granted to public bodies should be liberally construed in their favour and, consequently, the provisions, in the Act which restrain outside interference with the action of the municipal committee should be so interpreted as to bar the jurisdiction of civil Courts altogether, whatever the nature of the act complained of may be. It was also contended that no injunction could be issued to the public body concerned enjoining it not to interfere with the erection of a building or directing it to sanction a building in a particular manner. The learned Single Judge put this proposition in these words:

A civil Court is not a Court of appeal from the decisions of the Administrator of the Corporation of the City of Lahore and the decision on the authority of which the plaintiff's suit was decreed makes them really so.

6. The case for the respondent was that if a committee acts reasonably and within the statute, its orders are sacrosanct. But if the committee acts outside the statute or abuses the powers vested in it by the statute and this act is wanton, unreasonable, arbitrary, capricious or oppressive, then the subject can have recourse to a civil Court for redress of his grievance and that in such a situation civil Courts are empowered to issue injunctions to the committee in the terms claimed in the present case. In *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(Supra)* the correctness of which decision has been doubted by the learned Single Judge, the following questions of law were considered and decided:

(1) Whether the civil Courts have any jurisdiction to interfere with the orders of the committee refusing to sanction erection or re-erection of any building, and, if so, in what

circumstances, and

(2) Whether any injunction can be issued to the municipal committee, directing it to proceed, or not to proceed, in a certain manner?

7. After an exhaustive survey of the whole case law, both English and Indian on the subject these questions were answered as follows: As regards the first proposition it was held that there was overwhelming authority in support of the view advanced by the respondents that the civil Courts could interfere even with the discretionary orders of public bodies if those orders were an abuse of the power vested in them, or, in other words, were in any way unreasonable, arbitrary, capricious, oppressive or partial. The second question was answered in these terms:

If injunction cannot be issued to restrain public bodies from conducting themselves in an objectionable or illegal manner, the result would be that the aggrieved person would be left without a remedy even if his legal rights were trampled under foot and that could not be the intention of the Legislature that created such public bodies.

Reference was made to the following observations of Mookerjee J. in *Chairman of Giridh Municipality v. Srish Chandra Mozumdar*²

The essence of the matter is that the action of the municipality is in its nature quasi-judicial and is not subject to collateral attack except on the ground of fraud, actual or constructive, or on the ground of exercise of a power not conferred by the statute. If errors or irregularities are committed, they must be corrected in the mode appointed by the statute, and, if not so corrected, they become conclusive, for Courts have not the power to control the quasi-judicial authority in a matter of discretion.

8. It was held that the principles enunciated by Mookerjee J. were not open to any criticisms. It is, therefore, clear that the Bench deciding *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(supra)* did not constitute itself as a Court of appeal on the decisions of the municipal committee under Section 193, Punjab Municipal Act, or lay down the proposition that in all cases where a municipality exercises its discretion under Section 193, Punjab Municipal Act, that discretion can be considered by a civil Court as a Court of appeal. On the other hand it very clearly affirmed the rule that errors or irregularities committed in the exercise of discretion vested in the committee under Section 193, Punjab Municipal Act, must be corrected in the mode appointed by the statute, and, if not so corrected, they become conclusive, for Courts have not the power to control the quasi-judicial authority in a matter of discretion. But the Bench took the view that when an act is done by a committee in excess of its powers, or in a wanton and careless use of those

²(08) 35 Cal. 859

powers, there is an injury for which the sufferer retains a remedy by an action at common law, or by suit in equity for an injunction. Whenever a proposed building does not contravene the Act or the bye-laws made under it, the local authority could not refuse sanction and its act is in excess of its jurisdiction and, therefore, liable to challenge in the ordinary Courts of the country. The provisions of Section 225 which make the decision of the Commissioner final can only mean this that that decision is final only so far as the proceedings under the Act are concerned. But when

an order is made which is outside that Act, then the provisions of Section 225 can have no application to such an order which itself is outside the Act. Reference was also made to the observations of Lord Macnaghten in *East Fremantle Corporation v. Annois*³ which are in these terms:

The law has been settled for the last hundred years. If persons in the position of the appellants, acting in the execution of a public trust and for the public benefit, do an act which they are authorized by law to do, and do it in a proper manner, though the act so done works a special injury to a particular individual, the individual injured, cannot maintain an action.... At the same time Abbot C.J. observed that if in doing the act authorized the trustees acted arbitrarily, carelessly or oppressively, the law in his opinion had provided a remedy.... In a word, the only question is, 'Has the power been exceeded?' Abuse is only one form of excess.

9. In short the Bench laid down that in two kinds of cases, Section 225 was no bar to the jurisdiction of a civil Court in examining the order of the municipal committee passed under Section 193(2), Punjab Municipal Act. The first case is where a committee acts ultra vires and the second case is where it acts arbitrarily or capriciously. In other words, where it abuses its statutory powers. The Bench did not lay down the proposition that in all cases where a discretion is exercised by a municipal committee under the provisions of Section 193(2), Punjab Municipal Act, the subject could in disregard to the provisions of Section 225 appeal to the civil Court.

10. In my view the rule enunciated in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(supra)* is a rule to which no exception can be taken. With great deference, to the learned single Judge who made this reference it must be held that the Bench in the above mentioned case did not enunciate the proposition that a civil Court is a Court of appeal from the decisions of the Administrator of the Corporation in all kinds of cases. On the other hand, it was laid down that in all cases where the committee acts within the four corners of the statute constituting it and exercises the powers conferred on it in a reasonable manner, then the exercise of the power cannot be corrected by a civil Court and the subject cannot be allowed to attack it collaterally. But a collateral attack on the exercise of such powers by the committee is permissible only when the committee acts fraudulently or oppressively and abuses its powers or acts in excess of the powers conferred by the statute. During the course of the arguments the learned Counsel for the municipality in spite of repeated questions to him was unable to point out a single flaw in the lengthy and the exhaustive judgment of the Bench in *Administrator Lahore Municipality v. Munir-ud-*

³(1902) A.C. 213

Din A.I.R. 1941 Lah. 200(supra). On the other hand, he stated that the rule enunciated in this decision was unexceptionable and was perfectly sound. All that he argued was that that rule did not govern the present case. That question will be considered in the concluding portion of this judgment. After a careful perusal of the Bench decision in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(supra)*, I have reached the conclusion (I speak with great respect) that it lays down the rule on the subject considered by it correctly and no ground is shown to re-consider the propositions enunciated in that case. The Hon'ble Din Mohammad J. who delivered the Bench judgment in that case has expressed his decision on these questions in his own inimitable manner and it is not possible for me to improve either on his reasoning or in

the manner in which he surveyed the authorities that he has considered, and it is unnecessary in these circumstances to reiterate all the reasoning in support of the answers given to the proposition considered in that case. I say with great respect that I Sully concur in the logic and the reasoning given in the decision in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(supra)*.

11. I would, however, like to briefly examine the question independently of the authority of this decision. The main attack on this decision is that it constitutes the civil Court as a Court of appeal from the decisions of the municipal committee in spite of the provisions of Section 225, Punjab Municipal Act. In my view, Section 225, Punjab, Municipal Act, provides a remedy to a subject only in cases where the committee has acted within the four, corners of the Act and has not acted in excess of the provisions of the Act or in contravention of those provisions. When a jurisdiction is vested in a committee and it either irregularly exercises that jurisdiction or errs in the exercise of that jurisdiction, in those cases the remedy of the subject against the order of the committee is by preferring an appeal to the Commissioner under the provisions of Section 225 and the order of the appellate authority would conclude the matter. Such a decision cannot be collaterally attacked in a civil Court Where, however, the committee acts in excess of the powers conferred by the Act or abuses those powers, then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does riot possess and for usurpation of power the remedy provided by the Act cannot be held to be exclusive. The remedies given to the subject by a statute are for relief against exercise of power conferred by a statute but those remedies are not contemplated for usurpation of power under cover of the provisions of the statute. The civil Courts are the proper tribunals in those kinds of cases and their jurisdiction cannot be held barred by reason of statutory remedies provided for grievances arising in exercise of statutory powers. To cases of this kind the rule that where a statute creates a right and provides at the same time a remedy, that remedy and no other is available, has no application. Again the rule has absolutely no application to a case where the right was not created by the statute but existed independently of it.

12. The right to build on one's own land is a right incident to the ownership of that land In places outside municipalities an owner has an unrestricted right to construct a building on his own land according to his will and pleasure, but within the municipalities the exercise of that right has been regulated ill the interests of the community residing within the limits of the municipal committee. If the committee refuses permission to build because the proposed building contravenes the statutory limitations on the owner's right to build, the remedy of the owner against the refusal is by an appeal under Section 225, and such refusal, if confirmed in appeal, cannot be the subject of a collateral attack in a civil Court. If, on the other hand, the committee refuses permission to build on grounds which are outside the statutory limitations of the owner's right to construct a building or abuses its powers, then in those cases the refusal is not based on the ground that the proposed building contravenes the statutory limitations of the owner's right to build, and therefore, the right of the subject to construct a building on his own land can be enforced to an ordinary civil Court. In my opinion the municipal committee is not given any authority to encroach on the rights of the inhabitants except for the purpose of the benefit to the public in general. It is impossible to believe that a decision on a question of private rights, could have been given finality where the decision is arrived at without hearing evidence or where the decision is arrived at by a body of men not especially trained in law respecting private rights. It is not open either to the committee or to the appellate authority to disallow a proposal to erect a building on

the ground that it is hideous in its appearance and would therefore injuriously affect the value of a neighbor's property. In all such matters the parties should be left to seek their own remedy in a civil Court.

13. The matter may be illustrated by a few illustrations. Suppose an Executive Officer refuses a proposal to construct a building on a plot of land owned by a person on the ground that he does not like the look of that person or that that person has been misbehaving towards the Executive Officer. Such a refusal is obviously outside the four corners of the statute. Can it be said that the only remedy against an order of that kind is the one provided in Section 225, Punjab Municipal Act? In my view, the answer is an emphatic no, because a municipal committee is a creature of the statute and it is brought into existence by, or under the authority of, an express legislative enactment to have control over municipal affairs within defined local limits and can exercise such powers of legislation, taxation and regulations as are entrusted to it by the Legislature. If in the exercise of those powers the committee makes a mistake, it will merely be a case of erroneous exercise of jurisdiction, and the aggrieved party must seek his remedy in the manner, and from the forum, provided in the statute. If, however, its action is in excess of, or in contravention of, the powers conferred on it by the statute, the subject has his ordinary remedy to seek relief in the civil Courts, unless their cognizance is either expressly or impliedly barred by Section 9 Civil Procedure Code This proposition has been put very precisely in *Frewin v. Lewis*⁴ by Lord Chancellor Cottenham. Lord Chancellor Cottenham observed:

If under pretence of any authority which the law does give to corporations to a certain extent, they go beyond the line of their authority, and infringe or violate the rights of others, they become like all other individuals amenable to the jurisdiction of this Court by injunction.

14. Take another illustration: that the committee refuses sanction to build a house on the ground that the applicant has not paid certain taxes that are due from him to the committee or that the applicant refuses to contribute a certain sum of money towards a certain fund which the committee is floating. Here, again the statutory power is exercised, for collateral purposes and is outside the Act. The provisions of Section

⁴(1938) 1938 R.R. 88

225 could in such a case be no bar to the subject for enforcing his rights in a civil Court. A case of this kind arose in Letters Patent Appeal No. 106 of 1940 which was decided by a bench presided over by the Hon'ble the Chief Justice and Tek Chand J. In that case both the plaintiffs owned houses on main streets in Delhi and both applied to the municipality for permission to construct colonnades overhanging the public streets. Sanction was given for these constructions subject to certain conditions, the conditions being payment of rent and execution of rent agreements. The plaintiffs refused to execute the agreements in the form suggested by the committee. Thereupon the municipality served a notice calling upon them to demolish the colonnades, with the result that the plaintiffs instituted suits for a declaration that the notice was illegal and invalid. It had been held by the learned Single Judge in this case that these notices were issued mala fide and with an ulterior motive, and that the committee was acting beyond the scope and purpose of Section 175 in using the power conferred by the section to coerce the plaintiffs into executing agreements, for payment of rent, which could not be legally demanded from them. The learned Chief Justice who delivered the bench judgment in that case observed as

follows:

It cannot possibly be said that such notices were issued bona fide and it appears to me that they are clearly notices which can be described as unreasonable, arbitrary and oppressive. If the notices can be so described, has the civil Court any right to investigate the matter? Fortunately for the respondents the matter has been set at rest by a very recent decision of this Court: *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(supra)*. In that case it was held that the civil Courts could interfere with the orders even of a discretionary nature of a municipal committee if those orders were an abuse of the power vested in them, or, in other word, if those orders were in any way unreasonable, arbitrary, capricious, oppressive and partial.

This decision is binding on this Court and it appears to me that it completely covers the present case.

15. Take a third illustration: Where the refusal of sanction to build is based on the ground that it contravened a scheme sanctioned for the locality where the land on which the proposed building is to be constructed is situated, but it is found as a fact that no such scheme exists, can it possibly be said in that case that the refusal to build was made in exercise of the statutory powers and the order could not be challenged in a civil Court? Here, again, my answer is an emphatic No. This matter was considered by a Single Judge of this Court in R.S.A. No. 1284 of 1940. It was held that a civil Court had jurisdiction to entertain a suit in spite of the fact that no appeal had been preferred against the refusal to the: Commissioner as required by Section 225, Punjab Municipal Act. The question under consideration in my view has been settled by their Lordships of the Privy Council in *Secretary of State v. Mask & Co*⁵. That was a case which arose under the provisions of Section 188, Sea Customs Act. In that case the respondents had been in the habit of importing their betelnuts at the port of Cuddalore in the Province of Madras, but in the beginning of the " year 1932, the Customs' Collector at that port had assessed a similar consignment of 3605 bags as boiled betel-nuts subject to duty on a a tarrif value, contrary to the respondents' contention that

⁵ AIR 1940 PC 105 : 1940 AWR (P.C.) 10 132 : 1940-50-LW 21

they should be assessed as raw betel nuts, subject to duty ad valorem. Section 188, Sea Customs Act, contained a provision similar to Section 225, Punjab Municipal Act, and it was contended that the civil Courts had no jurisdiction to examine that matter after the appellate authority had adjudicated upon it as that decision was final on the subject. Lord Thankerton, who delivered judgment of the board in that case at p. 614 of the report observed as follows:

It is now necessary to determine whether the, order of the Collector of Customs, dated 20th June 1933, which dismissed the appeal under Section 188, and which was confirmed by the Governor-General in Council on an application under Section 191, excludes the jurisdiction of the civil Courts to entertain a challenge of the merits of that decision. It is settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied

with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Many of the oases referred, to in the judgments below are of this nature, and are not relevant to the present case, in which there are no allegations of that nature.

16. In my view this pronouncement of their Lordships of the Privy Council puts a seal of. finality on the correctness of the decision given in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 2009(supra)*. In that case it was, however, held that the question raised in that case was neither in excess of jurisdiction of the authorities constituted under the Sea Customs Act, nor was it made in abuse of those powers. At p. 615 of the report the following relevant observations were made:

Their Lordships are of opinion that in this case. the jurisdiction of the civil Courts is excluded by the order of the Collector of Customs on the appeal under Section 188, and it is unnecessary to consider whether, prior to taking such appeal under Section 188 the respondents would have been entitled to resort to the civil Courts, or whether they would have been confined to the right of appeal under Section 188.

17. The present is a case where the respondent did not avail of the remedy provided by Section 225, Punjab Municipal Act, and the observations of their Lordships of the Privy Council above quoted lead to the conclusion that their Lord, ships left the question undecided in cases where the statutory remedy has not been availed of by the subject, but only held that in cases where statutory remedy has been availed of and the order in question was not in excess of jurisdiction and the statutory tribunal had not acted against fundamental principles of judicial procedure the order was conclusive. The appellants' counsel placed reliance on this decision of the Privy Council but, as I have pointed out, this decision does not run counter to anything which has been laid down in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(supra)*. On the other hand, as already pointed out it supports the propositions enunciated in that case. A case that very strongly supports the view of law taken in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(Supra)* is the case in *The Lahore Electric Supply Co. Ltd. Lahore v. Province of Punjab*⁵ That case arose under the Defence of India Act. Section 16 of that Act is in these terms:

16. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

18. It was held that that section did not deprive the civil Court of its jurisdiction in cases where an order made under the Act is not bona fide. Reliance was placed on the observations of Lord Thankerton in the case above mentioned and on the following observations of Lord Beading in *The King v. Governor of Brixton Prison*⁶ These observations were in these terms:

If we are of opinion that the powers were being misused, we should be able to deal with the matter. In other words, if it was clear that an act was done by the executive with the intention of misusing those powers, this Court would have jurisdiction to deal with the matter.

19. Here, there was a clear provision contained in Section 16 to the effect that no order made in exercise of any power conferred by the Defence of India Act shall be called in question in any Court, and yet it was held that that provision did not deprive the civil Court of its jurisdiction when an order was made mala fide under cover of the provisions of the Act. The provisions contained in Section 225, Punjab Municipal Act, are not couched in the same mandatory language as the provisions of Section 16, Defence of India Act, and in my view when finality has been given to the order of, the appellate authority in the Punjab Municipal Act the finality is only in cases where the order appealed against is within the Act and is not in excess of the Act but only is irregular or mistaken. A similar question arose for decision before a Full Bench of this Court under the provisions of Section 84 and 86, Punjab Municipal Act. Section 84 lays down that an appeal against the assessment or levy of any or against the refusal to refund any tax under this Act shall lie to the Deputy Commissioner or to such other officer as may be empowered by the local Government in this behalf. Section 86 lays down that no objection shall be taken in any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act. The language employed in Section 86 is more comprehensive than, the language employed in Section 225, Punjab Municipal Act. This Full Bench decision is *Municipal Committee Montgomery v. Sant Singh*⁷ of this case it was observed:

Any special piece of legislation may provide special remedies arising therefrom and may debar a subject from having recourse to any other remedies, but that bar will be, confined to matters covered by the legislation and to any extraneous matter. A corporation is the creature of a statute and is as much bound to act according to law as the constituents thereof, namely, the individuals ruled by the corporation and if the corporation does an act in disregard of its charter and intends to burden any individual with the consequences of its illegal act, an appeal by that individual to the general law of the land can in no circumstances be denied.

⁵ A.I.R. 1943 Lah. 41

⁷ A.I.R. 1940 Lah. 377

⁶(1916) 2 K.B. 742

20. Reliance was placed for these observations on a decision of their Lordships of the Privy Council in *Secretary of State v. Fahmidan Nisan Begum*⁸ In that case the question that arose for decision was whether a certain order of the Board of Revenue, purporting to be made under Act 9 of 1847, subjecting a certain land to assessment was open to objection in a civil Court. Their Lordships came to the conclusion that the provisions of Act 9 of 1847 were not applicable to the land 'involved in that suit and the order of the Board of Revenue was ultra vires. Their Lordships further held that that being so, the civil Courts could interfere with the order of the Board of Revenue though by the terms of the Act it was final, and it was observed that the Board of Revenue could not by purporting to exercise a jurisdiction which it did not possess, make their order upon such a matter final and exempt themselves from the control of the civil Court. A reference was also made by the Pull Bench to another Privy Council case, *Gaekwar Sarkar of Baroda v. Gandhi Kachrabhai*⁹ That case related to a provision in the Railways Act which laid down that a suit shall not lie to recover compensation for damage caused by the exercise of the powers thereby conferred, but that the amount of such compensation shall be determined in accordance with the Land Acquisition Act, 1870. In spite of this bar the plaintiff brought a suit for damages for injury alleged to have been caused to his fields. Before their Lord-ships it was contended, inter alia, that although the statutory authority of the Act of 1890 might have been

abused or exceeded, no suit would lie and that the respondent's only remedy was by proceeding for compensation under the Land Acquisition Act, 1870. Their Lordships answered that argument with the following observations:

It would be simply a waste of time to deal seriously with such contentions as these. It has been determined over and over again that if a person or a body of persons having statutory authority for the construction of works...exceeds or abuses the powers conferred by the Legislature, the remedy of a person injured in consequence is by action or suit, and not by a proceeding for compensation under the statute which has been so transgressed.

21. Following these cases of the Privy Council the Full Bench in *Municipal Committee Montgomery v. Sant Singh A.I.R. 1940 Lah. 377(supra)* held that a suit for injunction was maintainable in the civil Courts restraining the municipal committee from levying the tax which was an illegal one, and it was held that the provisions of Section 86, Punjab Municipal Act, were no bar to such a suit and that the ouster of ordinary jurisdiction in favour of a special jurisdiction can obviously apply only to the cases entrusted to the latter, and the grant of a jurisdiction cannot carry with it the conferral of a power to act beyond and outside of that jurisdiction. This decision of the Full Bench in my view very strongly supports the view that was taken of the law on the subject in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(Supra)*. Another Full Bench decision which very strongly supports the view that has been taken in the case, to the correctness of which a doubt has been thrown by the learned Single Judge, is the case in *Lachhman Singh v. Natha Singh*¹⁰ This case arose under the provisions of the Relief of Indebtedness Act, Section 7(1) of which fit in these terms:

⁸(90) 17 Cal. 590

¹⁰ A.I.R. 1940 Lah. 401

⁹(03) 27 Bom. 344

If any question arises in proceedings under this part of the Act, whether a person is a debtor or not, the decision of a Debt Conciliation Board shall be final.

22. Section 21 of the same Act debars civil Courts from entertaining suits to question the validity of any procedure or the legality of any agreement made under the Act, or to recover any debt in respect of which an agreement has been recorded in Section 17, or to recover any debt which has been deemed to have been duly discharged under Sub-section (2) of Section 18. It was held that a usufructuary mortgage was a debt within the provisions of the Punjab Relief of Indebtedness Act, and that the order of the Debt Conciliation Board which was a 'tribunal of special jurisdiction, was ultra vires and, therefore, any order passed by the Board treating the amount secured on a usufructuary mortgage as a debt and declaring that it has been discharged for all purposes and all occasions is ultra vires of the Board, and that the civil Courts are not debarred from entertaining the plea that such a mortgage is not affected by the order of the Board. It was observed that matters decided by Debt Conciliation Boards, in excess, or in contravention, of the powers conferred on them by the Act could be considered by the civil Courts' and the Seal of finality put on those decisions by the statute constituting those tribunals did not operate as a bar to such reconsideration. Recently in *Khawaja Mohammad Azam v. Provincial Government of the Punjab*¹¹ decided on 18th December 1944, the question whether a civil Court has jurisdiction in cases of abuse of power by statutory authorities or by the Executive was considered by a Bench of this Court of which I was a member and the judgment was delivered by my Lord the Chief Justice. In that case the appellant Khawaja Mohammad Azam had been removed from his office as

Municipal Commissioner under Section 16(1)(c), Punjab Municipal Act. That section provides that the Local Government may, by notification, remove any member of the committee if, in the opinion of the Local Government he has flagrantly abused his position as a member of the committee or has through negligence or 'misconduct been responsible for the loss or misapplication of any money or, property of the committee.

23. It was argued on behalf of the local Government that a civil Court could not decide the matter whether the use of language by the member amounted to a flagrant abuse of the plaintiff's position as a member of the committee, and that the decision of the Government could not be questioned in a civil Court. On the other hand, for the appellant it was contended that the Court could interfere if it was satisfied that the Local Government had abused their power and had acted from some ulterior motive. In delivering the judgment in this case, my Lord the Chief Justice observed as follows:

It appears to me that this contention is well founded, as it has been frequently laid down that an abuse of a power is no exercise of the power at all. This question of an abuse of power has frequently been discussed by Courts in England when dealing with statutes or rules involving the ouster of the jurisdiction of the ordinary Court of the land. Frequently the Executive have been given powers and the Courts have been forbidden to question those powers, but it has been invariably held that where the powers were being

¹¹ R.F.A. No. 372 of 1940

misused and abused, the ordinary Courts of the land could enquire into the matter, see *The King v. Governor of Brixton Prison*¹² where he observed: "If we were of opinion that the powers were being misused, we should be able to deal with the matter. In other words, if it was clear that an act was done by the executive with the intention of misusing those powers, this Court would have jurisdiction to deal with the matter." The whole matter was considered in a recent Full Bench decision of this Court in *The Lahore Electric Supply Co. Ltd. Lahore v. Province of Punjab A.I.R. 1943 Lah. 41(Supra)* in which the authorities are dealt with in detail. It appears to me that this case clearly lays down that an abuse of power is really no exercise of the power at all. The principle applies to the present case and if this Court were satisfied that the removal of the plaintiff was an abuse of the powers of the Local Government, the Court could and would interfere. On the other hand, if the removal of the plaintiff was an honest and bona fide, though mistaken, act, this Court could not interfere because, as I have said, it would be substituting its own opinion for the opinion of the Local Government.

24. It is clear, therefore, on the authority of the above case that if the municipal committee does not exercise its powers under Section 193(2) or exercises them for a collateral purpose, the civil Court could interfere and that would not be a case where it would be substituting Its own opinion for the opinion of the committee, and would not be covered by the remedies provided in the Municipal Act. Lastly, the view that has been expressed above finds support from another Bench decision delivered by my Lord the Chief Justice and to which I was also a party, in *Dilbagh Singh v. Emperor*¹³ In this case certain Burma contractors had been arrested by the police for the offence of cheating the Burma Government. They had been released on bail by the Magistrate

but were arrested again under cover of Rule 129, Defence of India Rules. It was conceded on behalf of the Crown in that case that these persons had not been detained because of any supposed danger to the State or for the efficient prosecution of the war but that they had been detained in order to enable the police to complete the investigation of the offence of cheating and further to enable the police to interrogate the detained men as often as they liked. In this case, my Lord the Chief Justice observed as follows:

In my judgment Rule 129 was never made for that purpose, and the rule cannot be used legally for any purpose other than that for what it was intended, namely, to ensure inter alia the security of the State and the efficient prosecution of the War.

To use it for some entirely different purpose, wholly unconnected with, the security of the State or the efficient prosecution of the war, is in my view a misuse of the powers given by that rule and an order passed for such purposes cannot be said to be an order under Rule 129, Defence of India Rules.

My Lord the Chief Justice, after considering the observations made in *The Lahore Electric Supply Co. Ltd. Lahore v. Province of Punjab A.I.R. 1943 Lah. 41(supra)* and other cases, finally observed in these terms:

¹²(1916) 2 K.B. 742 per Lord Reading at p. 749

¹³A.I.R. 1944 Lah. 373

Mr. Munshi's contention is that by detaining ' these persons under Rule 129 they have been completely deprived of their rights under the Code and the police by this device have been able to investigate these offences unhampered and without any of the restrictions imposed by the Code of Criminal Procedure. In my judgment this is only another way of putting the proposition that there has in this case been an abuse of the provisions of Rule 129, Defence of India Rules. These rules were not in my judgment ever intended to override the ordinary rules of procedure governing the investigation of crimes under the Penal Code and were never framed with a view to preventing the Courts of the land exercising their ordinary jurisdiction in ordinary criminal matters.

25. For the reasons given above I am of the opinion that the rule enunciated in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(supra)* is unexceptionable. I must, however, point out that that decision does not lay down that all cases of exercise of discretion of a municipality under the provisions of Section 193(2), Punjab Municipal Act, can be collaterally challenged in a civil Court. It is only in those cases that the committee has acted outside the Act or has abused its powers that the exercise of powers under Section 193(2), Punjab Municipal Act, can be considered by a civil Court.

26. Coming to the facts of the present case, as already pointed out, the refusal of the building plan submitted by the plaintiff after the lapse of the first' sanction given to him was based on the ground that the area was lowlying and could not be properly drained off. In my opinion the reason for refusal was outside the purview of Section 193(2), Punjab Municipal Act. That section, as already pointed out, authorises the committee to refuse sanction of the erection or re-erection of any building for any other reason which it deem to be just and sufficient as affecting such building, or if the land, on which it is proposed to erect or re-erect such building, is

Government property or vests in the committee. The plan cannot be rejected on the ground that the land on which it is proposed to erect or re-erect a building is in a locality unsuitable for such a building. The reason given by the committee did not as such affect the building proposed, to be constructed. The reason affected the whole of the area in which the site of the proposed building was situate and such an objection cannot be said to affect the building itself. An objection of the nature that was raised and on which refusal was based in the resent case could only be taken under the provisions of Section 193(1) of the Act provided a scheme had been sanctioned for this area under the provisions of the Act. It seems to me that the committee acting under cover of Section 198(2), Punjab Municipal Act, was trying to achieve its object which it could only achieve under the provisions of Section 193(1) provided a sanctioned scheme for this area had come into existence. In the absence of such a scheme it could not refuse the building plan of the plaintiff under the provisions of Section 193(2). Section 193(2) only covers those cases which are outside the provisions of Section 193(1), but acting under cover of Section 193(2) it would be acting collaterally if it gave a reason for refusal to sanction the proposed building which could only fall under Section 193(1). Moreover, it has been laid down in Section 131, Punjab Municipal Act, that:

The committee may, by notice, require the owner or occupier of any land or building to cleanse, repair, cover, rill up or drain off any private well, tank, reservoir, pool, depression or excavation therein which may appear to the committee to be injurious to health or offensive to the neighbourhood: Provided that if for the purpose of effecting any drainage under this section it should be necessary to acquire any land not belonging to the same owner or to pay compensation to any person, the committee shall provide such land or pay such compensation.

27. It seems to me that the committee instead of acting under Section 131 for making this low-lying area habitable and to make arrangements for draining it off resorted to the provisions of Section 193(2) for the same purpose and, therefore, acted collaterally and in excess of the powers conferred, by that section and, therefore, its action could be challenged in a civil Court. This is not a case where the action of the committee falls within the purview of the provisions of Section 193(2). Being outside those provisions, Section 225 does not operate as a bar to the jurisdiction of the civil Courts in this case. If the matter is examined carefully it comes to this that by the reason it has assigned for refusal of sanction under Section 193(2), Punjab Municipal Act, in the present case it has declared that nobody can build on the whole of this low-lying area for all times to come. In other words, it has deprived the owners of their proprietary rights in this land as they cannot make any effective use of it and therefore the owners are certainly entitled to claim redress against such an infringement of their rights by having recourse to a civil Court.

28. It may further be observed that so far as this particular case is concerned, sanction to build had been given to the plaintiff on 31st October 1935, in spite of the fact that this area was low-lying. Subsequent to that sanction the plaintiff had constructed a chardiwari and he also filled the foundations and had constructed the building up to its plinth. He had obviously raised up to the street level the site of the house -on which he proposed to build, and to his case the objection regarding the rest of the low-lying area could not be made applicable, particularly when the committee had in the meantime sanctioned at least 200 houses to be built on this low-lying area. The action of the committee in these circumstances can only be described as an abuse of its

power as a statutory body cannot act discriminately between persons subject to its jurisdiction, and if it gives discriminative treatment to certain persons, then it must be held that the exercise of its power is wanton, arbitrary and oppressive, and is subject to the control of the civil Courts. In my view this case falls within the rule laid down by the Bench in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(supra)* and was rightly decided by the two Courts below. The only other matter that was raised by the learned Counsel for the appellant was that the Court had no power to issue an injunction to the committee under the provisions of Section 55, Specific Belief Act. This matter has been considered by the Bench in *Administrator Lahore Municipality v. Munir-ud-Din A.I.R. 1941 Lah. 200(supra)* and has also been considered by a Full Bench in *Municipal Committee Montgomery v. Sant Singh A.I.R. 1940 Lah. 377(supra)*. For the reasons given in both these cases, I am of the opinion that an injunction could be issued against the committee under the provisions of Section 55, Specific Belief Act. The law on the subject has been summed up by Kerr on Injunctions (Edn. 6, p. 572) in the following terms:

Public bodies, incorporated by statutes for a public purpose, or the promotion of a public benefit, may not exceed the jurisdiction which has been entrusted to them by the legislature. If, under pretence of an authority which the law does give them to a certain extent, they exceed their authority, and assume to themselves a power which the law does not give them, the Court no longer considers them as acting under the authority of their commission, but treats them as persons acting without legal authority.

and in those circumstances like all other individuals they become amenable to the jurisdiction of civil Courts by injunction. For the reasons given above I hold that the two Courts below rightly granted the relief of injunction, to the plaintiff as claimed by him. In the result this appeal must fail and I would act cordingly dismiss it with costs throughout.

Bhandari J.

29. I am entirely of the same opinion and have little to add to the very clear and lucid judgment of my learned brother. The civil Courts have no right to question the propriety of an order which is strictly limited by the terms of the statute granting power to make it, but if, as in the present case, the order does not conform to the terms of the statute or is arbitrary or oppressive, or involves an unjustifiable interference with the private rights of the citizen, it is obviously the duty of the Courts to interfere. I would dismiss this appeal with costs here and below.

Achhru Ram J.

30. I agree.