13(1) of the Constitution. The only difference between that case and the present case is that there it was a business given to one man and here it is a business given to four persons who are the highest bidders at a public auction for the four shops for the sale of fruits and vegetables in Sabzi Mandi at Malerkotla. In substance there is really no difference between the two cases and it has been shown that monopoly is not confined to one person and may extend to more persons than one. So the restriction placed by the appellant Municipality in the impugned bye-laws confining the business of the sale, wholesale or by auction, of fruits and vegetables to just four shops in Sabzi Mandi of Malerkotla is, to use their Lordships' expression, more than a reasonable restriction on the right of the respondents in this case.

The respondent was denied a licence for the sale of fruits and vegetables whether wholesale or retail or by auction within the municipal limits of Malerkotla on the sole ground that he was not one of the four persons, who had successfully bid for one of the four shops for that purpose in Sabzi Mandi of Malerkotla. This, the learned Judge rightly considered, was not a valid and a legal ground in view of the *ultra vires* nature of the impugned bye-laws and the restriction imposed by the same on the right of the respondent to carry on that particular business, which restriction has been found to be far from reasonable.

Falshaw, C.J.

In this view, the appeal of the appellant Municipality fails and is dismissed with costs.

D. FALSHAW, C.J.—I agree.

B.R.T.

APPELLATE CIVIL

Before S. K. Kapur, J.

DELHI IMPROVEMENT TRUST,—*Appellant.*

versus

CHANDRA BHAN AND OTHERS.—*Respondents*

R.S.A. 9-D of 1958.

1965

August, 24th.

United Provinces Town Improvement Act (VIII of 1919) as extended to Delhi—Scheme of the Act and types of schemes that can be sanctioned—S. 49—Applicability of S. 193 of the Punjab Municipal Act (III of 1911)—Effect of.

Held, that the scheme of the United Provinces Town Improvement Act, 1919, as extended to Delhi, is as under; Section 32 authorises the Trust to frame a scheme whenever the Trust is of opinion that it is expedient and for the public advantage to control and provide for the future expansion or development of a municipality or Notified Area in any area to which the said Act extends. By sub-section (1-A) of section 32 it is provided that such scheme shall ordinarily be framed in respect of an area wholly without the limits of the municipality or Notified Area, but may, in special circumstances and with the previous sanction of the Chief Commissioner, be framed in respect of an area which lies wholly within, or partly within and partly without, the said limits. Section 41 confers authority on the Chief Commissioner to sanction a scheme either with or without modification, or to refuse to sanction or to return the scheme for reconsideration. Section 24 sets out the various types of schemes which may be framed under the Act. Sub-section (5) of section 32 provides that if the Trust refuses to grant permission to any person to erect, re-erect, add to or alter any building or wall on his land in the area and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal. By virtue of section 56 power is given to the Trust, with the previous sanction of the Chief Commissioner, to acquire land under the provisions of the Land Acquisition Act, 1894, to carry out any of the purposes of the Act. Sections 33 to 44 lay down the procedure to be followed in framing improvement schemes. The perusal of section 24 indicates that there may be schemes where no acquisition is provided for or a scheme in consequence whereof certain lands have to be acquired.

Held, that section 49(1) of the U.P. Town Improvement Act in terms makes section 193 of the Punjab Municipal Act, 1911, applicable to areas in respect of which an improvement scheme is in force. The effect is that the building plans of the persons, on whose notices no order had been passed within 60 days, must be deemed to have been sanctioned. In such a case the deeming provision of section 193(4) of the Punjab Municipal Act has to be taken to its logical conclusion and when so taken, it must exclude the applicability of section 32(5) of the U.P. Town Improvement Act. In that event it has to be held that their building plan was sanctioned and, therefore, their land could not be acquired in pursuance of section 32(5) of the said Act.

Regular Second appeal from the decree of the court of Shri Pritam Singh, Additional Senior Sub-Judge, (with enhanced appellate powers), Delhi, dated the 6th day of May, 1957, affirming that of Shri Birindra Singh Yadav, Sub-Judge, 1st Class, Delhi, dated the 31st January, 1955 and granting the plaintiff-respondents a decree for declaration against the defendant-Appellant.

BISHAMBER DAYAL, Standing Counsel for the Appellant.

K. C. MITTAL, ADVOCATE, for the Respondents.

JUDGMENT

Kapur, J.

KAPUR, J.—This second appeal is directed against the judgment of Additional Senior Subordinate Judge, Delhi, with enhanced appellate powers, dated May 6, 1957. The facts of the case may briefly be set out. The United Provinces Town Improvement Act, 1919 (Act, VIII of 1919) was extended to Delhi with certain modifications. On March 22, 1939, a scheme called "Serai Rohilla Town Expansion Scheme" was framed by the Trust in exercise of the powers conferred by section 32(1) of the Act. The said scheme was notified in accordance with the provisions of section 42 of the said Act. The said notification (Exhibit D. 6) is in the following terms:—

"NOTIFICATION

Dated Delhi, the 22nd March, 1939

No. F. 1(48)/39-*LSG/LB.*—In accordance with the provisions of section 42 of the United Provinces Town Improvement Act, 1919, (United Provinces Act VIII of 1919), it is hereby announced for general information that the Chief Commissioner has sanctioned the Serai Rohilla Improvement Scheme prepared by the Delhi Improvement Trust. The scheme is a town expansion scheme and does not involve the immediate acquisition of land by the Trust.

(Sd.) . . .,

E. M. JENKINS,

Chief Commissioner, Delhi.

No. F. 1(48)/39-LSG/LB.

Copy forwarded to the Chairman, Delhi Improvement Trust, for information, with reference to his letter No. F. II/6. dated 9th March 1939.

2. This sanction is given subject to the following conditions:—

(1) No acquisition of land will be sanctioned by the Trust without the Chief Commissioner's approval.

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(2) A survey of the scheme area should be made with the object of ascertaining (if possible) whether plinth levels can be controlled for new building construction permitted by the Trust.

(3) The arrangements for water-supply and drainage (including sewerage) should be examined at this stage, so that the Trust may have a clear idea of the extensions required and the most economical method of making them.

(Sd.) . . .,
E. M. JENKINS,
Chief Commissioner, Delhi."

The Scheme was merely a controlling scheme and as expressly provided in the said notification did not involve the immediate acquisition of any land by the Trust. The respondents were the owners of certain plots of land within the area covered by the said scheme. A notification (Exhibit I. 6/1), dated 11th March, 1941, was issued, which is as under:—

"NOTIFICATION

Dated Delhi, the 11th March, 1941

No. F. 1(37)/41-*LSG.*—With reference to the Chief Commissioner's notification No. F. 1(48)/39-LSG/LB, dated the 22nd March, 1939, and to section 42 of the United Provinces Town Improvement Act 1919, as applied to the Province of Delhi, it is hereby notified that the Chief Commissioner has modified the sanction accorded by him to the Serai Rohilla Improvement Scheme so as to include the acquisition of the land referred to in the notice published by the Delhi Improvement Trust in respect of the scheme under section 36 of the Act.

Under section 7 of the Land Acquisition Act 1894, the Chief Commissioner is pleased to direct the Lands Officer, Delhi Improvement Trust, being an officer specially appointed to perform the functions of a Collector under that Act, to take order for the acquisition of 11,692 square yards of land, as detailed in the schedule to this notification, out of that proposed for acquisition under the scheme.

SCHEDULE

(*Vide* sheets attached)

(Sd.) . . .,
A. V. ASKWITH,
Chief Commissioner, Delhi.

No. F. 1(37)/41-LSG.—A copy is forwarded for information and necessary action to the Chairman, Delhi Improvement Trust, with reference to his letter No. 46(6)41, dated the 11th February, 1941.

(Sd.) . . .,
A. V. ASKWITH,
Chief Commissioner, Delhi."

The plaintiffs *inter alia* challenged the aforesaid notification, dated 11th March, 1941, principally on the ground that the said notification constituted an alteration in the scheme involving acquisition and, therefore, the provisions of section 43(b) of the Act, ought to have been complied with. It was further contended that by virtue of section 49, section 193 of the Punjab Municipal Act, became applicable and the authorities not having passed any orders on their notices of intention to erect buildings on the said plots within the prescribed period of 60 days the sanction to erect buildings should be deemed to have been granted. It is not in dispute that 23 plaintiffs gave notices of their intention to erect buildings on their respective plots. The following chart would indicate the name of the applicant, the date of notice, the date of the refusal and the document on the record in proof of the same.

(After setting out the chart the judgment proceeds).

The learned Additional Senior Subordinate Judge held in favour of the plaintiffs mainly on two grounds:—

(1) The notification, dated 11th March, 1941, was a modification of the scheme and, therefore, it was necessary to comply with clause (b) of section 43 of the said Act; and

(2) the sanction to erect buildings must be deemed to have been given to the plaintiffs by virtue of section 49 of the said Act, read with section 193(4) of the Punjab Municipal Act.

It may be pointed out that the plaintiffs have already completed the buildings on their respective plots. Mr. Bishambar Dayal, the learned counsel for the appellant, submits that the Town Extension Scheme (Exhibit

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D. 6) was merely a controlling scheme, and did not involve any acquisition of land. He points out that the Trust having declined the sanction to construct on the said plots, it was obliged under sub-section (5) of section 32 to proceed to acquire such land and the notification, dated 11th March, 1941, was nothing, but the sanction of the Chief Commissioner for acquisition of the said land in pursuance of section 56 of the said Act, read with section 32(5). He submits that it was only carrying out the obligations on the part of the Trust under section 32(5) and there was no alteration of the scheme. He further submits that, in any case, section 43(2) was not attracted because that applies only when a scheme has been altered by the Trust while admittedly the notification, dated 11th March, 1941, was issued by the Chief Commissioner. According to the learned counsel, even if the said notification was outside the competence of the Chief Commissioner it would not attract section 43(b). The learned counsel for the respondents, on the other hand, submits that language of the notification, dated 11th March, 1941, is itself indicative of the fact that the Chief Commissioner was modifying the scheme so as to include the acquisition of land which was not included in the original scheme, dated 22nd March, 1939. I am in agreement with the submissions of the learned counsel for the appellant so far as this contention is concerned. The scheme of the said Act is as under section 32 authorises the Trust to frame a scheme whenever the Trust is of opinion that it is expedient and for the public advantage to control and provide for the future expansion or development of a municipality or Notified Area in any area to which the said Act extends. By sub-section (1-A) of section 32, it is provided that such scheme shall ordinarily be framed in respect of an area wholly without the limits of the municipality or Notified Area, but may, in special circumstances and with the previous sanction of the Chief Commissioner, be framed in respect of an area which lies wholly within or partly within and partly without, the said limits. Section 41 confers authority on the Chief Commissioner to sanction a scheme either with or without modification, or to refuse to sanction or to return the scheme for reconsideration. Section 24 sets out the various types of schemes which may be framed under the Act. Sub-section (5) of section 32 is in the following terms:—

> "(5) If the Trust refuses to grant permission to any person to erect, re-erect, add to or alter any

building or wall on his land in the area aforesaid, and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal."

By virtue of section 56 power is given to the Trust, with the previous sanction of the Chief Commissioner, to acquire land under the provisions of the Land Acquisition Act, 1894, to carry out any of the purposes of the Act. Sections 33 to 44 lay down the procedure to be followed in framing improvement schemes. The perusal of section 24 would indicate that there may be schemes like the present one where no acquisition is provided for or a scheme in consequence whereof certain lands have to be acquired. As I have said earlier, the present scheme, dated 22nd March, 1939, did not envisage any acquisition of land, but was merely a controlling scheme. All that was done by the notification, dated 11th March, 1941 was to provide for carrying out of the obligations cast on the Trust under section 32(5) of the said Act and there was no alteration in the scheme involving acquisition as postulated by section 43(b) of the said Act. The language of the said notification also lends support to the above. In the said notification all that the Chief Commissioner said was that he had "modified the sanction accorded by him to the Serai Rohilla Improvement Scheme as to include the acquisition of the land....." It is, therefore, clear that the Chief Commissioner merely modified the sanction and not the scheme and this modification in the sanction had to be made for carrying out the obligations under section 32(5). Section 43(b) of the said Act was not applicable for another reason as well. The opening part of the section authorises the Trust to alter the scheme before it has been carried into execution. It is this alteration by the Trust which attracts section 43(b). In this case admittedly no alteration had been made by the Trust. That being so, section 43(b) was clearly out of the picture.

The learned counsel for the respondents called my attention to certain parts of the plaint including the prayer and submitted that one of the grounds of attack against the notification, dated 11th March, 1941, was that the Chief Commissioner was not competent to alter the scheme. As I have said above, there was no alteration in the scheme by

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the notification, dated 11th March, 1941. That being so, it must be held that the notification, dated 11th March, 1941, was proper and valid. That takes me to the other contention of the learned counsel for the respondents. He has drawn my attention to section 49 which makes certain provisions of the Punjab Municipal Act, applicable to all areas in respect of which an improvement scheme is in force. One of such sections is section 193. Sub-section (4) of section 193 is in the following terms:—

> "(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), but subject to the provisions of sub-section (2) of section 190 and sub-section (1-a) of this section, if the committee neglects or omits, within sixty days of the receipt from any person of a valid notice of such person's intention to erect or re-erect a building or within one hundred and twenty days, if the notice relates to a building on the same or part of the same site, on which sanction for the erection of a building has been refused within the previous twelve months; to pass orders sanctioning or refusing to sanction such erection, or re-erection such erection or re-erection, shall unless the land on which it is proposed to erect or re-erect such buildings belongs to or vests in the committee, be deemed to have been sanctioned, except in so far as it may contravene any by-law, or any building or town planning scheme sanctioned under section 192:
>
> Provided that should a resolution conveying or refusing such sanction be suspended under section 232, the period prescribed by clause (4) shall commence to run afresh from the date of communication of final orders by the Commissioner or the (Provincial Government) under section 235.
>
> Provided further that if not less than one-fifth of the members present vote against a resolution conveying sanction, the sanction shall be deemed not to have been conveyed until after the lapse of fourteen days from the passing of the resolution".

The learned counsel for the respondents submits that the Trust not having passed orders sanctioning or refusing

to sanction the erection of buildings within the prescribed period of 60 days the permission to build should be deemed to have been granted and consequently section 32(5) would not come into play. The learned counsel also referred to rule 55(4) framed under section 49(2) of the said Act which is more or less to the same effect as section 193(4) of the Punjab Municipal Act. So far as the said rule is concerned, it was enacted on July 26, 1940, while the notices of the respondents of their intention to erect buildings had been disposed of earlier except in three cases. This rule, therefore, has no application to those cases. The rule will not apply even in those three cases because the period of sixty days expired before the enforcement of the rule. The question still remains regarding the applicability and effect of section 193(4) of the Punjab Municipal Act. Mr. Bishamber Dayal, the learned counsel for the appellant, submits that the perusal of section 193, clearly shows that the intention of the legislature was to exclude the rule, regarding disposal of notice of intention to erect the buildings within a period of 60 days, in areas where a scheme was in force. He submits that intention is implicit in section 193 and under section 49 of the said Act, section 193 has to be applied only so far as it is consistent with the tenor of the said Act. I am unable to agree with Mr. Bishambar Dayal. Section 49(1) of the said Act, in terms makes section 193 of the Punjab Municipal Act, applicable to areas in respect of which an improvement scheme is in force. That being so, the intention appears to be contrary to what has been suggested by Mr. Bishambar Dayal. Moreover, section 193(4) of the Punjab Municipal Act is applicable in terms even in areas where building schemes under section 192 of the Punjab Municipal Act, are in force. The only exception made is that such deeming provision would not be attracted and sanction not deemed to have been given where the sanction involved contravention of any bye-law or any building or town planning scheme sanctioned under section 192 of the Punjab Municipal Act. That being so, the deeming provision will have its full effect if the sanction did not involve any contravention of any by-law or any scheme in force in any area. That, in my view, follows logically from reading section 49 of the said Act, and section 193 of the Punjab Municipal Act. Mr. Bishambar Dayal , further referred to section 32 of the said Act and pointed out that no such time-limit, as has been laid down in section 193 of the Punjab Municipal Act, has been provided in the said section and, therefore, the

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prescription of time-limit in section 193 would not apply being inconsistent with the tenor of the said Act. In my opinion, Mr. Bishambar Dayal, is not right in his submission. No doubt, section 32 prescribes no time-limit, but section 49 of the same Act, makes section 193 of the Punjab Municipal Act, in terms applicable. Both these sections must be read together and when so read it clearly follows that the time-limit has been made applicable. That being the position, in cases of those plaintiff-respondents on whose notices no order had been passed within 60 days, their building plans must be deemed to have been sanctioned. If that be so, the deeming provision has to be taken to its logical conclusion and when so taken, it must exclude the applicability of section 32(5) of the said Act. In that event it has to be held that their building plan was sanctioned and, therefore, their land could not be acquired in pursuance of section 32(5) of the said Act. From the chart reproduced above, it appears that no order was passed in respect of the plaintiff-respondents at items Nos. 1 to 5, 7 to 15 and 17 to 23 within a period of 60 days. In the result, these plaintiffs-respondents must succeed and it must be held that their lands could not be acquired and the notification, dated 11th March, 1941, was not applicable to them. The appeal with respect to the said respondents must, therefore fail. So far as the other plaintiff-respondents are concerned, either the order refusing sanction was passed within 60 days or they had failed to prove that it was not so passed within that period. The appeal with respect to those respondents, therefore, must be allowed. I may also mention that so far as Lakhi Ram, plaintiff, No. 5, is concerned and whose name appears in the said chart at items Nos. 5 and 6, he made applications with respect to two different plots. So far as the plot with respect to which his name is mentioned at item No. 5, is concerned, the sanction order was not passed within 60 days and, therefore, with respect to that the appeal will fail, but with respect to the other plot mentioned at item No. 6, in the said chart, he made application on 19th March, 1940 and an order rejecting the application was passed within 60 days on 1st May, 1940, and, therefore, the appeal with respect to that plot of Lakhi Ram, will be allowed. In the circumstances, there will be no order as to costs.

B.R.T.