Laws Order, 1951, only applied to all sales of goods delivered and consumed in the State of first destination. If the goods were delivered for consumption, it is immaterial whether they were in fact consumed in the State where they were delivered. The power of the State to levy sales tax relying upon the territorial nexus between the taxing power of the State and the sale, is impaired for reasons already set out to the extent to which it is restricted by the incorporation of Art. 286(1)(a)(i) and the Explanation thereto, in that Act. Therefore, sales effected on or after January 26, 1950, where goods are as a direct result of the sale delivered in another State for consumption in that other State, are not liable to be taxed.

The directions issued by the High Court will therefore be modified as follows:

The order of the Superintendent of Taxes is set aside. He is directed to grant refund of tax paid in the light of this judgment. The appellant will be entitled to exemption from payment of tax if the goods are, as a direct result of the sale, delivered in another State for the purpose of consumption in that State.

*Appeal dismissed subject to modification.*

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## M. PENTIAH AND OTHERS

*v.*

## MUDDALA VEERAMALLAPPA AND OTHERS.

1960

November 7.

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. SUBBA RAO, K. N. WANCHOO and J. R. MUDHOLKAR, JJ.)

*Municipality—Committee constituted under old Act continued by repealing Act—Term of office—Power—If can effect sale of municipal land — Interpretation of statute — Power of Court— Hyderabad District Municipalities Act, 1956 (Hyd. XVIII of 1956), ss. 16, 17, 18, 20, 32, 34, 35, 76, 77 and 320.*

The respondents were the elected members of the Vicarabad

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Municipal Committee, constituted in 1953, under the Hyderabad Municipal and Town Committees Act, 1951. That Act was repealed by s. 320 of the Hyderabad District Municipalities Act, 1956, which came into force in 1956. That section provided that the committee constituted under the repealed enactment was to be deemed to have been constituted under the Act and the members thereof should hold office till the first meeting of the committee was called under s. 35 of the Act. No election was held under the new Act; the old committee, which continued to function, after duly passing a resolution and obtaining the necessary sanction from the Government, sold certain municipal lands to third parties. The appellants, who were rate-payers of the said Municipality, moved the High Court for the issue of a writ of *quo warranto* challenging the said sales under Art. 226 of the Constitution. The High Court dismissed the petition. The contention of the appellants in this Court was that the members of the said committee were *functus officio* on expiry of three years from the commencement of the Act for s. 34 of the Act prescribed a term of three years and s. 320 of the Act did not provide any definite term for them. But if s. 34 was held to be inapplicable, neither could the first general election under the Act, for which s. 16 of the Act was the only provision, be held, nor could the first meeting of the committee called under s. 35 of the Act and the result would be that the old committee would continue indefinitely.

*Held*, that the contention must be negatived.

The word 'committee' in s. 320 of the Hyderabad District Municipalities Act, 1956, did not mean a committee elected under the Act and the term of three years prescribed by s. 34 of the Act could not, therefore, apply to it.

Construed in the light of well-recognised principles of interpretation of statutes and the scheme as envisaged by ss. 16, 17, 18, 20, 32, 34, and 320 of the Act, s. 320 of the Act could be no more than a transitory provision and it would be unreasonable to suggest that the Legislature which repealed the earlier Act with the express intention of constituting committees on broad-based democratic principles, intended to perpetuate old committees constituted under the repealed Act.

Section 16(1) of the Act, properly construed, was clearly inapplicable to the first general election under the Act and could apply only to subsequent elections. So far as the first general election under the Act was concerned, ss. 17 and 20 of the Act provided a self-contained and integrated machinery therefor independent of s. 16(1) of the Act.

*Canada Sugar Refining Co.* v. *R.*, [1898] A.C. 735, referred to.

The Legislature in enacting the new Act assumed and expected that the Government would, within a reasonable time, issue notifications for holding the first general election under s. 17 of the Act and its failure to do so and thus implement the

Act, and not any inherent inconsistency in the Act itself, prolonged the life of the old committee.

Since s. 77 of the Act expressly authorised the Municipal Committee to sell municipal property subject to the conditions specified therein, no prohibition could be implied from the provisions of s 76 of the Act and the impugned sales, effected in conformity with the conditions precedent laid down by s. 77 of the Act, could not be said to be *ultra vires* the powers of the committee.

*Elizabeth Dowager Baroness Wenlock* v. *The River Dee Company*, (1885) 10 A.C. 354 and *Attorney-General* v. *Fulhan Corporation*, (1921) 1 Ch. D. 440, considered.

*Per* Sarkar, J.—It is well settled that where the language of a statute leads to manifest contradiction of the apparent purpose of the enactment, as the language of s. 16(1) does in the present case, the Court has the power so to read it as to carry out the obvious intention of the Legislature.

The intention of the Legislature in enacting the new Act clearly was that elections should be held and committees constituted under it.

*Seaford Court Estates Ltd.* v. *Asher*, [1949] 2 All E.R. 155, referred to.

Section 16(1) is the only section of the Act which authorises the holding of a general election but, since the requirements as to time in s. 16(1) of the Act could not apply to the first general election, that section must be read to carry out the obvious intention of the Legislature as if there was no such requirement in the case of the first general election under the Act. Although this would not indicate when that election was to be held, the obvious implication would be that it must be held within a reasonable time of the commencement of the Act. Section 20 of the Act does not authorise the holding of a general election.

*Salmon* v. *Duncombe*, (1886) 11 App. Cas. 627, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 387 of 1960.

Appeal by special leave from the judgment and order dated February 12, 1960, of the Andhra Pradesh High Court, in Writ Petition No. 5 of 1960.

*P. A. Choudhuri* and *K. R. Choudhuri*, for the appellants.

*P. Ram Reddy*, for respondents Nos. 1, 2 and 6 to 11.

1960. November 7. The Judgment of Gajendragadkar, Subba Rao, Wanchoo and Mudholkar, JJ.,

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was delivered by Subba Rao, J. Sarkar, J., delivered a separate judgment.

SUBBA RAO J.—This appeal by special leave is directed against the judgment of the High Court of Judicature at Hyderabad dismissing the petition filed by the appellants under Art. 226 of the Constitution to issue a writ of *quo warranto* against respondents 1 to 10 directing them to exhibit an information as to the authority under which they are functioning as members of the Vicarabad Municipal Committee and to restrain them from selling certain plots of land belonging to the Municipality to third parties. Vicarabad was originally situate in the Part B State of Hyderabad and is now in the State of Andhra Pradesh. The Municipal Committee of Vicarabad was constituted under the Hyderabad Municipal and Town Committees Act (XXVII of 1951). In the year 1953 respondents 1 to 10 were elected, and five others, who are not parties before us, were nominated, to that Committee. On November 27, 1953, the Rajpramukh of the State of Hyderabad published a notification under the relevant Acts in the Hyderabad Government Gazette Extraordinary notifying the above persons as members of the said Committee. Presumably with a view to democratize the local institutions in that part of the country and to bring them on a par with those prevailing in the neighbouring States, the Hyderabad District Municipalities Act, 1956 (XVIII of 1956), (hereinafter referred to as the Act), was passed by the Hyderabad Legislature and it received the assent of the President on August 9, 1956. Under s. 320 of the Act the Hyderabad Municipal and Town Committees Act, 1951 (XXVII of 1951) and other connected Acts were repealed. As a transitory measure, under the same section any Committee constituted under the enactment so repealed was deemed to have been constituted under the Act and the members of the said Committee were to continue to hold office till the first meeting of the Committee was called under s. 35 of the Act. Under that provision respondents 1 to 10 and the five nominated members continued to function as members

of the Municipal Committee. In or about the year 1958 the said Committee acquired land measuring acres 15-7 guntas described as "Varad Raja Omar Bagh" for Rs. 18,000 for the purpose of establishing a grain market (gunj). For one reason or other, the Municipal Committee was not in a position to construct the grain market and run it departmentally. The Committee, therefore, after taking the permission of the Government, resolved by a requisite majority to sell the said land to third parties with a condition that the vendee or vendees should construct a building or buildings for running a grain market. Thereafter the Committee sold the land in different plots to third parties; but the sale deeds were not executed in view of the interim order made in the writ petition by the High Court and subsequently in the appeal by this Court.

In the writ petition the appellants contended, *inter alia*, that the respondents ceased to be members of the Municipal Committee on the expiry of three years from the date the new Act came into force and that, therefore, they had no right to sell the land, and that, in any view, the sale made by the Committee of the property acquired for the purpose of constructing a market was *ultra vires* the provisions of the Act. The respondents contested the petition on various grounds. The learned Judges of the High Court dismissed the petition with costs for the following reasons:

1. The old Committee will continue to function till a new Committee comes into existence.

2. "Section 76 contemplates that property vested in it under s. 72(f), 73 and 74 should be transferred only to Government. Here, the transfer is not in favour of the Government. That apart we are told that in this case sanction of the Government was obtained at every stage. It cannot be predicated that the purpose for which the properties are being disposed of is not for a public purpose. It is not disputed that the properties are being sold only to persons who are required to build grain market".

3. The act now opposed is not in any way in conflict with the provisions of ss. 244, 245 and 247.

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4. "It looks to us that the petitioners lack in *bona fides* and that this petition is not conceived in the interests of the public".

The present appeal, as aforesaid, was filed by special leave granted by this Court.

Mr. P. A. Chowdury, learned counsel for the appellants, convassed the correctness of the findings of the High Court. His first argument may be summarized thus: Under s. 320 of the Act any Committee constituted under the repealed enactment shall be deemed to have been constituted under the Act and the members of the said Committee shall continue to hold office till the first meeting of the Committee is called under s. 35 of the Act. Under s. 35 of the Act, the first meeting of the Committee shall not be held on a date prior to the date on which the term of the outgoing members expires under s. 34. Section 34 of the Act provides that the members shall hold office for a term of three years. Therefore, the term of the members of the Committee deemed to have been constituted under s. 320 is three years from the date on which the Act came into force. If the term fixed under s. 34 does not apply to the members of the said Committee, the result will be that the said members will continue to hold office indefinitely, for the first meeting of the Committee could not be legally convened under the Act as s. 16 which enables the Collector to do so imposes a duty on him to hold a general election within three months before the expiry of the term of office of the members of the Committee as specified in s. 34, and, as no definite term has been prescribed for the members of the Committee under s. 320, the election machinery fails, with the result that the members of the "deemed" Committee would continue to be members of the said Committee indefinitely. On this interpretation learned counsel contends that the section would be void for the following reasons: (1) s. 320(1)(a) of the Act would be *ultra vires* the powers of the State Legislature under Art. 246 of the Constitution, read with entry 5, List II, VII Schedule; (2) the said section deprives the appellants of the right to equality and equal protection of the laws guaranteed under Art. 14

of the Constitution; (3) s. 320 would be void also as inconsistent with the entire scheme of the provisions of the Act.

Let us first test the validity of the construction of s. 320 of the Act suggested by the learned counsel. The material part of s. 320 reads:

"(1) The Hyderabad Municipal and Town Committees Act, 1951, (XXVII of 1951)..... (is) hereby repealed; provided that:—

(a) any Committee constituted under the enactment so repealed (hereinafter referred to in this section as the said Committee) shall be deemed to have been constituted under this Act, and Members of the said Committee shall continue to hold office till the first meeting of the Committee is called under section 35;".

The terms of the section are clear and do not lend any scope for argument. The section makes a distinction between the "said" Committee and the Committee elected under the Act and says, "Members of the said Committee shall continue to hold office till the first meeting of the Committee is called under s. 35". Though the word "Committee" is defined in s. 2(5) to mean a Municipal or Town Committee established or deemed to be established under the Act, that definition must give way if there is anything repugnant in the subject or context. As the section makes a clear distinction between the "said" Committee and the Committee elected under the Act, in the context, the Committee in s. 320 cannot mean the Committee elected under the Act. The term fixed for the members of the Committee constituted under the Act cannot apply to the members of the Committee deemed to have been constituted under the Act. Section 32 which provides for the culminating stage of the process of election under the Act says that the names of all members finally elected to any Committee shall be forthwith published in the official Gazette. Section 34 prescribes the term of office of the members so elected. Under it, "except as is otherwise provided in this Act, members shall hold office for a term of three years." Section 320(1)(a) provides a different term for the

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members of the Committee deemed to have been constituted under the Act. Thereunder, the term is fixed not by any number of years but by the happening of an event. The Committee constituted under s. 320 clearly falls under the exception. But it is suggested that the exception refers only to s. 28 whereunder a member of a Committee ceases to be one by a supervening disqualification. Firstly, this section does not fix a term but only imposes a disqualification on the basis of a term fixed under s. 34; secondly, assuming that the said section also fixes a term, the exception may as well cover both the deviations from the normal rule. That apart, sub-s. (2) of s. 34 dispels any doubt that may arise on the construction of sub-section (1) of the section. Under sub-s. (2), the term of office of such members shall be deemed to commence on the date of the first meeting called by the Collector under s. 35. Section 35 directs the Collector to call a meeting after giving at least five clear days notice within thirty days from the date of the publication of the names of members under s. 32. This provision clearly indicates that the members of the Committee mentioned in s. 34 are only the members elected under the Act and not members of the Committee deemed to have been elected under the Act, for, in the case of the latter Committee, no publication under s. 32 is provided for and therefore the provisions of s. 35 cannot apply to them. It is, therefore, manifest that the term prescribed in s. 34 cannot apply to a member of the "deemed" Committee.

Let us now see whether this interpretation would necessarily lead us to hold that the members of the "deemed" Committee under s. 320(1)(a) would have an indefinite duration. This result, it is suggested, would flow from a correct interpretation of the relevant provisions of s. 16 of the Act. The judgment of the High Court does not disclose that any argument was addressed before that Court on the basis of s. 16 of the Act. But we allowed the learned counsel to raise the point as in effect it is only a link in the chain of his argument to persuade us to hold in his favour on the construction of s. 320.

Before we consider this argument in some detail, it will be convenient at this stage to notice some of the well established rules of construction which would help us to steer clear of the complications created by the Act. Maxwell "On the Interpretation of Statutes", 10th Edn., says at p. 7 thus:

"..... if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

It is said in Craies on Statute Law, 5th Edn., at p. 82—

"Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided."

Lord Davey in *Canada Sugar Refining Co.* v. *R.* (1) provides another useful guide of correct perspective to such a problem in the following words:

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

To appreciate the problem presented and to give an adequate answer to the same, it would be necessary and convenient to notice the scheme of the Act as reflected in the relevant sections, namely, ss. 16, 17, 18, 20, 32, 34 and 320. The said scheme of the Act may be stated thus: Under the Act, there are general elections and elections to casual vacancies. The general elections may be in regard to the first election after the Act came into force or to the subsequent elections under the Act. Section 5 imposes a duty on the Government to constitute a Municipal Committee for each town and notify the date when it shall come into existence. Section 17 enjoins on the Government to issue a notification calling upon all the constituencies to elect members in accordance

(1) [1898] A.C. 735.

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with the provisions of the Act on or before such date or dates as may be specified in the said notification. Section 16 imposes a duty upon the Collector to hold a general election in the manner prescribed within three months before the expiry of the term of office of the members of the Committee as specified in s. 34 of the Act. Sub-section (2) of s. 16 provides for a bye-election for filling up of a casual vacancy. Section 18 enables the Collector with the approval of the Government to designate or nominate a Returning Officer. Section 19 imposes a duty upon such an officer to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by the Act and the rules made there under. Section 20 authorizes the Collector to issue a notification in the Official Gazette appointing the dates for making nominations, for the scrutiny of nominations, for the withdrawal of candidatures and for the holding of the poll. After the elections are held in the manner prescribed, the names of all the members finally elected to any Committee shall be published in the Official Gazette. Except as otherwise provided in the Act, s. 34 prescribes the term of three years for a member so elected. As a transitory provision till such an election is held, s. 320 says that the members of the previous Committee constituted under the earlier Act shall be deemed to be constituted under the Act and the members thereof shall hold office till the first meeting of the Committee is called under s. 35 of the Act.

It is clear from the aforesaid provisions that the Government notifies the dates calling upon all the constituencies to elect the members before such date or dates prescribed; the Collector holds the election and fixes the dates for the various stages of the process of election; the Returning Officer appointed by the Collector does all acts and things necessary for effectually conducting the election.

On the general scheme of the Act we do not see any legal objection to the Collector holding the first elections under the Act. The legal obstacle for such a course is sought to be raised on the wording of s. 16(1). Section 16(1) reads :

"Every general election requisite for the purpose of this Act shall be held by the Collector in the manner prescribed within three months before the expiry of the term of office of the members of the Committee as specified in section 34."

The argument is that the Collector's power to hold a general election is confined to s. 16(1) and, as in the case of the members of the Committee deemed to have been constituted under the Act the second limb of the section cannot apply and as the Collector's power is limited by the second limb of the section, the Collector has no power to hold the first general election under the Act. If this interpretation be accepted, the Act would become a dead-letter and the obvious intention of the Legislature would be defeated. Such a construction cannot be accepted except in cases of absolute intractability of the language used.

While the Legislature repealed the earlier Act with an express intention to constitute new Committees on broad based democratic principles, by this interpretation the Committee under the old Act perpetuates itself indefinitely. In our view, s. 16(1) does not have any such effect. Section 16(1) may be read along with the aforesaid other relevant provisions of the Act. If so read, it would be clear that it could not apply to the first election after the Act came into force, but should be confined to subsequent elections. So far as the first general election is concerned, there is a self-contained and integrated machinery for holding the election without in any way calling in aid the provisions of s. 16(1). Section 17 applies to all elections, that is, general as well as bye-elections. It applies to the first general election as well as subsequent general elections. The proviso to that section says that for the purpose of holding elections under sub-s. (1) of s. 16 no such notification shall be issued at any time earlier than four months before the expiry of the term of office of the members of the Committee as specified in s. 34. The proviso can be given full meaning, for it provides only for a case covered by s. 16(1) and, as the first general election is outside the scope of s. 16(1),

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it also falls outside the scope of the proviso to s. 17. Under s. 17, therefore, the Government, in respect of the first general election, calls upon all the constituencies to elect members before the date or dates fixed by it. Under s. 20, the Collector fixes the dates for the various stages of the election. The Returning Officer does all the acts and things necessary for conducting the election and when the election process is completed, the names of the members elected are published. All these can be done without reference to s. 16(1), for the Collector is also empowered under s. 20 to hold the elections. In this view, there cannot be any legal difficulty for conducting the first election, after the Act came into force. If so, the term of the members of the Committee deemed to have been elected would come to an end when the first meeting of the Committee was called under s. 35. The Legislature in enacting the law not only assumed but also expected that the Government would issue the requisite notification under s. 17 of the Act within a reasonable time from the date when the Act came into force. The scheme of the Act should be judged on that basis; if so judged, the sections disclose an integrated scheme giving s. 320 a transitory character.

It is conceded by learned counsel that if s. 320(1)(a) is constructed in the manner we do, the other points particularised above do not arise for consideration.

Before leaving this part of the case we must observe that the difficulty is created not by the provisions of the Act but by the fact of the Government not proceeding under s. 17 of the Act within a reasonable time from the date on which the Act came into force. This is a typical case of the legislative intention being obstructed or deflected by the inaction of the executive.

Mr. Ram Reddy, learned counsel for the respondents, states that there are many good reasons why the Government did not implement the Act. There may be many such reasons, but when the Legislature made an Act in 1956, with a view to democratize municipal administration in that part of the country so as to bring it on a par with that obtaining in other

States, it is no answer to say that the Government had good reasons for not implementing the Act. If the Government had any such reasons, that might be an occasion for moving the Legislature to repeal the Act or to amend it. If the affected parties had filed a writ of *mandamus* in time, this situation could have been avoided; but it was not done. We hope and trust that the Government would take immediate steps to hold elections to the Municipal Committee so that the body constituted as early as 1953, under a different Act could be replaced by an elected body under the Act.

Even so, learned counsel for the appellants contends that the Municipal Committee had no power to sell the land acquired by it for constructing a market. To appreciate this contention it would be convenient to notice the relevant provisions of the Act. Under s. 72(f) all land or other property transferred to the Committee by the Government or the District Board or acquired by gift, purchase, or otherwise for local purposes shall vest in and be under the control of the Committee. Section 73 enables the Government, in consultation with the Committee, to direct that any property, movable or immovable, which is vested in it, shall vest in such Committee. Section 74 empowers the Government on the request of the Committee to acquire any land for the purposes of the Act. Under s. 76, the Committee may, with the sanction of the Government, transfer to the Government any property vested in the Committee under ss. 72(f), 73 and 74, but not so as to affect any trust or public right subject to which the property is held. Learned counsel contends that, as the land was acquired by the Committee for the construction of a market, the Committee has power to transfer the same to the Government only subject to the conditions laid down in s. 76, and that it has no power to sell the land to third parties. This argument ignores the express intention of s. 77 of the Act. Section 77 says:

"Subject to such exceptions as the Government may by general or special order direct, no Committee shall transfer any immovable property except in pursuance of a resolution passed at a meeting by a

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majority of not less than two-third of the whole number of members and in accordance with rules made under this Act, and no Committee shall transfer any property which has been vested in it by the Government except with the sanction of the Government:

Provided that nothing in this section shall apply to leases of immovable property for a term not exceeding three years".

This section confers on the Committee an express power couched in a negative form. Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative. If the section is recast in an affirmative form, it reads to the effect that the Committee shall have power to transfer any immovable property, if the conditions laid down under the section are complied with. The conditions laid down are: (1) there shall be a resolution passed at a meeting by a majority of not less than two-third of the whole number of members of the Committee; (2) it shall be in accordance with the rules made under the Act; (3) in the case of a property vested in it by the Government, the transfer can be made only with the sanction of the Government; and (4) the sale is not exempted by the Government, by general or special order, from the operation of s. 77 of the Act. It is not disputed that the relevant conditions have been complied with in the present case. If so, the power of the Committee to alienate the property cannot be questioned.

Learned counsel contends that the provisions of s. 76 govern the situation and that s. 77 may apply only to a property vested in the Committee under provisions other than those of ss. 72(f), 73 and 74, and that further, if a wider interpretation was given to s. 77, while under s. 76 the transfer in favour of the Government would be subject to a trust or public right, under s. 77 it would be free from it if it was transferred to a private party. The first objection has no force, as there are no sections other than ss. 72, 73 and 74 whereunder the Government vests property in a Committee. The second objection also has no merits, for the trust or public right mentioned in s. 76

does not appear to relate to the purpose for which the property is purchased but to the trust or public right existing over the property so alienated by the Committee. Further the proviso to s. 77, which says, "nothing in this section shall apply to leases of immovable property for a term not exceeding three years", indicates that the main section applies also to the property vested in the Committee under the previous section, for it exempts from the operation of the operative part of s. 77 leases for a term not exceeding three years in respect of properties covered by the preceding section and other sections. This interpretation need not cause any apprehension that a Committee may squander away the municipal property, for s. 77 is hedged in by four conditions and the conditions afford sufficient guarantee against improper and improvident alienations.

In this context learned counsel for the appellants invoked the doctrine of law that an action of a statutory corporation may be *ultra vires* its powers without being illegal and also the principle that when a statute confers an express power, a power inconsistent with that expressly given cannot be implied. It is not necessary to consider all the decisions cited, as learned counsel for the respondents does not canvass the correctness of the said principles. It would, therefore, be sufficient to notice two of the decisions cited at the Bar. The decision in *Elizabeth Dowager Baroness Wenlock* v. *The River Dee Company* (1) is relied upon in support of the proposition that when a corporation is authorised to do an act subject to certain conditions, it must be deemed to have been prohibited to do the said act except in accordance with the provisions of that Act which confers the authority on it. Where by Act 14 & 15 Vict. a company was empowered to borrow at interest for the purposes of the concerned Acts, subject to certain conditions, it was held that the company was prohibited by the said Act from borrowing except in accordance with the provisions of that Act. Strong reliance is placed on the decision in *Attorney-General* v. *Fulham Corporation* (2).

(1) (1885) 10 A.C. 354. (2) (1921) 1 Ch.D. 440.

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There, in exercise of the powers conferred under the Baths and Wash-houses Acts, the Metropolitan Borough of Fulham propounded a scheme in substitution of an earlier one whereunder it installed a wash-house to which persons resorted for washing their clothes bringing their own wash materials and utilised the facilities offered by the municipality on payment of the prescribed charges. Sarjant, J., held that the object of the legislation was to provide for persons who became customers facilities for doing their own washing, but the scheme provided for washing by the municipality itself and that, therefore, it was *ultra vires* the statute. In coming to that conclusion the learned Judge, after considering an earlier decision on the subject, applied the following principle to the facts of the case before him :

"That recognises that in every case it is for a corporation of this kind to show that it has affirmatively an authority to do particular acts; but that in applying that principle, the rule is not to be applied too narrowly, and the corporation is entitled to do not only that which is expressly authorised but that which is reasonably incidental to or consequential upon that which is in terms authorized."

The principle so stated is unobjectionable.

The correctness of these principles also need not be canvassed, for the construction we have placed on the provisions of the Act does not run counter to any of these principles. We have held that s. 77 confers an express power on the Municipal Committee to sell property subject to the conditions mentioned therein. Therefore, the impugned sales are not *ultra vires* the powers of the Committee. In view of the said express power, no prohibition can be implied from the provisions of s. 76.

Learned counsel further contends that the statutory power can be exercised only for the purposes sanctioned by the statute, that the sales of the acquired land to private persons were not for one of such purposes, and that, therefore, they were void. The principle that a statutory body can only function within the four corners of the statute is unexceptionable; but the

Legislature can confer a power on a statutory corporation to sell its land is equally uncontestable. In this case we have held that the statute conferred such a power on the Municipal Committee, subject to stringgent limitations. Many situations can be visualized when such a sale would be necessary and would be to the benefit of the corporation. Of course the price fetched by such sales can only be utilised for the purposes sanctioned by the Act.

The last point raised is that the learned Judges of the High Court were not justified in holding on the materials placed before them that the appellants lacked *bona fides* and that the petition filed by them was not conceived in the interests of the public. We do not find any material on the record to sustain this finding. Indeed, but for the petitioner-appellants the extraordinary situation created by the inaction of the Government in the matter of implementing the Act, affecting thereby the municipal administration of all the districts in Telangana area, might not have been brought to light. We cannot describe the action of the appellants either *mala fide* or frivolous.

In the result, the appeal fails and is dismissed but, in the circumstances, without costs.



SARKAR, J.—The first question is whether the first ten respondents are still members of the Municipal Committee of Vicarabad. These persons had been elected to the Committee in the elections held in 1953 under the Hyderabad Municipal and Town Committees Act, 1951 (Hyderabad Act XXVII of 1951), hereafter called the repealed Act. That Act was repealed by the Hyderabad District Municipalities Act (Hyderabad Act XVIII of 1956), hereafter called the new Act, which came into force in August 1956. The appellants, who are rate-payers of the Municipality, contend that on a proper reading of the new Act, it must be held that these ten respondents have ceased to be members of the Committee, and they seek a writ of *quo warranto* against the respondents.

Section 320 of the new Act provides that any Committee constituted under the repealed Act shall be deemed to have been constituted under the new Act

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and its members shall continue to hold office till the first meeting of the Committee is called under s. 35 of the new Act. The ten respondents contend that as admittedly the meeting under s. 35 has not been called, their term of office has not yet expired.

Now s. 35, so far as is material, provides that the first meeting of the Committee shall be called by the Collector within thirty days of the date of publication of the names of members under s. 32. Section 32 states that the names of members finally elected to any Committee shall be forthwith published in the official Gazette. It is quite clear, therefore, that the Committee mentioned in this section, is a Committee constituted by an election held under the new Act. It would follow that the meeting contemplated in s. 35 is a meeting of a Committee constituted by an election held under the new Act. The provisions of that section put this beyond doubt.

In order, therefore, that a meeting of the Committee contemplated in s. 35 may be held, there has first to be an election under the new Act to constitute the Committee. No such election has yet been held. It is the provision concerning election in the new Act that has given rise to the difficulty that arises in this case. Section 16, sub-s. (1), gives the power to hold the general elections. It is in these words:

"Every general election requisite for the purpose of this Act shall be held by the Collector in the manner prescribed within three months before the expiry of the term of office of the members of the Committee as specified in section 34".

Section 34 in substance states that except as otherwise provided members of the Committee shall hold office for a term of three years and that term of office shall be deemed to commence on the date of the first meeting called under s. 35. It would therefore appear that the members whose term of office is sought to be specified by s. 34 are members elected under the new Act, for their term is to commence on the date that they first meet under s. 35 and as earlier stated, the meeting under s. 35 is a meeting of members elected under the new Act.

The contention for the appellants is that if s. 34 is construed in the way mentioned above, the first general election under the new Act cannot be held under s. 16, for an election can be held under that section only within three months before the expiry of the term of office of members elected under the new Act and in the case of first election there are ex hypothesi, no such members. It is said that as there is no other provision in the new Act for holding a general election, the Act would then become unworkable, for if the first general election cannot be held no subsequent election can be held either. The result, it is contended, is that the Committee elected under the repealed Act would continue for ever by virtue of s. 320. Such a situation, it is said, could not have been intended by the new Act. It is therefore suggested that s. 34 should be construed as specifying a term of office of three years from the commencement of the new Act for members elected under the repealed Act who are under s. 320, to be deemed to form a Committee constituted under the new Act. If s. 34 is so construed, then the first general election under the new Act can properly be held under s. 16. It is on this basis that the appellants contend that the ten respondents' term of office expired in August, 1959, and they are in possession of the office now without any warrant.

There is no doubt that the Act raises some difficulty. It was certainly not intended that the members elected to the Committee under the repealed Act should be given a permanent tenure of office nor that there would be no elections under the new Act. Yet such a result would appear to follow if the language used in the new Act is strictly and literally interpreted. It is however well established that "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.....

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Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the courts are very reluctant to substitute words in a Statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense.": see Maxwell on Statutes (10th ed.) p. 229. In *Seaford Court Estates Ltd.* v. *Asher* (1), Denning, L. J., said,

"when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament.....and then he must supplement the written word so as to give "force and life" to the intention of the legislature.....A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

I conceive it my duty, therefore, so to read the new Act, unless I am prevented by the intractability of the language used, as to make it carry out the obvious intention of the legislature. Now there does not seem to be the slightest doubt that the intention of the makers of the new Act was that there should be elections held under it and that the Municipal Committees should be constituted by such elections to run the administration of the municipalities. The sections to which I have so far referred and the other provisions of the new Act make this perfectly plain. Thus s. 5 provides for the establishment of municipal committees and s. 8 states that the committees shall consist of a certain number of elected members. The other sections show that the Committees shall have charge of the administration of the municipalities for the benefit of the dwellers within them. It is plain

(1) [1949] 2 All E.R. 155, 164.

that the entire object of the new Act would fail if no general election could be held under it.

The question then is, How should the Act be read so as to make it possible to hold general elections under it? I agree with the learned advocate for the appellants that the only section in the new Act providing for general elections being held, is s. 16(1). In my view, s. 20 does not authorise the holding of any general election; it only provides for a notification of the date on which the poll shall, if necessary, be taken. There is no doubt that under s. 16(1) the second and all subsequent general elections can be held; in regard to such general elections, no difficulty is created by the language of the section. It would be curious if s. 20 also provided for general elections, for then there would be two provisions in the Act authorising general elections other than the first. Then I find that all the sections referring to general elections refer to such elections being held under s. 16(1) and not under s. 20. Thus s. 31 provides that if at a general election held under s. 16, no member is elected, a fresh election shall be held. It would follow that if in an election under s. 20, assuming that that section authorises an election, no member is elected, no fresh election can be held. There would be no reason to make this distinction between elections held under s. 16 and under s. 20. Again the proviso to s. 17 requires a certain notification to be issued within a prescribed time for holding elections under s. 16(1). If an election can be held under s. 20, no such notification need be issued for there is no provision requiring it. This could not have been intended. For all these reasons it seems to me that s. 20 does not confer any power to hold any election.

I have earlier said that the suggestion for the appellants is that the best way out of the difficulty is to read s. 34 as specifying a term of office of three years commencing from the coming into force of the new Act, for the members elected under the repealed Act who are to be deemed under s. 320 to be a committee constituted under the new Act. It seems to me that this is not a correct solution of the problem. First,

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the object of continuing the members elected under the repealed Act in office is clearly to have, what may be called a caretaker committee to do the work of the Municipality till a committee is constituted by election under the new Act. It could not have been intended that the committee of the members elected under the repealed Act would function for three years after the new Act has come into operation nor that such members would have the same term of office as members elected under the new Act. Secondly, I do not find the language used in s. 34 sufficiently tractable to cover by any alteration, a member elected under the repealed Act. To meet the suggestion of the appellants, a new provision would have really to to be enacted and added to s. 34 and this I do not think is permissible. It would be necessary to add to the section a provision that in the case of members elected under the old Act the term of office of three years would start running from the commencement of the new Act, a provision which is wholly absent in the section as it stands. Lastly, so read, s. 34 would come into conflict with s. 320 which expressly provides that the term of office of the members elected under the repealed Act would continue till the first meeting of the committee constituted under the new Act is held under s. 35. This portion of s. 320 would have to be completely struck out.

It seems to me that the real solution of the difficulty lies in construing s. 16(1) so as to authorise the holding of the first general election under it and remove the absurdity of there being no provision directing the first general election to be held. Now that section applies to "every general election requisite for the purpose of this Act." It therefore applies to the first and all other general elections. The clear intention hence is that the first general election will also be held under this provision. But such election cannot be held within the time mentioned therein for that time has to be calculated from the expiry of the term of office of the Committee elected under the Act and in the case of the first general election under the new Act, there is no such Committee. The requirement

as to time cannot apply to the first general election. The section has therefore to be read as if there was no such requirement in the case of the first general election. It will have to be read with the addition of the words "provided that every general election excepting the first general election shall be held" between the words "prescribed" and "within". That would carry out the intention of the legislature and do the least violence to the language used. So read, there would be clear power under the Act to hold the first general meeting. There would of course then be no indication as to when this election is to be held but that would only mean that it has to be held within a reasonable time of the commencement of the new Act.

The course suggested by me is not without the support of precedents. Thus in *Salmon* v. *Duncombe* (1), the Judicial Committee in construing a statute omitted from it the words "as if such natural-born subject resided in England" because the retention of those words would have prevented the person contemplated getting full power to dispose of his immovable property by his will which it was held, the object of the statute was, he should get.

With regard to the other point argued in this appeal, namely, whether the Municipal Committee even if properly constituted, has power to sell the land mentioned in the petition, I agree, for the reasons mentioned in the judgment delivered by the majority of the members of the bench, that it has such power and have nothing to add.

The appeal therefore fails.

*Appeal dismissed.*

(1) (1886) 11 App. Cas. 627.