

1933

Present : Dalton A.C.J. and de Silva A.J.

NEWNHAM v. LUCAS FERNANDO.

175—D. C. Colombo, 2,861.

Housing and Town Improvement—Laying of street lines—Existing street and continuation thereof—Meaning of continuation—Ordinance No. 19 of 1915, s. 18 (4).

Where power is given to a local authority by section 18 (4) of the Housing and Town Improvement Ordinance to define by resolution "the lines by which an existing street or any part or continuation thereof is bounded",—

Held, that the section applied to streets existing at the time of the resolution or to any proposed continuation thereof.

A PPEAL from an order of the District Judge of Colombo.

In 1926 the Municipal Council of Colombo purported to define the lines of a street, according to a plan attached to the resolution, connecting Buller's road with the Galle road. The present claim arose out of the acquisition of the land by the Municipality for public purposes and the amount of compensation payable for the same. It was contended for the claimant that the street lines had not been validly laid down in terms of section 18 (4) of the Housing and Town Improvement Ordinance, No. 19 of 1915.

H. V. Perera (with him J. R. V. Ferdinands), for claimant, appellant.—The Chairman of the Municipal Council acquired 2 roods 7.84 perches under the Land Acquisition Ordinance, offering Rs. 26,777.25 as compensation to the appellant. The block of land is situated at Reid avenue. The plaintiff has discriminated between two portions of this land because one cannot build between street lines. The land was acquired on February 10, 1931. This street is a new street because no street lines were laid down in accordance with the Ordinance. The street lines were laid down across private property, where there was no street at all on May 14, 1926. The street lines laid down were not in accordance with law inasmuch as there was no existing street, public or private. Section 18 of Ordinance No. 19 of 1915 does not authorize the laying of street lines under these circumstances, although the Council claims to have acted under section 18 (4). If the land is acquired for the purpose of a road then the Council can lay down street lines under section 18. There was no intention of extending Buller's road at the time of its construction. At the time of making Buller's road it was complete as it ran into Reid avenue. The Chairman of the Council contends that the Council has power under section 18 (4) to define lines for the continuation of any existing street. When the street lines were laid down the land was private property. The section refers to continuation of a street. The Council cannot lay street lines where there is no road. The road and its continuation must be conceived at the same time.

The mere possibility of continuation is not the test to be applied. Section 18 (1) (a) draws a distinction between an existing street and a new street. The road must have existed in 1915, then street lines can be laid at any time. Before the Council can lay down street lines the continuation must be in existence. A word or expression in ordinary use need not have the same meaning in a different context. In this context "existing street" is used to distinguish it from a "new street". Until acquisition the private owner can do what he likes with it. Street lines are laid down only in respect of an existing street, or a part of it or a continuation of it. In order to stop building, street lines should be laid under the 1915 Ordinance.

Section 46 enables the Council to acquire land for the purpose of laying down a new street. Continuation may refer to the full execution of an idea present at the time when the original road was laid down. The intention was to connect Borella and Reid avenue. These views are supported by the resolution of the Council.

F. A. Hayley, K.C. (with him *J. L. M. Fernando*), for plaintiff, respondent.—The scheme of the Ordinance must be interpreted. Sections 35-60 of Ordinance No. 19 of 1915 have nothing to do with the matter in question. These sections contemplate schemes of improvement by commissioners or bodies of persons willing to pay for improvements. You can build only by an existing street or a hypothetical street. The Council can make no new street: it is always a continuation of the public roads of a town. A "new street" is not defined in the Ordinance, other than the use of section 18 (4). "Continuation" is used in the broadest possible sense in the Ordinance. Only private persons can open up new streets. The present new road is only an extension of the former Mosque lane. "Street" has been very widely defined in the Ordinance. On the facts the new road is a continuation of Buller's road. Section 18 is all one section and the various provisions are all inter-connected. An Ordinance has to be read as a whole. "Continue" means also "to extend". "Extension" is defined according to this meaning—*Shanghai Corporation v. McMurray*¹. Section 172 of Ordinance No. 6 of 1910 empowered the laying down of lines of the original Buller's road.

H. V. Perera, in reply.—The main distinction in the Ordinance is that between existing streets and new streets. The fixing of street lines is the initial step in the making of a new road.

May 31, 1933. DALTON A.C.J.—

This appeal raises questions as to the construction of section 18 (4) of the Housing and Town Improvement Ordinance, 1915, and as to the powers of the Town Council of Colombo thereunder.

In 1926 the Council had purported to define the lines of a street as shown on a plan attached to the resolution, connecting Buller's road with the Galle road. The present case concerns the acquisition of land for that street, and the amount to be paid therefor. At the hearing it was agreed, firstly that if the learned trial Judge held that the street lines had been validly defined, and secondly, if any depreciation in

¹ 69 L. J. P. C. 19.

consequence of street lines having been laid down can be taken into account, all portions within the street lines should be valued at Rs. 30,000 per acre, otherwise at Rs. 60,000 per acre.

The second point referred to in this agreement has, I am told, been already settled in favour of the Council in case No. S. C. 174. The first point now arises in this appeal. The trial Judge decided the question in favour of the Council and the claimant now appeals.

At the conclusion of the argument I felt quite unable to agree with Mr. Perera's contentions as to the meaning of the words "existing street" and "continuation thereof" as used in section 18 (4). I have no doubt "existing street" means a street existing at the time the resolution is passed. It seems to me to be the natural construction of the sub-section. It is urged by him that it must mean a street existing at the time the Ordinance was passed, and that the same meaning must be given to the word as also used in section 18 (1) (a). He argued that one could not give two different meanings to one word as used in the same section. It is not in my opinion necessary to do so, for I am equally unable to agree with him that "existing" as used in section 18 (1) (a) means existing at the time the Ordinance was passed. In my opinion it means existing at the time the erection referred to is being made. To give the word the construction for which he contends would in my opinion be an unnatural straining of the words used, which seem to me to be fairly plain. I find the word "existing" used in other parts of the Ordinance in the same sense as I find it is used in section 18.

In the same way it seems to me that the word "continuation" means, as Mr. Hayley contends, proposed continuation. If it meant an existing continuation, that it seems to me would be included in the term "existing street", and would be repeating over again the same thing.

At the conclusion of the arguments before us the only matter of difficulty that presented itself to me was whether the street in question that has been made was in fact a "continuation" of Buller's road, within the meaning of that term as used in section 18 (4), or a new street altogether, since I could find no definite finding of the trial Judge on that point.

It is conceded that under this Ordinance the local authority has no power to define the lines of a new street, apart from certain improvement schemes provided for in Part III., Chapter II. of the Ordinance. It is necessary therefore to see that the powers given in section 18 (4) to define the lines by which any continuation of an existing street is bound shall not be made use of to do something the authority has no power to do, since the laying down of street lines necessarily results in a depreciation of the value of the property coming within those lines.

The learned trial Judge appreciated that it was necessary to decide whether the street lines laid down in 1926 were in fact laid down as a continuation of an existing street but I have some difficulty in understanding how he answers this question. He seems, I think, to have misunderstood the argument of counsel for the claimant who urged that the continuation must be an "existing" continuation. At any rate,

however, the learned Judge states he was unable to accept the contention that Buller's road as it existed in 1926 must necessarily end at Reid avenue and could not be extended or continued across the junction.

The terms of the resolution as passed in 1926 refer to "a street connecting Buller's road with the Galle road". The plan attached to the resolution is called "plan of Buller's road extension to Colombo-Galle road". At that date Mr. Perera urged that Buller's road came to an end where it joined Reid avenue, the avenue running across the end of Buller's road. He suggested that the proposed road on the other side of Reid avenue was not a continuation of Buller's road, but in fact a new road altogether, the word "continuation" suggesting a union without a break. It is true that the Council's assessor in giving evidence speaks of the road as a new road; at one point he calls it an "entirely new road", but I think, having regard to the context, he uses those words as one might sometimes use them of an admitted continuation recently built of an existing road.

A question as to the meaning of the words "extensions of the lines of roads at present laid down" came up for decision in *Shanghai Corporation v. McMurray*¹. I agree with Mr. Perera that the word "extension" as used in the regulations in question in that case certainly had a much wider meaning than the word "continuation" as used in section 18 (4), but the case is cited as having some bearing on the matter we have to decide, since the Privy Council seem to have given the term a very wide meaning, applying not only to extension of the original road, but also to branches going off in different directions. As there the Court from which the appeal came was held to have taken too narrow a view of the word "extension", so here, on consideration of the terms of the section and of the evidence in the case I have come to the conclusion that the meaning of "continuation" for which Mr. Perera contends would be too narrow a meaning. In the circumstances here upon the evidence in the case I would hold that the road in question is a continuation of an existing road, i.e., Buller's road, and therefore on this point also the appeal must fail.

The appeal will therefore be dismissed with costs.

DE SILVA A.J.—

In view of the decision of this Court in case S. C. No. 174/D. C., Colombo, 2,839, the only point raised by Mr. Perera for the defendant-appellant in this case is whether street lines have been validly defined across the defendant's land by a resolution of the Municipal Council of April 14, 1926.

Admittedly, at the time of the passing of the resolution there was no street on the defendant's land. The Council in passing the resolution acted under section 18 (4) of the Housing and Town Improvement Ordinance of 1915, which reads:—"The local authority may by resolution from time to time, subject to the standards prescribed by rule 8 of the schedule to this Ordinance, define the lines by which any existing street or any part or continuation thereof shall be bounded, and the lines so defined shall be deemed to be the lines of the street." It is argued by

¹ 69 L. J. P. C. 19.

Mr. Perera that the section gave the Council power to define lines only in respect of an existing street or an actual continuation thereof. He argued that the word "continuation" did not include a proposed continuation. An actual continuation would be a street within the definition of the word in section 2 of the Ordinance and it would be a street in existence. Mr. Perera had therefore to find a meaning for the word "continuation" different from the words "existing street", and he argued that the latter words in the section applied only to streets existing at the time of the passing of the Ordinance, and that the word "continuation" meant a street which had come into existence since the passing of the Ordinance as a continuation of a street which had existed before. It is necessary to adopt these arguments before it can be held that the word "continuation" is limited to a continuation which has actually been made. Mr. Perera argued that the words "existing street" under section 18 (1) (a) bore the meaning which he suggested, and that section 18 referred to two classes of streets "existing streets", i.e., streets which existed at the time of the passing of the Ordinance and "new streets", i.e., streets which came into existence after the passing of the Ordinance.

Section 18 (1) (a) reads:—"Every building erected or re-erected after the commencement of this Ordinance within the administrative limits of any local authority—shall be erected either upon the line of an existing street not less than twenty feet in width, or upon the line of a new street defined or approved by the Chairman or otherwise authorized under this or any other Ordinance". I was impressed by the view that the words "existing street" in this sub-section could not mean merely a street in existence, because authority is given by the sub-section to build on the line of such a street so long as it is not less than twenty feet in width.

A closer examination has revealed to me that there is not much force in this view. Streets are constructed by a public authority or by private persons, and an examination of sections 19, 20, and 23 disclose the fact that in respect of private streets a large measure of control is exercised by the public authority. It is not necessary for the purpose of this case to find out exactly what the measure of control is, but it is sufficient to realize that the measure is large. The word "street" is defined very widely and under section 19 "every person who intends to lay out or construct a new street" has to give written notice of his intention to the Chairman and to submit plans showing details of the proposed "new street". The word "construct" is also given a very wide meaning in section 2 and includes not only "sewering, draining, levelling, paving, kerbing, metalling, channelling", but also "every method of making a carriageway or footway, and the provision of access to the street or thoroughfare". The Chairman under section 20 has the power to give written directions (which have to be complied with) with regard to width and several other details. So that it becomes quite clear that a very large measure of control is exercised by the public authority in respect of streets coming into existence after the passing of the Ordinance. There is therefore nothing strange in granting authority to build upon such a street so long as it is not less than twenty feet in width.

The meaning sought by Mr. Perera to be given to the word "existing street", viz., streets existing at the time of the passing of the Ordinance is an extraordinary meaning which would not be given to it unless one was compelled to do so. I can find no sufficient reason for adopting it because section 18 (1) (a) can be interpreted quite simply by giving to the words "existing street" the meaning of streets in existence at the time of a proposed building, and by giving to the words "new street" the meaning streets which are not in existence but which are defined or approved at the time of the proposal to build. The words "existing street" in section 13 (4) would have a similar meaning. I am of opinion that this is a correct interpretation of the words in the two sub-sections. The word "existing" undoubtedly bears such a meaning in section 46 (1) and 48 (1) of the Ordinance and perhaps in other sections. Consequently the word "continuation" does not mean an actual continuation which has taken place but means a proposed continuation.

It has been argued that the trace of the lines which have been defined over the defendant's land is not in fact a "continuation" of Buller's road. It appears from the plans D 1 and P 3 that Buller's road, Have-lock road (also called Bambalapitiya road), and Reid avenue meet at a junction, and that the proposed road in respect of which lines were defined connects the junction with Colpetty road. It was argued by Mr. Perera that in order to be a "continuation" it is necessary that the proposed road and Buller's road should have formed part of one scheme adopted at one and the same time, the execution of the part of it relating to the proposed road not being carried out immediately after the rest of it was completed. He argued that Buller's road was complete when it was constructed up to the junction I have referred to, and that the proposed road is a new road, and not a "continuation" of Buller's road. I cannot accept this argument as I do not find anything in the word "continuation" which indicates that the continuation and the original had to be planned at the same time. I think it can refer quite clearly to the continuation of a road which but for the continuation could be regarded as complete. I am of opinion that in order to be a "continuation" what is necessary to be established is only physical continuity. But for the fact that other roads met at this junction, there could be no doubt I think that the proposed road was a continuation of Buller's road. It is necessary to examine whether the junction and the other roads make any difference.

Two points appear to arise, one is the presence of the junction. I do not think this makes any difference. Roads clearly continue across junctions and I do not think the occurrence of a junction can be said to prevent the continuity of the road. The next point is the effect of the presence of the other roads. I agree with counsel on both sides that the giving of a name can make no difference to the application of the section, and that the proposed road would or would not be a continuation of Buller's road quite independently of what it is called. It may be a question whether the proposed road is a continuation of Have-lock road, Buller's road or perhaps (and this is less likely) of Reid avenue. It might be regarded even as the continuation of more than one road but so long as it can be regarded as the continuation of at least one it will

possess the character of the "continuation of an existing street". To hold otherwise would defeat the principle of continuity underlying the section. Adopting the test of physical continuity I have no doubt that it is the "continuation of an existing street" and so long as this condition was satisfied the Council had power under section 18 (4) to define lines.

I think therefore that the lines have been validly defined and that the appeal must be dismissed with costs.

Appeal dismissed.

