

Present: Fisher C.J. and Akbar J.

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CHAIRMAN, MUNICIPAL COUNCIL, COLOMBO, v. SOERTSZ.

256—D. C. Colombo, 1,654.

*Housing and Town Improvement Ordinance—Definition of street lines—
Permission to build given to owner—Cancellation of street lines—
Withdrawal of permission—Ordinance No. 19 of 1915, s. 18 (4).*

A Municipal Council has no right to cancel street lines defined in pursuance of the powers vested in it under section 18 (4) of the Housing and Town Improvement Ordinance and to prohibit an owner from building within those street lines, where permission to build had been granted to him before the cancellation.

A PPEAL from a decision of the Additional District Judge of Colombo in the form of a case stated to the Supreme Court under section 92 (1) of the Housing and Town Improvement Ordinance, No. 19 of 1915.

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A street by the name of St. Mary's road, Bambalapitiya, less than 20 feet in width, existed prior to 1915. In view of the provisions of section 18 (1) (a) of the Housing and Town Improvement Ordinance, No. 19 of 1915, no buildings could be erected adjoining St. Mary's road after the Ordinance came into force, until new street lines had been defined for it by the Municipal Council under section 18 (4). On April 27, 1924, the Council duly defined the street lines of St. Mary's road, and thereafter the respondent bought a plot of land adjoining this road and applied to the Chairman, Municipal Council, for permission to build six cottages on the land so purchased. The plans submitted by the respondent for this purpose were duly approved, and two of the six cottages were erected. Building operations in respect of the remaining four cottages having been suspended for over a year, the respondent, in view of the provisions of section 10 of the Ordinance, applied for fresh permission to build. The Chairman, however, replied that during the interval the Municipal Council, by resolution of August 8, 1928, had cancelled the street lines which had been defined for St. Mary's road in 1922, and that permission to build could not be granted on the ground that no street lines existed along St. Mary's road at the time of the respondent's second application. The respondent appealed to the District Court of Colombo under section 84 of the Housing and Town Improvement Ordinance from the order of the Chairman refusing permission to build. The learned District Judge held that the Chairman was not justified in refusing permission, and that section 18 (4) of the Ordinance did not warrant the Council in cancelling street lines once they had been defined.

On the application of the Chairman, the learned District Judge stated a case for the Supreme Court under section 92 (1) of the Ordinance.

Hayley, K.C. (with him *Keuneman* and *Gratiaen*), for the Chairman, appellant.—The Council has power to cancel street lines once they have been defined under section 18 (4) of the Ordinance. These street lines are defined by resolution of the Council. A resolution is clearly an "order", within the meaning of section 11A of the Interpretation Ordinance, No. 21 of 1901, which gives any authority vested with power to make an "order" the right to amend, vary, revoke, or rescind it. Moreover, under the provisions of section 18 (4) of Ordinance No. 19 of 1915, the Council may "from time to time" define the street lines of any street. The words "from time to time" have a well known signification in statutes; they imply the power to cancel and repeal. (*Lawrie v. Lees*¹; *Kruze v. Johnson*².)

The fact that the respondent had previously obtained permission to erect six cottages adjoining St. Mary's road before the street lines

¹ 7 Appeal Cases 19, at p. 29.

² 78 Law Times 647, at p. 649.

were cancelled by the Council, and the fact that two of these cottages had in fact been built already, cannot be held to create an estoppel. Each cottage must be taken as a separate entity, and a question of estoppel would arise only if the Council had cancelled the street lines after the erection of any particular cottage had already commenced. (*White v. Sunderland Corporation*¹; *Mayor of Harrogate v. Dickinson*².)

De Zoysa, K.C. (with him *H. V. Perera* and *Speldewinde*), for the respondent.—Once the Council has defined the street lines of any street under section 18 (4) of Ordinance No. 19 of 1915, it has power to redefine them but not to cancel them altogether. Section 18 (4) expressly states that “the street lines so defined shall be deemed to be the lines of the street”. A statute which gives a person power to define anything presupposes the continued existence of that which is defined.

The interpretation of the words “from time to time” in *Lawrie v. Lees* (*supra*) depends on the special circumstances of that case and cannot apply here. Nor has section 11A of the Interpretation Ordinance any application, as a resolution of the Council defining street lines under the Housing and Town Improvement Ordinance is in no sense an “order”. Direct consequences follow from an “order”, whereas the resolution in question merely confers a certain status on a particular street. Even if section 11A does apply, it must be read subject to section 5 (3) (b) of the Interpretation Ordinance, under which rights which have already accrued are protected.

In any event, the Council is estopped from cancelling the street lines of St. Mary’s road as against the respondent, who purchased land adjoining this street for building purposes after the Council had defined street lines along it in 1924.

Ordinances which interfere with private rights must be strictly construed. (*Maxwell on Interpretation of Statutes*, 527.)

Hayley, K.C., in reply.

February 21, 1930. FISHER C.J.—

This is an appeal from a decision of the learned Judge of the District Court and comes before us in the form of a case stated under section 92 (1) of the Housing and Town Improvement Ordinance, No. 19 of 1915. The facts, as stated, are as follows: In 1922 the appellant Council acting under section 18 (4) of the Ordinance referred to defined the lines of St. Mary’s road, the respondent to the present appeal “purchased property along this road thereafter and received permission to erect six cottages. Two of them were erected and owing to cessation of work for over a year he was obliged to apply for fresh permission. In the interval the Municipal Council

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¹ 88 *Law Times* 592.

² 88 *Law Times* 299.

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purporting to act under the same section passed a resolution on August 8, 1928, in the following terms:—‘ To avoid the liability of paying compensation for setting back buildings, under section 18 (4) of Ordinance No. 19 of 1915, recommended that the Council cancel the private street lines laid down for all streets which existed before 1915, resolved that the above recommendation of the Special Committee be adopted ’ Thereafter the Chairman published in the *Government Gazette* of October 5, 1928, the conditions on which permission to build would in future be given. The appellant was accordingly informed that the permission he desired would be given if he consented to surrender free of cost such land as would be thrown into the street when the lines were defined and that on his consenting the line would be defined for his property. He refused to accept this condition. Whereupon the Chairman refused to allow him permission to build, on the ground that no building could be erected along that road in the absence of street lines.” The learned District Judge held that the Chairman was not justified in refusing permission and that “ section 18 (4) did not warrant the Council in cancelling street lines when once they were laid down ”.

The decisive question in this case is whether the finding of the learned Judge as to the scope of section 18 (4) is correct. That sub-section runs as follows:—“ The local authority may by resolution from time to time define lines by which any existing street or any part or continuance thereof shall be bounded, and the lines so defined shall be deemed to be the lines of the street.”

It was sought to justify the action of the Council mainly on two grounds, the first being that the resolution referred to in the sub-section must be taken to be an order within the meaning of section 11A of the Interpretation Ordinance, No. 21 of 1901, and that therefore it could be at any time “ rescinded or revoked ”. In my opinion that contention cannot prevail. A resolution under that sub-section acts automatically without any order, and on being passed the consequences at once ensue. There is, therefore, no question of an order within the meaning of section 11A of the Interpretation Ordinance. It was further contended that inasmuch as under the sub-section the Municipality “ may by resolution from time to time ” define the lines of an existing street they can therefore cancel a resolution which has been passed under the sub-section. In this case no fresh definition of lines was made, and the intention was, as is shown by the documents in the case, to redefine the lines of this street precisely as they had been defined by the resolution of August 8. An enactment of this nature, involving as it may, interference with private rights, must be strictly construed, and there would be no justification in my opinion for construing the sub-section as enabling the Municipality to deprive an existing

street of the lines which under the section are after the passing of the resolution " to be deemed to be the lines of the street " .

In my opinion, therefore, the resolution of August 8, 1928, was ineffectual and could not and did not affect the resolution passed in 1922.

Arguments were addressed to us as to the power of the Municipality once having defined the lines under sub-section (4) subsequently to redefine them. The redefinition in this case, as has been seen, would have taken the form of a re-enactment of what the Council sought to take away or place in abeyance by the resolution of August 8, 1928. But in any case I incline to the view that the words " from time to time " which were relied upon by Counsel for the appellant do not contemplate such a power. They are capable of another, and in my opinion a more reasonable construction, and I think the section must be read as meaning that a resolution under section 18 (4) once passed gives a street a status or condition which the Municipality is not entitled under that enactment to suspend or take away. We need not consider the results which would follow if the view contended for by the appellant is the correct view, nor need we consider any question of motive or whether the granting of the building permit can be made the subject of bargaining. The question for our consideration is purely one of the construction of section 18 (4). The only reason given by the Chairman for his refusal to give the respondent a permit to build the remaining four cottages of the six which had been originally sanctioned was based on the sub-section referred to.

In my opinion the learned Judge's finding that the present respondent has done all that was reasonably necessary and that " authority should be given to the appellant to build " is correct.

The appeal must be dismissed with costs.

AKBAR J.—

This is an appeal from a case stated by the District Court under section 92 of the Housing and Town Improvement Ordinance, No. 19 of 1915. The appellant is the Chairman of the Municipal Council, Colombo, and the respondent is the owner of a plot of land adjoining a road known as St. Mary's road in Wellawatta. St. Mary's road is one of the many side roads branching off from the Galle road towards the sea. This street existed before the Ordinance No. 19 of 1915 and was about 14 feet in width. Acting under the powers conferred on it by section 18 (4) of the Ordinance, the Municipal Council of Colombo defined the street lines of this road on April 27, 1922. After these street lines were defined, the respondent to this appeal bought this property and he applied for permission to put up six cottages on the plot of land so purchased. The plan of the

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buildings was duly approved and the respondent built two of these cottages. As building operations were suspended for over a year he applied under section 10 for fresh permission to build, which permission was refused by the Municipal Council. It is admitted that the proposed buildings complied with the requirements of the Ordinance relating to buildings as such, and that the sole ground for the refusal of permission is to be found in the letter of the Chairman marked A 6 stating that no street lines for St. Mary's road existed, as they had been cancelled by a resolution of the Municipal Council on August 8, 1928. The attention of the respondent was called to a notification in the *Government Gazette* of October 5, 1928, in which it was stated that the Municipal Council had by resolution cancelled "the private street lines laid down for all streets which existed before 1915"; the reason given being the desire of the Municipal Council to avoid the liability of paying compensation for setting back building under section 18 (4) of Ordinance No. 19 of 1915. It will be seen that there is an ambiguity in this resolution, because it is not clear whether the cancellation referred to private street lines (whatever that expression may mean) which existed before 1915, or whether it referred to street lines laid on private streets in the case of streets which had existed before 1915. The notification in the *Government Gazette* referred to by me and the letter marked A 4 from the engineer of buildings dated November 14, 1928, put forward an extraordinary suggestion to the respondent, namely, that if he was willing "to throw all your land within the street lines along your frontage into the street free of compensation", permission would be granted to build. It will be seen that in spite of the so-called cancellation of the street lines in August, 1928, A 4 dated November 14, 1928, definitely states that street lines existed on this road. Then the letter proceeds to state that if the respondent was willing to abide by this condition, he was to sign in triplicate an agreement, agreeing to make a free grant of all his land along this frontage within the streets lines to the Municipality. This proposal of the Municipality, to say the least, is most extraordinary. The street lines are said to have been cancelled, but A 4 and the *Gazette* notification suggest that they existed for a certain purpose, namely, to get from private persons, intending to build, the land, free of compensation, falling within these mysterious street lines. They also indicate that the Council will be prepared to pass a resolution defining the lines on the site of the cancelled lines. It is not necessary for the purpose of this appeal to go into the motive or intention underlying this proposal. The only question I have to decide is whether the Municipal Council had the power under section 18 (4) of the Ordinance to cancel street lines once they had defined them. It will be seen from the wording of section 18 (4) that the Municipal Council "may by resolution from time to time, subject

to the standards prescribed by rule 8 of the schedule of this Ordinance, define the lines by which any existing street shall be bounded and the lines so defined shall be deemed to be the lines of the street". The standards prescribed by rule 8 of the schedule require a minimum width of 40 feet, but by a proviso of the same sub-section the power is given to the Municipal Council for the purpose of defining the lines of the streets to authorize any modification of the standards as may be deemed expedient.

Before I proceed to state the law on the subject the main facts which require to be borne in mind are as follows:—This street existed before 1915. Under section 18 (1) of the Ordinance no building could be erected after the Ordinance came into operation unless it was erected "either upon the line of an existing street not less than 20 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". When the Ordinance came into operation this street already existed and it was 14 feet in width. So that no owner could, after the Ordinance was passed, build on this road, which was less than the minimum width of 20 feet, unless the owners proceeded to make a new street under the provisions of sections 19, 20 and 21 of the Ordinance. So that the second alternative was not open to the respondent in this case, because there was no proposal to open a new street. The only manner in which the owners on this road could erect buildings would be to erect them on the lines of the street not less than 20 feet in width. Section 18 (4) states how these lines can be made to exist in a street similar to St. Mary's road which was in fact less than 20 feet. By that sub-section the local authority could define the lines of such a street. On April 27, 1922, the Municipal Council did by resolution define the lines making the street lines 20 feet wide. By passing this resolution they immediately placed this street in a certain category, namely, a category in which owners of land on either side of the street were directly authorized subject to plans being approved to build on the street lines 20 feet apart. The respondent relying on this resolution of the Municipal Council bought his plot of land. The question arises whether the Municipality can by resolution cancel these street lines and entirely take away the privilege which was conferred on owners by the resolution of 1922.

It is argued by Mr. Hayley that the Municipal Council had these powers because the words "from time to time" in sub-section (4) of section 8 impliedly gave such a power and he has cited some cases in support of his argument. He further argued that the Municipal Council had these powers under section 11A of the Interpretation Ordinance, No. 21 of 1901. I do not think the authorities he has cited, namely, the cases of *William Lawrie v. George Lees*¹ and *Kruse*

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¹ 7 Appeal Cases 19.

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*v. Johnson*¹, have any application in this case. The words "from time to time" in section 18 (4) had of necessity to be inserted, for a local authority cannot be expected to deal with all the streets within its jurisdiction which had no street lines immediately on the passing of the Ordinance. In any event, under a section giving power to define the lines from time to time, a local authority cannot cancel the lines once defined and leave the street without such lines. Nor do I think that section 11A of Ordinance No. 21 of 1901 will apply, because a resolution of a body defining the lines of a street can hardly be called an order. In an order proper certain consequences follow directly from the order. In this case no consequences, except the conferring of a certain status on a street, follow directly as a result of the resolution, though by other sections of the Ordinance certain rights and liabilities are vested in and incurred by certain persons. But even suppose a resolution under sub-section (4) of section 18 is "an order" within section 11A of Ordinance No. 21 of 1901. If so, it will come within the meaning of a "written law" under section 3 (24) of Ordinance No. 21 of 1901, and no cancellation of street lines of St. Mary's road can under section 5 (3) (b) affect the right of property owners in St. Mary's road to build on the street lines as laid down in 1922. Admittedly the respondent's application to build was refused, not because the plan of the buildings was such as would violate in itself the terms of the Ordinance, but because the Chairman thought there were no street lines owing to the so-called cancellation in 1928. The case of *White v. Corporation of Sunderland*² turned on the meaning of the words "except as regards any work commenced" in certain by-laws and has no application in this case. Moreover, that case dealt with the question of buildings as such and how far the buildings had to be altered to suit the new by-laws and not with a total prohibition to build as in this case.

In my opinion the order of the District Judge was right, and I would dismiss the appeal with costs.

Appeal dismissed.