

172.C.183  
The Laws of Improvement  
and Acquisition in Calcutta

with Complete Commentaries and Forms

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BY

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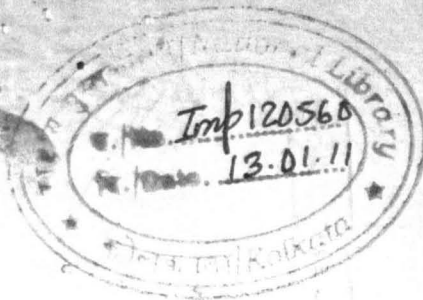
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## TABLE OF CONTENTS.

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### Page

Introduction	i
Table of Cases Cited	x
The Calcutta Improvement Act—Contents	xi
The Calcutta Improvement Act	1
The Calcutta Improvement (Appeals) Act	111
The Calcutta Improvement (Amendment) Act	113
The Land Acquisition Act, with Amendments	121
Forms	151
Index	161

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## INTRODUCTION.

### History of the Calcutta Improvement Act.

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The Hon'ble Mr. Stephenson in moving for leave to introduce a Bill to provide for the improvement and expansion of Calcutta said:—

"I ask for leave of the Council to introduce a Bill for the Improvement and Expansion of Calcutta.

"I may perhaps be expected to give a History of the circumstances leading up to the Bill and of the various stages through which it has passed.

"The starting point of the Improvement Scheme was the Report of the Calcutta Building Commission in 1897. In the Resolution appointing this Commission it was stated that the sanitary officers deputed by the Medical Board to inquire into the condition of Calcutta had shown to what an extent overcrowding prevailed in Calcutta, and how the construction of buildings in the older part of the town impeded or rendered impossible any effective conservancy, and the Commission was directed to inquire into the history and operation of the existing law and by-laws on buildings. They were further requested to inquire into the desirability of opening out the congested tracts of Calcutta and the most feasible plan of effecting this. On this point their recommendations were necessarily vague, and they could only insist on the desirability of opening out a number of fairly wide streets and, where possible, creating open spaces as lungs to the locality. They could make no estimate as to the cost, but suggested various methods of financing the work, and it is noticeable that, with one exception, every source of revenue tapped in the present Bill was mentioned in the Commission's Report.

"The proposals were taken up by this Government, and in July, 1899 the Government of India were first addressed. The Scheme set forth was to drive 15½ miles of roads through the congested portions in the north of Calcutta, and to provide incidentally open spaces where possible. The estimated cost was five crores, and it was proposed that the execution of these great works of improvement should be entrusted to a special and separate body or Trust, and that the Land Acquisition Act should be amended in certain particulars. The cost of the scheme was to be met half by loans on the security of a tax of 1 per cent. on jute, but guaranteed by the Corporation.

"This was the first proposal for the improvement of Calcutta and it is desirable to notice certain features of it. In the first place, the proposal for 15½ miles of roads was not based on any survey or any definite scheme. It had its origin in a note pointing out that certain roads in certain directions were very desirable, and 15½ miles was taken as a convenient approximation. Secondly, the alterations were confined to these roads. The dustees were to be swept away to the width of the roads or of the land to be taken up, but no attempt was foreshadowed to improve the congested areas still remaining



between the streets or to provide for the transfer of the congested population elsewhere. *Thirdly*, the estimate of cost was exceedingly

**Recoupment.** uncertain. Until a scheme is prepared there can be no definite estimate of expenditure. All that could be done, was to take the cost of the only wide road that had been constructed—Harrison Road—and assume that the cost and recoveries would work out as they did in that case and it is on that basis that the recoveries by recoupment—a principle which persists through all schemes—are calculated at about a half of the gross cost. It is very important to remember this indefiniteness in the estimates because that is the factor which more than anything else has made it difficult to frame financial proposals, and is thus responsible for the delay that has taken place in giving the proposals their final shape.

"The Government of India at once accepted the main features of the scheme, but were unable, for reasons partly connected with the currency policy, to allow the tax on jute. Practically the whole correspondence of the next three years hinges upon the question how Calcutta could best meet the burden of the improvements and how far and in what form assistance might properly be given to it. In 1900 the Government of India proposed to recommend to the Secretary of State that a grant of Rs. 50 lakhs be made from Imperial Revenues for the scheme, on the understanding that a Trust was formed to carry it out and that the money which had to be raised by loan should be raised on the security of the rates; and this offer was subsequently approved by the Secretary of State on condition that a scheme was framed causing the cost of the improvements to fall upon the Municipality and that adequate taxation was imposed to meet this cost. This offer did not remove all the difficulties, and the Government of Bengal proposed to reduce the scheme to more modest dimensions. Their proposal was not considered by the Government of India to meet the needs of the case, and further correspondence ensued, chiefly upon details of finance with which I need not trouble the Council, because although they cleared the ground for the present scheme, they are not now of practical importance. Finally, in 1902 the Government of India forwarded to the Secretary of State the first definite scheme that had been put before him. This was to construct 15½ miles of roads at a cost of Rs. 478 lakhs, of which 291 lakhs was expected to be recovered by recoupment and 50 lakhs was to be given from Imperial Revenues. The remainder was to be raised by loans for a term of sixty years, and the Corporation was to meet the loan charges from their own resources, supplemented by a tax on petroleum; and on the expiry of 20 years the Corporation should take over from the Trust all its liabilities and assets. The Secretary of State accepted the principle of the scheme with very considerable modifications, and insisted that the responsibility of the Corporation should be definitely fixed, and they should be bound by legislation to pay a certain sum annually to the credit of the Trust, and proposed that 1½ per cent. of the total rateable value of all lands and buildings in the city should be paid annually to the Trust; that the proceeds of the tax on petroleum should also be paid direct to the Trust, and that the Corporation should be made responsible for any deficit.

"At this stage the scheme was made public and criticisms were invited. This is the end of the first period, and it may be convenient to summarise the principles which had been worked out during the first five years. They were—

- (i) that the opening up of congested areas was necessary;
- (ii) that this could best be done by a Trust;
- (iii) that the principle of recoupment could be relied upon to meet a large part of the cost;
- (iv) that the balance should fall primarily upon Calcutta, and that a substantial contribution must be made by the Corporation;
- (v) that Government would help with a grant of Rs. 5 lakhs;
- (vi) That the Corporation must assume the liabilities of the Trust when the latter was wound up; and
- (vii) that some amendment of the Land Acquisition Act would be required.

"There was a considerable discussion on the published scheme, but nothing more of importance was done till the beginning of 1904 when as matters were progressing very slowly and it was recognised that the machinery of official correspondence was in some respects ill-adapted to effect an expeditious settlement of questions so intricate as those which arose in connection with the improvement of Calcutta, an advisory Conference was held at which Your Honour and Sir Herbert Risley attended on behalf of the Government of India. This Conference felt acutely the difficulty already alluded to arising from the necessarily vague nature of the scheme, and limited their recommendations to the classes of work to be undertaken.

"The recommendations of the Conference are of the utmost importance in the history of the scheme. They differ considerably from the principles hitherto laid down, especially as regards the scope of the Trust, and they form the basis of the present Bill. The defect that the earlier proposals dealt only with a very limited portion of the overcrowding was clearly recognised, and the new scheme was much more comprehensive. The new scheme proposed to tackle the areas outside the alignment of these roads, which were still the backbone of the scheme, to provide for more open space and to clear overbuilt areas. This at once raised the question which had hitherto been avoided of what was to become of the ejected population. If the congested areas were opened out, the inhabitants must go somewhere, and not only that but care must be taken that the growth of population does not cause the areas to be again congested. The surplus present population as well as the growth of population in future must be provided for if permanent good was to be done. There are not sufficient areas in Calcutta itself to provide for their accommodation, and it was necessary, therefore, that the Trust should look to the future expansion of Calcutta, and should extend their operations to the suburbs in the direction in which this expansion would naturally take place. It follows therefore that the Trust must have power to make the suburbs, where the surplus population should be provided for, accessible by constructing or subsidizing trams or other means of cheap conveyance. Further, although it was hoped that private enterprise would provide suitable accommodation, yet the past history of the congested areas showed that it was essential that the Trust should be in a position to enforce the restrictions and regulations that are necessary for sanitation and the amenities of life. The Trust must then have power to acquire land in suburban areas which they could sell or lease, imposing suitable conditions, and they must also have the power given to the Corporation of Calcutta of

regulating buildings. All this was provided for in the scheme drawn up by the Conference.

"The enlarged scope of the scheme necessarily meant a considerable increase in the cost. The amount required was roughly estimated to be Rs. 822 lakhs, but, there is no virtue in this particular amount, and no doubt a great deal more could be spent with advantage. This does not represent the actual cost of any definite scheme, but is roughly what is estimated to be required for any scheme of wide and permanent utility on these lines. It was proposed to spend Rs. 500 lakhs on new roads, 172 lakhs on open spaces and 150 lakhs on housing and expansion. Of this sum, 336 lakhs was to be recovered by recoupment, 50 lakhs was Government contribution and the remainder was to be raised by loans.

"The current expenses and the Sinking Fund for the loans were to be provided by a contribution from the Corporation, supplemented by the proceeds from certain taxes, among which were—

- a  $\frac{1}{4}$  per cent. tax on jute,
- a terminal tax on passengers, and
- a transfer duty on land in Calcutta.

"The municipal contribution was to be a first charge on the rates, and was to be paid even if it were necessary to raise the rates above the legal maximum. The Conference also discussed the composition of the Trust, and proposed a body of six Trustees in addition to a President. The Chairman of the Corporation was to be an *ex-officio* Trustee, and two of the other Trustees were to be Commissioners of the Calcutta Municipality and one a member of the Bengal Chamber of Commerce, but all were to be appointed by Government.

"The proposals of the Conference were accepted by the Government of Bengal and forwarded to the Government of India. Some discussion as to the practicability of some of the proposed taxes followed, but eventually the sanction of the Secretary of State was obtained to the proposals generally on the understanding that the scheme of taxation would be for 60 years; and that although some of the loans would not fall due till after the expiration of 60 years, yet inasmuch as all the revenue would not be required in the first few years to meet interest and the sinking fund of loans, which would only be raised as required, the balance of the revenue would be invested, and thus be ready to meet all liabilities when the scheme of taxation was stopped. In 1905 the Government of India forwarded an analysis of the scheme as it then stood and the opinion of the public was invited on it. This scheme reproduced all the recommendations of the Conference. The cost of management by the Trust was taken at Re. 1 lakh, and the annual charge for interest and sinking fund at Rs. 20,35,000. This was to be met as follows:—

	Rs.
The estimated recoveries from the land taken for the surplus	
Population ... ..	3,00,000
Contributions by the Corporation supplemented by special	
taxation ... ..	18,35,000

"The contribution of the Corporation was to be a fixed demand of Rs. 4,64,000, being the sum made available by the repayment of the Government loan in December 1908 plus  $1\frac{1}{2}$  per cent. on the rateable value, which

was then calculated to yield Rs. 3,60,000. The Corporation were also held liable for default on the part of the Trust. In order to enable the Corporation to meet these liabilities, their revenues were to be supplemented by new taxes on petroleum and on transfers of immovable property. It was further proposed that the special taxation should consist of a tax on jute and one or more of various other taxes, including a railway terminal tax. The general summary of the scheme may perhaps be quoted :—

'The scheme involves a capital expenditure of 822 lakhs. The persons whose land are improved are expected to repay to the Trust 336 lakhs capital, while those who are served by the housing operations will pay 3 lakhs per annum, i. e., 2 lakhs per annum (sufficient in 60 years to repay a loan of 42 lakhs), and the cost of management, 1 lakh. The capital outlay may therefore be regarded as thus distributed :—

Persons directly benefited	...	...	378 lakhs.
Residents of Calcutta	...	...	394 "
The general tax-payer	...	...	"

'Thus no part of the cost of management and less than half the capital charges fall on the local tax-payer.

'The comparative lightness of the burden in relation to the magnitude of the operations involved is the more noticeable when the scheme of taxation comes to be analysed. The repayment of 394 lakhs involves an annual charge of Rs. 18,35,000. Of this amount it is contemplated that over Rs. 4 lakhs will be obtained from the Corporation without additional taxation and 5 lakhs from the tax on jute, by far the greater proportion of which will probably be borne by consumers beyond Calcutta. The special additional taxation falling ultimately on Calcutta represents in fact only about one-quarter of the whole cost of the scheme.'

'The opinions of the interested public were collected and carefully considered. On the whole, the scheme was well received, but there was some opposition to almost every proposed tax except, perhaps, that on jute. As a result of these criticisms, the constitution of the Trust was slightly altered, and they were given power to co-opt temporarily experts or persons specially interested in any particular scheme that happened to be before the Trust at the time. Their hands were also strengthened by giving them power to construct roads in the suburbs. As regards the financial question, the opinions received disclosed a strong feeling that the contribution from Imperial Revenues might fairly be enhanced, and the Government of India were asked for a further grant of  $1\frac{1}{2}$  lakhs per annum for 60 years. As the best solution of the very vexed question of the proper amount of the municipal contribution, the following was proposed :—

- (1) that the Corporation contribute to the Trust an annual sum equal to a 2 per cent. consolidated rate, estimated to yield 5.40 lakhs ;
- (2) that a transfer duty at 2 per cent. be imposed on sales, gifts, and usufructuary mortgages of immovable property in Calcutta, estimated to yield 2 lakhs a year ; and
- (3) that if in any year the sum of these two sources of revenue fell short of 7.50 lakhs, the Corporation should make up the deficiency.

'As regards the taxes necessary to make up the required balance of the revenue, it was recognised that no increased taxation would be altogether popular, and after much discussion and consultation with interests concerned it was proposed to levy the jute tax and the terminal tax. This scheme of taxation appeared to Government to constitute as equitable a distribution of the general burden as was possible under the circumstances.



"This scheme was sent home, and the Secretary of State, in giving his sanction to it, directed that some of the members of the Trust should be elected. He also sanctioned the annual subvention of Rs. 1½ lakhs on the condition that the scheme of taxation became law in its entirety and was made effective for the full term of 60 years. The improvement scheme thus received its present shape, and the subsequent delay has been due to its being cast into the form of a Bill and to the necessary criticisms on the wording and form of sections of that Bill.

"Such is the history of the scheme, and I trust that I have indicated sufficiently clearly the reasons for the delay in bringing it to fruition—a delay that may well have seemed intolerable to those necessarily ignorant of the cause. Perhaps, I may be permitted now to set forth shortly and generally the nature and scope of the present Bill.

#### **Nature and Scope of the Act.**

"The agency set up by the Bill is a body of Trustees. It has been recognised from the beginning that the hands of the Corporation are too full of their ordinary administration to allow them to take up a special scheme of this magnitude, which should be designed, executed and superintended by an independent body, and the precedent of the Bombay Improvement Trust has been taken. In Bombay the number of Trustees is 14, but so large a number is open to serious objections. The Trust is not a deliberative body; it is formed to execute works within certain defined lines: it is essential that their action shall be prompt, and their policy continuous and their decisions secret. A Board of seven, including a President, seems to be quite large enough from this point of view. To meet the objection that such a body cannot be sufficiently representative, it is proposed that the principal interests concerned—those of the Corporation—shall be represented by the Chairman being *ex-officio* a Trustee and two of the remaining Trustees being elected by the Corporation. Another Trustee is elected by the Chamber of Commerce. To provide for other interests that may be concerned in any particular scheme before the Trust, it is proposed that the Trustees shall co-opt representative persons who shall take part in all the consultations of the Trust. The President of the Trust is to be a whole-time officer, appointed for three years on a salary of not more than Rs. 3,000, the term of office of the other Trustees is two years, and they are to be remunerated by fees. Rules of Business have been provided, based on the Bombay Trust Act and the Calcutta Municipal Act; and in view of the magnitude of their task, the importance of the interests concerned, the large amount provided from public funds and, above all, the necessarily uncertain financial nature of the operations, considerable Government control has been provided. All schemes are subject to Government approval, and all loans, and all contracts involving more than a lakh, must be sanctioned by Government. Government has also reserved the power to make rules, and to keep a constant check on the proceedings of the Trust.

"As regards the work of the Board, the Trustees may undertake either a general improvement scheme or a street scheme. The first will provide for the relaying out of a congested or insanitary area, and it is provided that when the scheme comprises an area of 40 acres, more than one-third of which is covered by buildings the Trust may acquire land for the formation of open spaces. A street scheme will provide for the improvement of communications and sanitation and for opening up of congested areas. Under such a scheme all main thoroughfares must be at least 60 feet wide, minor thorough-

fares 40 feet and *bustee* roads 20 feet. For the purpose of both classes of schemes the Trust may acquire land, demolish buildings and alter streets. But in both cases they are bound to provide for the construction of dwellings for persons displaced and for shops for their use. With this object they may acquire land either inside or outside the Municipality. It is not contemplated that the Trust will enter on a course of speculative building, but it is recognised that the provision of dwellings must precede the demolition of existing areas, and it may be necessary for the Trust to show the way before private enterprise steps in. When private enterprise is ready to take up the building, the Trust will either lease or sell on suitable conditions the land acquired for the purpose. For the purposes of their schemes the Trust may take over any existing street or open space, under certain restrictions necessary to safeguard the public, and on completion of the scheme they will hand over to the Corporation all the streets and open spaces comprised in it; but before doing so they are bound to provide all Municipal conveniences—drainage, water, lighting, and the like. As it is necessary to prevent the evils, which this Bill is intended to remedy, arising in the suburban area, power has been taken to extend the Act and the whole or part of the Calcutta Municipal Act to any neighbouring area, and the Trustees are authorized to subsidize tramways to improve the communications with these areas.

“As regards finance, while there are necessarily no estimates and the Bill does not refer to any limit of expenditure, proposals have been drawn up on the rough calculation that the cost will be 822 lakhs, of which 336 lakhs will be recovered by recoupment and 50 lakhs, will be granted from Imperial Revenues. There remains a sum of 436 lakhs to be raised by loan, for periods not exceeding 60 years in each case. For the service of these loans an annual revenue of 19.65 lakhs is necessary, and to this must be added 1.25 for working expenses and contingencies, bringing the total up to 20.90. To meet this revenue, the Bill provides for the levy of the following taxes :—

- (1) An extra duty of 2 per cent. on the value of all immovable property situated in the Calcutta Municipality which is transferred by sale, gift or usufructuary mortgage; the money to be collected under the Stamp Act and paid at the end of the year to the Trustees. One result of the improvements must be the enhancement of the value of immovable property in Calcutta, and it is only equitable that the class of owners of property who are thus benefited should contribute directly to the cost of the scheme. The burden of a general raising of the rates might be passed on to the occupiers in whole or in part, and it is essential that some means should be devised to prevent the owners of land from evading their obligations. This tax is estimated to bring in two lakhs.
- (2) A terminal tax of half an anna to be paid by every passenger by rail or steamer to or from Calcutta. It is a tax that residents outside who visit Calcutta and are for the time at all events benefited by the improvements should pay some share of the cost. The tax is to be collected in the shape of a surcharge on the ticket by the Railway and Steamer Companies concerned, and paid by them at end of the year. It is intended at all events at first to exempt passengers from within a radius of 30



miles on the ground that the ejected population must necessarily be driven to the suburbs, and it is unwise to do anything that might hamper their free coming and going; but power has been taken to abolish this concession with the sanction of the Government of India if at any time it is thought expedient to do so. This tax is estimated to yield two lakhs.

- (3) A Customs and Excise duty, not exceeding 2 annas per bale of 400 pounds on raw jute and jute cuttings and rejections exported from the Port of Calcutta or consumed in any mill in Bengal. It is not intended to impose the full duty at first, but to begin with 1 anna 9 pies per bale. The justification for this impost is the fact that though many of the mills are outside Municipal limits, yet they do to some extent contribute to the overcrowding; moreover, the head-quarters of the industry is in Calcutta, the agents are all there, and the financing is there. It is in this sense peculiarly a Calcutta industry, and will benefit directly or indirectly by the improvements. The full duty 2 annas is about a quarter per cent. on the value, and will practically not be felt. It is estimated to realise 8'40.

"We have then a revenue of 12'40 produced by special taxation on persons directly or indirectly benefited. It is estimated that the Trust may expect to receive another 3 lakhs a year from the lands it acquires for housing the surplus population, and from such buildings as it may erect on these lands. There remains the contribution of the Corporation. This will be a first charge on the rates, and will consist of a sum equal to a 2 per cent. consolidated rate with the stipulation that this sum, together with the transfer tax, shall not be less than 7½ lakhs. In addition to this, there is a further liability imposed by the Bill on the Corporation, viz., that if the Trust fails to pay the interest and sinking fund charges on the loans raised, the Accountant-General, Bengal, shall pay them and shall be reimbursed immediately out of the Municipal Funds by the Chairman of the Corporation. In such a case the rents and income of the Trust shall be attached and paid to the Corporation until the debt is liquidated.

"This makes up the estimated revenue of the Trust, and the grant of a lakh and a-half from the Government of India forms the reserve. It will be observed that the financial scheme is necessarily very uncertain. There is no defined estimate of expenditure; the working expenses may very likely be heavier than anticipated; the cost of the scheme may turn out very much in excess of the very rough calculations for which there is only a very shadowy basis. And on the receipts side the recoveries by recoupment may be considerably less than our anticipation. It is true that the required annual income is based on the supposition that the full loan of 436 lakhs will be taken from the first; but, on the other hand, the three lakhs taken credit for in revenue as the income from the lands taken up for housing will certainly not be received from the first. The receipts from the terminal tax and the tax on jute are estimates only and may be falsified. Further, if the loans are not taken at once, their term will extend beyond the period of taxation, and excess revenue in the first years must be put aside to meet this liability; and, lastly, the 336 lakhs it is estimated to recover by recoupment or some portion of them may have to be taken before the recoupment recoveries

begin to come in, in which case a further charge for interest may be incurred. For all these reasons it is sound to have a reserve of revenue, and the Government grant of  $1\frac{1}{2}$  lakhs will provide this, and can be supplemented by an increase in the jute tax to 2 annas and by the rise in the value of the consolidated rate. At the same time the financial condition may turn out better than has been anticipated, and in that case it would be possible, when the position of the Trust is fully assured, to give some relief from the annual payments, and power has been taken to give this relief with the consent of the Government of India; the nature of the relief and the recipients would be determined when the occasion arises.

"Lastly, one word about the alteration of the procedure for land acquisition.

**Alteration in the Procedure of Land Acquisition.** "A special Tribunal is set up to take the place of the Court under the Land Acquisition Act. This Tribunal consists of a President and two assessors. The President must be either a member of the Judicial Branch of the Imperial or Provincial Civil Service, of not less than ten years' standing, who has, for at least three years, served as District Judge or held judicial office not inferior to that of a Subordinate Judge of the first grade, or a barrister, advocate or pleader of not less than ten years' standing, who has practised as an advocate or pleader in the Calcutta High Court. The President and one assessor shall be appointed by Government and the other assessor by the Corporation, and this Tribunal will decide all questions in dispute regarding compensation under the Bill. In order to guard against loss to the public owing to unduly inflated prices having to be paid for the land acquired, precautions have been taken to prevent fictitious enhancement of values, and the definition of market value has been recast."

The motion was put and agreed to.

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# TABLE OF CASES CITED.

	PAGE.
Abu Baker v. Peary Mohan Mookerjee ... ..	133
Alston v. Eastern Counties Rail Co. ... ..	92
Armstrong v. Waterford and Limerick Rail Co. ... ..	92
Bandhi Sing v. Ramadhin Sing ... ..	141
Basanta Kumari Debi v. The Corporation of Calcutta ... ..	103
Birmingham and District Land Co. v. London & North Western Rail Co. ... ..	99
Bygrave v. Metropolitan Board ... ..	99
Chairman Rajpur Municipality v. Nogensdra Nath Bagchi ... ..	91
Chairman Municipal Board Chapra v. Basudev Narain Sing ... ..	91
Chairman Giridih Municipality v. Srish Chunder Mojumder ... ..	91
Debnarain Dutt v. Chairman Baruipur Municipality ... ..	91
Doe Hudson v. Leeds and Bredford Rail Co. ... ..	92
Errington v. Metropolitan District Rail Co. ... ..	5
Fergusson v. Wilson ... ..	7
Fookes v. Wills Rail Co. ... ..	100
Galloway v. Mayor and Commonalty of London ... ..	92, 95
Great Western Railway Co v. Swindon Rail Co. ... ..	92
Ganoda v. Nalmie ... ..	93
Gangaram Marwari v. Secretary of State ... ..	128
Giris Chandra Ghosh v. Kishory Mohan Das ... ..	98
Holiday v. Mayor of Wakefield ... ..	5
Hari Pandurang v. Secretary of State for India in Council ... ..	2, 52
Harihar Bannerjee v. Ram Sashi Ray ... ..	97
Joges Chandra Ray v. Yakub Ali ... ..	133
Kameswar Prashad v. Chairman Bhabua Municipality ... ..	91
Knapp v. London Chatham and Dover Railway Co ... ..	92
Mani Lal Singh v. The Trustees for the Improvement of Calcutta ... ..	25, 47, 48, 56
Manneswar Das v. Collector of Chapra ... ..	91
Mayor of Ludlow v. Charlton ... ..	17
Mrinalinee v. Abinas ... ..	133, 140
Nabinkali v. Banolota ... ..	133, 140
Nicholson v. Bradfield ... ..	17
Nores Chandra Bose v. Hira Lal Bose ... ..	52
Nanda Lal Ganguly v. Khetra Mohan Ghosh ... ..	52
North Shore Ry. Co. v. Pion. ... ..	92
North London Railway Co. v. Metropolitan Board Works ... ..	95
Parkdale Corporation v. West ... ..	92
Rameswar Singh v. Secretary of State ... ..	29
Ramsden v. Manchester Rail Co. ... ..	92
Ram Prosanno Nandy v. The Secretary of State for India in Council ... ..	141
Ratanlal Choonilal v. The Municipal Commissioners for the City of Bombay ... ..	134
Saib Chandra Singh v. Annoda Gopal ... ..	133, 140
Satyendra Nath Dey v. The Secretary of State for India in Council ... ..	141
Sahebzaadee v. Ferguson ... ..	90
Secretary of State v. Perumal ... ..	90
Secretary of State v. Monohor Mookerjee ... ..	133
Smith v. Great Western Rail Co. ... ..	5
South of Ireland Colliery Co. v. Wadde ... ..	17
Stretton v. Great Western and Brentford Rail Co. ... ..	92
Trustees for the Improvement of Calcutta v. Chandra Kanto Ghosh ... ..	6, 24, 32, 47, 48, 55, 92, 93
University Life Assurance Society v. Metropolitan Rail, Co. ... ..	92
Wills v. Mayor of Kingston on Hull ... ..	17
Willing v. South Eastern Rail Co. ... ..	92

# The Calcutta Improvement Act, 1911.

## CONTENTS.

---

### CHAPTER I.—PRELIMINARY.

#### SECTION.

1. Short title, commencement and extent.
2. Definitions.

### CHAPTER II.—THE BOARD OF TRUSTEES.

#### *Constitution of the Board.*

3. Creation and incorporation of Board.
4. Constitution of the Board.
5. Appointment of Trustees.
6. *Ex officio* Trustee.
7. Election of other Trustees.
8. Appointment in default of election.
9. Disqualifications for being appointed or elected a Trustee.
10. The Chairman to be a whole-time officer.
11. Remuneration of Chairman.
12. Leave of absence or deputation of the Chairman.
13. Appointment, etc., of acting Chairman.
14. Leave of absence to other Trustees.
15. Removal of Trustees.
16. Filling of casual vacancies in certain cases.
17. Term of office of Trustees.

#### *Conduct of Business.*

18. Meetings of Board.
19. Temporary association of members with the Board for particular purposes.
20. Constitution and functions of Committees.
21. Meetings of Committees.
22. Fees for attendance at meetings.
23. Trustees and associated members of Board or Committee not to take part in proceedings in which they are personally interested.
24. Power to make and perform contracts.
25. Execution of contracts, and approval of estimates.
26. Further provisions as to execution of contracts, and provisions as to seal of Board.
27. Tenders.
28. Security for performance of contract.
29. Supply of documents and information to the Government.

#### *Officers and Servants.*

30. Statement of strength and remuneration of staff.
31. Board to make rules.

## SECTION.

32. Powers of appointment, etc., in whom vested.
33. Sanction of Local Government required to certain statements, rules and orders.
34. Control by Chairman.
35. Delegation of certain of Chairman's functions.

CHAPTER III.—IMPROVEMENT SCHEMES AND  
RE-HOUSING SCHEMES.

36. When general improvement scheme may be framed.
37. Authority for making an official representation for a general improvement scheme.
38. Consideration of official representations.
39. When street scheme may be framed.
40. Matters to be considered when framing improvement schemes.
41. Matters which must be provided for in improvement schemes.
42. Matters which may be provided for in improvement schemes.
43. Preparation publication and transmission of notice as to improvement scheme, and supply of documents to applicants.
44. Transmission to Board of representation by Corporation or Municipality as to improvement scheme.
45. Service of notice as to proposed acquisition of land.
46. Furnishing of copy of, or extracts from, the municipal assessment-book.
47. Abandonment of improvement scheme, or application to Local Government to sanction it.
48. Power to sanction or reject improvement scheme.
49. Notification of sanction to improvement scheme.
50. Alteration of improvement scheme after sanction.
51. Combination of improvement schemes.
52. Re-housing persons displaced by improvement schemes.
53. Width of streets.
54. Transfer to Board, for purposes of improvement scheme, of building or land vested in Corporation or Municipality.
55. Transfer of private street or square to Board for purposes of improvement scheme.
56. Provision of drain or water-work to replace another situated on land vested in the Board under section 54 or section 55.
57. Bar to application of certain sections of the Calcutta Municipal Act, 1899, to streets vested in the Board.
58. Repair and watering of streets vested in the Board.
59. Guarding and lighting when street vested in the Board is opened or broken up, or when street is under construction, and speedy completion of work.
60. Prevention or restriction of traffic in street vested in the Board, during progress of work.
61. Provision of facilities, and payment of compensation when work is executed by Board in public street vested in them.
62. Power of Board to turn or close public street or square vested in them.
63. Projected public streets.
64. Reference of disputes to Tribunal.



## SECTION.

- 65. Vesting in Corporation of streets laid out or altered, and open spaces provided, by the Board under an improvement scheme.
- 66. Application of section 65 to other Municipalities.
- 67. Power of Board to retain service passages.

## CHAPTER IV.—ACQUISITION AND DISPOSAL OF LAND.

*Acquisition and Disposal of Land.*

- 68. Power to purchase or lease by agreement.
- 69. Power to acquire land under the Land Acquisition Act, 1894.
- 70. Tribunal to be constituted.
- 71. Modification of the Land Acquisition Act, 1894.
- 72. Constitution of Tribunal.
- 73. Remuneration of members of Tribunal.
- 74. Officers and servants of Tribunal.
- 75. Payments by Board on account of Tribunal.
- 76. Power to make rules for Tribunal.
- 77. Award of Tribunal how to be determined.

*Abandonment of Acquisition.*

- 78. Abandonment of acquisition in consideration of special payment.
- 79. Recovery of money payable in pursuance of section 78.
- 80. Agreement or payment under section 78 not to bar acquisition under a fresh declaration.

*Disposal of Land.*

- 81. Power to dispose of land.

## CHAPTER V.—TAXATION.

*Duty on Transfers of Property.*

- 82. Duty on certain transfers of immoveable property.
- 83. Terminal tax on passengers by railway or inland steam-vessel.

*Customs Duty on Jute.*

- 84. Customs duty on exports of jute from Calcutta by sea.
- 85. Section 5 of the Indian Tariff Act, 1894, not to apply to jute.
- 86. Power to Local Government to make rules.
- 87. Punishment for offences.

## CHAPTER VI.—FINANCE.

*Municipal Contributions.*

- 88. Contributions from Municipal Fund.

*Loans.*

- 89. Power of Board to borrow money.
- 90. Manner and time of borrowing money.
- 91. Loans from banks.
- 92. Diversion of borrowed money to purposes other than those first approved.
- 93. Form, signature, exchange, transfer and effect of debentures.
- 94. Signature of coupons attached to debentures.
- 95. Payment to survivors of joint payees.
- 96. Receipt by joint holder for interest or dividend.



## SECTION.

- 97. Priority of payments for interest and repayment of loans.
- 98. Repayment of loans taken under section 89.
- 99. Establishment and maintenance of sinking funds.
- 100. Power to discontinue payments into sinking funds.
- 101. Investment of sinking funds.
- 102. Application on sinking funds.
- 103. Annual statements by Trustees.
- 104. Annual examination of sinking funds.

*Enforcement of Liabilities.*

- 105. Procedure if Board fail to make any payment or investment in respect of loans.
- 106. Procedure if Chairman of Corporation fails to make any payment due to Board or Accountant-General.
- 107. Payments under section 105 to be a charge on the property of the Board.

*Budget Estimates.*

- 108. Estimates of income and expenditure to be laid annually before the Board.
- 109. Sanction of Board to estimates.
- 110. Approval of Local Government to estimates.
- 111. Transmission of copy of estimate to Chairman of Corporation.
- 112. Special provisions as to the first estimate after the constitution of the Board.
- 113. Supplementary estimates.
- 114. Adherence to estimate, and maintenance of closing balance.

*Banking and Investments.*

- 115. Receipt of moneys, and deposit in Bank of Bengal.
- 116. Investment of surplus money.
- 117. Payments by cheque.
- 118. Signature of orders under section 116, and cheques.
- 119. Duty of Chairman and others before signing cheque.

*Accounts.*

- 120. Definition of "cost of management."
- 121. Keeping of capital account and revenue account.
- 122. Credits to capital account.
- 123. Application of capital account.
- 124. Credits to revenue account.
- 125. Application of revenue account.
- 126. Power to direct sale of securities in which any surplus of the revenue account is invested.
- 127. Advances from revenue account to capital account.
- 128. Advances from capital account to revenue account.
- 129. Submission of abstracts of accounts to Local Government.
- 130. Annual audit account.
- 131. Powers of auditor.
- 132. Remuneration of auditor.
- 133. Reports and information to be furnished by auditor to the Board.
- 134. Board to remedy defects pointed out by auditor.
- 135. Auditor's report to be sent to each Trustee and considered by Board.
- 136. Publication and transmission of an abstract of the accounts.

## SECTION.

## CHAPTER VII.—RULES.

- 137. Further powers to Local Government for making rules.
- 138. Further powers to Board for making rules.
- 139. Conditions precedent to the making of rules under section 86, 137 or 138.
- 140. Sanction of Local Government required to rules made under section 138.
- 141. Publication of rules.
- 142. Printing and sale of copies of rules.
- 143. Exhibition of copies of rules.
- 144. Power of Local Government to cancel rules made under section 138

## CHAPTER VIII.—SUPPLEMENTAL PROVISIONS.

*Status of Trustees, etc.*

- 145. Trustees etc., deemed public servants.  
*Contributions towards leave-allowances and pensions of Government servants.*
- 146. Contributions by Board towards leave allowances and pensions of Government servants employed under this Act.  
*Extension of Acts to areas in the neighbourhood of the Calcutta Municipality.*
- 147. Power to extend the Calcutta Municipal Act, 1899, to areas, near Calcutta, to which provisions of the present Act have been extended.
- 148. Publication of notifications under sections 1 (3) and 147 (1) in draft, for criticism.

*Facilities for movement of the population.*

- 149. Powers of the Board for facilitating movement of the population.

*Telegraph and Railways Acts.*

- 150. Saving of Telegraph and Railways Acts.

*Legal Proceedings.*

- 151. Cognizance of offences.
- 152. Limitation of time for prosecution.
- 153. Power to hear case in absence of accused when summoned to appear.
- 154. Powers of Chairman as to institution, etc., of legal proceedings and obtaining legal advice.
- 155. Indemnity to Board, etc.
- 156. Notice of suit against Board, etc.

*Police.*

- 157. Co-operation of the Police.
- 158. Arrest of offenders.
- 159. Proof of consent, etc., of Board or Chairman or officer or servant of Board.

*Validation.*

- 160. Validation of acts and proceedings.

*Compensation.*

- 161. General power of Board to pay compensation.
- 162. Compensation to be paid by offenders for damage caused by them.

*Public Notice and Advertisements.*

- 163. Public notice how to be made known.

## SECTION.

164. Newspapers in which advertisements or notices to be published.

*Signature and Service of notices or bills.*

165. Stamping signature on notices or bills.

166. Service how to be effected.

*Surveys.*

167. Power to make surveys, or contribute towards their cost.

*Power of Entry.*

168. Power of entry.

*Penalties.*

169. Punishment for acquiring share or interest in contract etc., with the Board.

170. Penalty for reflowing fence, etc., in street.

171. Penalty for building within street alignment or building line fixed by Board.

- 171A. Penalty for failure to remove wall or building in respect of which agreement has been executed.

172. Penalty for failure to comply with requisition made by auditor.

173. Penalty for obstructing contractor or removing mark.

174. Fines, damages and proceeds of confiscations to be paid to Board.

*Recovery of expenses.*

- 174A. Removal of wall or building and recovery of expense. Penalty for failure to remove wall or building in respect of which agreement has been executed.

*Disposal of Fines and Damages.*

175. Suspension or abolition, and re-imposition, of taxation or Municipal contributions.

*Dissolution of Board.*

176. Ultimate dissolution of Board, and transfer of their assets and liabilities to the Corporation.

## THE SCHEDULE.

## FURTHER MODIFICATIONS IN THE LAND ACQUISITION ACT, 1894.

1. Amendment of section 3.

2. Amendment of section 11.

3. Amendment of section 15.

4. Amendment of section 17.

5. New section 17A—

- 17A. Transfer of land to Board.

6. Amendment of section 18.

7. Amendment of section 19.

8. Amendment of section 20.

9. Amendment of section 23.

10. Amendment of section 24.

11. New section 24A—

- 24A. Further provisions for determining compensation.

12. Amendment of section 31.

13. New sections 48A and 48B.

- 48A. Compensation to be awarded when land not acquired within two years.

- 48B. Sections 48 and 48A not to apply in certain cases.

14. Amendment of section 49.

# THE CALCUTTA IMPROVEMENT ACT,

BEING

Act V of 1911 B. C.

as amended by

Act XVIII of 1911 B. C.

and

Act III of 1915 B. C.

An Act to provide for the Improvement and Expansion of Calcutta.

**Note:**—The preamble to the Act, which is described as an Act for the improvement and expansion of Calcutta, consists of four paragraphs. The first paragraph enumerates the object of the Act, namely,

(A) The Improvement and Expansion of Calcutta by

- (a) opening up congested areas,
- (b) laying out or altering streets,
- (c) providing open spaces for purposes of ventilation and recreation,
- (d) demolishing or constructing buildings,
- (e) acquiring land for the said purposes.

(B) The rehousing of persons of the poorer and working classes displaced by the execution of improvement schemes.

Trustees for the Improvement of Calcutta *vs.* Chandra Kanta Ghosh  
21, C. W. N. 8. Ratanlal Choonilal *vs.* The Municipal Commissioners for the  
City of Bombay 23 C. W. N. 441 (B. C.)

Whereas it is expedient to make provision for the IMPROVEMENT and EXPANSION of CALCUTTA by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, acquiring land for the said purposes and for the re-housing of persons of the poorer and working classes displaced by the execution of improvement schemes, and otherwise as hereinafter appearing ;

- (3) that part of Hastings North of the South edge of Clyde Road and the new Road, to the river bank which have hitherto been excluded from Calcutta.

The following draft notification No. 608M dated 25th February 1909 is published in the Calcutta Gazette of 26th February 1919 in Part I B page 40.

"In exercise of the powers conferred by Subsec (3) Section 1 of the Calcutta Improvement Act 1911 (Bengal Act V of 1911) the Governor in Council is pleased to extend section 167 of that Act in the GARDEN REACH Municipality."

**2.** In this Act, unless there is any thing repugnant in the subject or context,—

(a) "the Board" means the Board of Trustees for the Improvement of Calcutta, constituted under this act ;

(aa) "Building line" means a line (in rear of the street alignment) up to which the main wall of a building abutting on a projected public street may lawfully extend ;

(b) "The Calcutta Municipality" means "Calcutta" as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899 ,

**Note:—**Vide note under Section 1.

(d) "Chairman" means the Chairman of the Board,

(e) "The Corporation" means the Corporation of Calcutta constituted under the said Calcutta Municipal Act, 1899 ,

(a) "The General Committee" means The General Committee constituted under the said Calcutta Municipal Act 1899 ;

(f) "Improvement scheme" means a GENERAL IMPROVEMENT scheme or a STREET SCHEME, or both but does not include a projected public street, referred to in Section 63"

(g) "Land" has the same meaning as in clause (a) of section 3 of the Land Acquisition Act, 1894 ,

- (k) "Municipal assessment-book" means the assessment-book kept under section 164 of the Calcutta Municipal Act 1899 and the valuation and rating list prepared under section 103 of the Bengal Municipal Act 1884 ;
- (i) "Notification" means a notification published in the Calcutta Gazette ;
- (j) "Secretary to the Board" means the person for the time being appointed by the Board to discharge the functions of Secretary to the Board ;
- (k) the "Tribunal" means the Tribunal constituted under section 72 ;
- (l) "Trustee" means a Member of the Board ; and
- (m) the expressions "drain," "public street" and "street alignment" have the same meaning as in clauses (16), (37) and (47), respectively, of section 3 of the Calcutta Municipal Act, 1889.

**Note :—***Cl. (g)* The word "land" has been defined in section 3 of the L. A. Act I of 1894 in the following terms "The expression 'land' includes benefits to arise out of land and things attached to the earth." Lands are the subject matter of the law of compensation. Mines are included under "lands" and if required may be purchased compulsorily, Cripps, page 6 (5 Edition). *Holiday vs. Mayor of Wakefield* (1891) A. C. 81 ; 60 L. J. Q. B. 361. *Smith vs. Great Western Rail Co.* (1887) 3 App. cas. 165 ; 47 L. J. Ch. 97 *Errington vs. Metropolitan District Rail Co.* (1882) 19 Ch. D. 559.

Section 3 of the Land Clauses Act 1845 defines lands as "messuages lands, tenements and hereditaments of any tenure."

The term "messuages" is substantially equivalent to a house, "Tenement" is a large word used to pass not only lands and other inheritances which are holden, but also offices, rents, commons, *profits a prendre* out of lands and the like, wherein a man hath any possible tenement and whereof he is seised "ut de libro tenemento." But Hereditament is the largest of all in that kind, for whatsoever may be inherited is an hereditament, be it corporeal or incorporeal, real or personal or mixt." And Blackstone (Comm. Vol. 2, p. 16), Says, that "Incorporeal hereditaments are principally of ten sorts, advowsons, tithes, commons, ways, offices, dignities, franchises, corrodies or pensions, annuities and rents," Cripps p. 6 (5 Edition) Land includes the trees, buildings & crops standing thereon. Section 19 of Act I of 1894, it also includes Easements vide cl (b) sec 3 of L. A. Act I of 1894.



**Ex-officio  
Trustee.**

**6.** The Chairman of the Corporation shall be a Trustee *Ex-officio*.

**7. (a)**  
**Election of other  
Trustees.**

The three members of the Corporation referred to in clause (c) of section 4 shall be elected as follows, namely,—

- (a) one by the Corporation,
- (b) one by the Ward Commissioners, and
- (c) one by the Commissioners appointed under sub-section (2) of section 8 of the Calcutta Municipal Act, 1899.

(2) The members of the Bengal Chamber of Commerce referred to in clause (d) of section 4 shall be elected by that Chamber.

(3) The member of the Bengal National Chamber of Commerce referred to in clause (e) of section 4 shall be elected by that Chamber.

(4) The Secretary to the Corporation, the Secretary to the Bengal Chamber of Commerce and the Secretary to the Bengal National Chamber of Commerce, shall respectively make a return, in duplicate, to the Chairman, setting forth the name in full of every person elected under this section; and the said return shall be published by notification under the signature of the Chairman.

**Note.**—Under the Calcutta Municipal Act, 1899, Section 5, the Municipal authorities charged with carrying out the provisions of that Act are—

- (a) a corporation,
- (b) a General Committee,
- (c) a Chairman of the Corporation,

And section 6 defines "Corporation" which consists of the Chairman and fifty Commissioners to be elected or appointed and Section 8 provides that (1) twentyfive of the Commissioners shall be elected at Ward elections and (2) the remaining Commissioners shall be appointed as follows namely:—

- (a) four by the Bengal Chamber of commerce,
- (b) four by the Trades Association Calcutta,
- (c) two by the Commissioners for the Port of Calcutta,
- and
- (d) fifteen by the Local Government.

**8.** If any of the bodies of electors referred to in section 7 does not, by such date as may be prescribed by rule made in that behalf under section 137, elect a person to be a Trustee, the Local Government shall, by notification, appoint a person belonging to such body to be a Trustee; and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by such body.

**Disqualification for being appointed or elected a Trustee.**

**9.** (1) A person shall be disqualified for being appointed or elected a Trustee if he—

(a) has been sentenced by any Court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the Local Government is hereby empowered to make, if it thinks fit in this behalf; or

(b) is an undischarged insolvent; or

(c) holds any office or place of profit under the Board; or

(d) has, directly or indirectly, by himself or by any partner, employer or employee, any share or interest in any contract or employment with, by, or on behalf of, the Board or

(e) is a director, or a secretary, manager or other salaried officer, of any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of the Board.

(2) But a person shall not be disqualified as aforesaid, or be deemed to have any share or interest in such contract or employment as aforesaid, by reason only of his having a share or interest in—

(i) any sale, purchase, lease or exchange of land, or any agreement for the same; or

(ii) any agreement for the loan of money, or any security for the payment of money order; or

(iii) any newspaper in which any advertisement relating to the affairs of the Board is inserted; or

(iv) the occasional sale to the Board, to a value not exceeding two thousand rupees in any one financial year, of any article in which he trades; or by reason only of his having a share or interest, otherwise than as a director, or secretary, manager or other salaried officer, in any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of the Board.

**Note:**—This section is identically the same as section 14 of the Bombay Act with slight modifications, vide also section 39 of the Calcutta Municipal Act, 1899.

**10.** While any person is holding the office of Chairman he shall not hold any other salaried office, and subject to any exceptions permitted by the Local Government, shall devote his whole time and attention to his duties under this Act.

**The Chairman to be a wholetime officer.**

**11.** (1) The Chairman shall receive such monthly salary, not exceeding three thousand rupees, as may be fixed by the Local Government :

**Remuneration of Chairman.**

Provided that, if the Chairman, after having held his office for three years, is re-appointed for a further period of not less than two years, the Local Government may direct that his monthly salary be increased to any sum not exceeding three thousand five hundred rupees.

(2) The word "salary," as used in this section, excludes allowances to which the Chairman may be entitled and any contribution payable on his account under any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

(3) The Local Government may, if it thinks fit, direct the payment to the Chairman of a house-rent and conveyance allowance, not exceeding five hundred rupees *per mensem*, in addition to his salary.

**Note:**—It will be noticed that the Act does not provide for the appointment of a Chairman for a period of three years at least as is provided by section 12 of the Bombay Act. The Local Government has been given by the Act the absolute power of appointment of a Chairman for such time as the Local Government thinks fit and proper.

**12.** (1) The Local Government may, after consultation with the Board, grant leave of absence to the Chairman, or depute him to other duties, for such period as it thinks fit.

Leave of absence  
or deputation of  
the Chairman.

(2) The allowance (if any) to be paid to the Chairman while absent on leave or deputation shall be such amount, not exceeding his salary, as may be fixed by the Local Government.

Provided that, if the Chairman is a Government officer the amount of such allowance, shall be such as he may be entitled to under any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

**13.** (1) Whenever the Chairman is granted leave of absence or deputed to other duties, the Local Government may appoint a person to act as Chairman.

Appointment etc.  
of acting Chairman

(2) The salary and house-rent and conveyance allowance (if any) of any person appointed to act as Chairman shall be fixed by the Local Government, subject to the provisions of section 11.

(3) Any person appointed to act as Chairman shall exercise the powers and perform the duties conferred and imposed by and under this Act on the Chairman, and shall be subject to the same liabilities, restrictions and conditions as the Chairman.

**14.** The Board may permit any Trustee, other than the Chairman or the Chairman of the Corporation, to absent himself from the meeting of the Board for any period not exceeding six months.

Leave of absence  
of other Trustee.

**15.** (1) The Local Government may, by notification, declare that any Trustee shall cease to be a Trustee—

Removal of Trustees.

- (a) if he has acted in contravention of section 23, or
- (b) if he has been absent from, or is unable to attend, the meetings of the Board for any period exceeding six consecutive months, or

- (c) if he has, without the permission of the Board, been absent from the meetings of the Board for any period exceeding three consecutive months, or
- (d) if he is a salaried servant of the Government, and if his continuance in office as a Trustee is, in the opinion of the Local Government, undesirable.

(2) The Local Government shall by notification, declare that a Trustee shall cease to be a Trustee—

- (i) if he has become disqualified for appointment or election as a Trustee for any of the reasons mentioned in section 9 ; or
- (ii) if he was elected or appointed as being a member of the Corporation, the Bengal Chamber of Commerce or the Bengal National Chamber of Commerce, and if he is, at the date of such notification, no longer a member of the Corporation or such Chamber, as the case may be.

(3) If at any time it appears to the Local Government that the Chairman has shown himself to be unsuitable for his office, or has been guilty of any misconduct or neglect which renders his removal expedient, it may, by notification, declare that the Chairman shall cease to hold office as such.

**16.** If any Trustee be permitted by the Board to absent himself from meetings of the Board for any period exceeding three months, or if any Trustee, other than the Chairman of the Corporation dies or resigns the office of Trustee, or ceases to hold the office of Trustee in pursuance of a notification, published under section 15,

the vacancy shall be filled, within one month, by a fresh appointment, or election under section 7 or section 8, as the case may be.

**Note :—**There is no provision for filling up the vacancy for any period less than three months. Section 18 (i) of the Bombay Act however provides that during any vacancy in the Board, the continuing Trustees may act as if no vacancy had occurred.



**17.** (1) The term of office of the first Trustee appointed or elected under section 5, section 7 or section 8, other than the Chairman, shall commence on such day as may be appointed by the Local Government.

**Term of office of Trustees.**

(2) Subject to the provisions of section 15, the term of office of Trustee (other than the Chairman of the Corporation) shall be as follows :—

(a) the Chairman—such period, not less than three years, as may be fixed by the Local Government.

(b) a Trustee appointed or elected in pursuance of section 16 in the place of a Trustee who has been permitted to absent himself from meetings of the Board—the period of the absence of the latter Trustee ;

(c) other Trustees—three years.

(3) Any Trustee shall, if not disqualified for any of the reasons mentioned in section 9, be eligible for re-appointment or re-election at the end of his term of office.

### Conduct of business.

**18.** The Board shall meet, and shall from time to time make such arrangements with respect to the place, day, hour, notice management and adjournment of their meetings as they may think fit, subject to the following provisions, namely :—

**Meetings of Board.**

(a) an ordinary meeting shall be held once at least in every month ;

(b) the Chairman may, whenever he thinks fit, and shall, upon the written request of not less than two other Trustees, call a special meeting ;

(c) the Chairman shall attend every meeting of the Board unless absent on leave or prevented by sickness or other reasonable cause ;

(d) no business shall be transacted at any meeting unless at least half of the existing number of the Trustees are present from the beginning to the end of the meeting ;



(e) the person to preside at a meeting shall be the Chairman, or, in his absence from any meeting, the Trustees present shall choose one of their number to preside ;

(f) all questions shall be decided by a majority of votes of the Trustees present, the person presiding having a second or casting vote in all cases of equality of votes ;

(g) if a poll be demanded, the names of the Trustees voting and the nature of their votes, shall be recorded by the person presiding ;

(h) minutes of the names of the Trustees present, and of the proceedings at each meeting shall be kept in a book to be provided for the purpose, which shall be signed at the next ensuing meeting by the person presiding at such meeting, and shall be open to inspection by any Trustee during office hours.

**Note :—**The section should be read subject to the provisions of section 35. Post.

**19.** (1) The Board may associate with themselves, in such manner and for such period as may be prescribed by rules made under section 138, any person whose assistance or advice they may desire in carrying out any of the provisions of this Act.

Temporary association of members with the Board for particular purposes.

(2) A person associated with themselves by the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relative to that purpose, but shall not have a right to vote at a meeting of the Board, and shall not be a member of the Board for any other purpose.

**Note :—**The Section is practically identical with Section 18 of the Bombay Act IV of 1898.

**20.** (1) The Board may from time to time appoint Committees, consisting of such persons of any of the following classes as they may think fit, namely—

Constitution and functions of the Committee

- (i) Trustees,
- (ii) persons associated with the Board under section 19,
- (iii) other persons whose assistance or advice the Board may desire as members of Committees :

Provided that no Committee shall consist of less than three persons.

(2) The Board may—

- (a) refer to such Committees, for enquiry and report, any matter relating to any of the purposes of this Act, and
- (b) delegate to such Committee, by specific resolution, and subject to any of the rules made under section 138, any of the powers or duties of the Board.

(3) The Board may at any time dissolve, or, subject to the provisions of sub-section (1) alter the constitution of, any such Committee.

(4) Every such Committee shall conform to any instructions from time to time given to them by the Board.

(5) All proceedings of any such Committee shall be subject to confirmation by the Board.

**Note:**—This is identical with clause (3) of sec 18 of the Bombay Act, with the exception of the clause "The Chairman shall be the President of every such Committee."

**21.** (1) Committees appointed under section 20 may meet and adjourn as they think proper, but the Chairman may, whenever he thinks fit, call a special meeting of any Committee, and shall call a special meeting of any Committee upon the written request of not less than two members thereof.

(2) The person to preside at a meeting of a Committee shall be the Chairman, if he is a member of the Committee, or, if he is not a member, then the members present shall choose one of their number to preside.

(3) No business shall be transacted at any meeting of a Committee unless at least half the number of the members of the Committee are present from the beginning to the end of the meeting.

(4) All questions, at any meeting of a Committee shall be decided by a majority of votes of the members present, the person presiding having a second or casting vote in all cases of equality of votes.

**Note:**—The section should be read subject to the provisions of section 35.

**22.** Every Trustee (other than the Chairman) and every person associated with the Board under section 19, shall be entitled to receive a fee of Twenty Rupees and every member of a Committee shall be entitled to a fee of Ten Rupees for each meeting of the Board or the Committee—

- (i) at which a quorum is present and business is transacted, and
- (ii) which he attends from the beginning to the end thereof, or for such period as the person presiding at the meeting may consider sufficient to justify the payment of the fee.

Provided that the aggregate amount of fees payable to any person in respect of meetings of any kind held during any month shall not exceed such sum as may be prescribed by any rule made under section 137 in their behalf.

The Bombay Act is more liberal. Under Section 17 of the Bombay Act, the Trustees are entitled to Rs. 30 for every ordinary meeting and Rs. 15 for every special meeting of the committee. The Calcutta Act follows section 100 of the Calcutta Municipal Act in this respect.

**23.** (1) A Trustee who—

Trustee and associated members of Board or Committee not to take part in proceedings in which they are personally interested

(a) has directly or indirectly by himself or by any partner, employer or employee, any such share or interest as is described in sub-section (2) of section 9, in respect of any matter, of

(b) has acted professionally, in relation to any matter, on behalf of any person having therein any such share or interest as aforesaid,

shall not vote or take any other part in any proceeding of the Board or any Committee relating to such matter.

(2) If any Trustee, or, any person associated with the Board under section 19, or any other member of a Committee appointed under this Act, has, directly or indirectly, any beneficial interest in any land situated in an area comprised in any improvement scheme framed under this Act, or in an area in which it is proposed to acquire land for any of the purposes of this Act,—

- (i) he shall before taking part in any proceeding at a meeting of the Board or any Committee relating to such area, inform the person presiding at the meeting of the nature of such interest.
- (ii) he shall not vote at any meeting of the Board or any Committee upon any resolution or question relating to such land, and
- (iii) he shall not take any other part in any proceeding at a meeting of the Board or any Committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so.

**24.** The Board may enter into and perform all such contracts as they may consider expedient for carrying out any of the purposes of this Act.

**Note:—**“The Seal is the only authentic evidence of what the Corporation has done, or agreed to do. The resolution of a meeting however numerous attended is, after all, not the act of the whole body. Every member knows he is bound by what is done by common seal and by nothing else. It is a great mistake, therefore, to speak of the necessity for a seal as a relic of ignorant times. It is no such thing. Either a seal or some substitute for a seal which by law shall be taken as conclusively evidencing the sense of the whole body corporate, is a necessity inherent in the very nature of a corporation. Mayor of Ludlow vs. Charlton 6. M. & W. 815. To this rule there are exceptions of two kinds, (1) Matters of trifling importance or daily necessary occurrence, do not require the form of a deed. The supply of coals to a workhouse, the hire of an inferior servant, furnish instances of such matters (Nicholson vs Bradfield L Ry. 19 Q. B. 620) Or again, where a municipal corporation owned a graving dock in constant use, it was held that agreements for the admission of ships might be made by simple contract. Wells Vs Mayor of Kingston on Hull L.R. 10. C.P. 402.

“A company can only carry on business by agents, managers and others; and if the contracts made by these persons are contracts which relate to the objects and purposes of the company and are not inconsistent with the rules and regulations, which govern their acts, they are valid and binding on the company, though not under seal.” South of Inland Colliery Co, Vs Waddle L.R. 3 C.P. 469.



**Execution of contracts and approval of estimates.**

**25.** (1) Every such contract shall be made on behalf of the Board by the Chairman: Provided that—

- (a) a contract involving an expenditure exceeding one thousand rupees and not exceeding one lakh of rupees shall not be made by the Chairman without the previous sanction of the Board; and
- (b) a contract involving an expenditure exceeding one lakh of rupees shall not be made by the Chairman without the previous sanction of the Board and the Local Government.

(2) Every estimate for the expenditure of any sum for carrying out any of the purposes of this Act shall be subject to the approval of the authority who is empowered by sub-section (1) to make or sanction the making of a contract involving the expenditure of a like sum.

(3) Sub-sections (1) and (2) shall apply to every variation or abandonment of a contract or estimate, as well as to an original contract or estimate.

**Note** :—The power of the Chairman under this section is his personal power & cannot be delegated, vide Section 35.

**26.** (1) Every contract made by the Chairman on behalf of the Board shall be entered into in such manner and form as would bind the Chairman, if such contract were made, on his own behalf, except that the common seal of the Board shall be used (where necessary); and every such contract may in the like manner and form be varied or discharged.

(2) Every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees shall be in writing, and shall be sealed.

(3) The common seal of the Board shall remain in the custody of the Secretary to the Board, and shall not be affixed to any contract or other instrument except in the presence of a Trustee (other than the Chairman), who shall attach his



signature to the contract or instrument in token that the same was sealed in his presence.

(4) The signature of the said Trustee shall be in addition to the signature of any witness to the execution of such contract or instrument.

(5) A contract not executed as provided in this section shall not be binding on the Board.

**Note** :—The Board acts through its Chairman who is authorised under the section to enter into all contracts on behalf of the Board and he has authority to spend up to Rs. 1000 in any contract for the execution of any work or supply of any materials or goods without the sanction of the Board. He has to take sanction of the Board in case he has to enter into any contract involving an expenditure exceeding one thousand rupees but not exceeding one lakh of rupees and in those cases in which the contract involves an expenditure over one lakh of rupees he has to take sanction not only of the Board but also of the Local Government.

From the section, as framed, it does not seem necessary for the Chairman to take sanction either of the Board or of the Local Government in cases of contracts relating to sales and other sources of incomes to the Board.

"In such manner & form" The formalities mentioned in the section must be strictly gone through before a contract by the Board becomes capable of enforcement in law, vide notes under sec. 3 ante.

**27.** (1) At least seven days before the Chairman enters into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees, he shall give notice by advertisement in local newspapers inviting tenders for such contract.

**Tenders.**

(2) In every such case the Chairman shall place before the Board the specifications, conditions and estimates and all the tenders received, specifying the particular tender (if any) which he proposes to accept.

(3) In every case in which the acceptance of a tender would involve an expenditure exceeding one lakh of rupees, the Board shall submit to the Local Government the specifications, conditions and estimates, and all the tenders received, specifying the particular tender (if any) the acceptance of which they propose to sanction.

(4) Neither the Board nor the Local Government shall be bound to sanction the acceptance of any tender which has

been made ; but the Board, within the pecuniary limits of their powers, as prescribed in section 25, sub-section (1), or the Local Government, may sanction the acceptance of any of such tenders which appears to them, upon a view of all the circumstances, to be the most advantageous, or may direct the rejection of all the tenders submitted to them.

**28.** The Chairman shall take sufficient security for the due performance of every contract involving an expenditure exceeding one thousand rupees.

**Security for performance of contract,**

**29. (1)** The Chairman shall forward to the Local Government a copy of the minutes of the proceedings of each meeting of the Board, within ten days from the date on which the minutes of the proceedings of such meeting were signed as prescribed in section 18, clause (h).

**Supply of documents and information to the Government,**

(2) If the Local Government so directs in any case, the Chairman shall forward to it a copy of all papers which were laid before the Board for consideration at any meeting.

(3) The Local Government may require the Chairman to furnish it with—

- (a) any return, statement, estimate, statistics or other information regarding any matter under the control of the Board, or
- (b) a report on any such matter, or
- (c) a copy of any document in the charge of the Chairman.

**Note :—**The section should be read subject to provisions of section 35.

### Officers and Servants.

**30.** The Board shall from time to time prepare, and shall maintain, a statement showing—

**Statement of strength and remuneration of staff.**

- (a) the number, designations and grades of the officers and servants (other than employees who are paid by the day or whose pay is charged to

temporary work) whom they consider it necessary and proper to employ for the purposes of this Act,

- (b) the amount and nature of the salaries, fees and allowances to be paid to each such officer and servant, and
- (c) the contributions payable under section 146 in respect of each such officer and servant.

Board to make  
rules.

**31.** The Board shall from time to time make rules—

- (a) fixing the amount and nature of the security to be furnished by any officer or servant of the Board from whom it may be deemed expedient to require security ;
- (b) for regulating the grant of leave of absence, leave-allowances and acting-allowances to the officers and servants of the Board ; and
- (c) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Board (other than any servant of the Government in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions as may be prescribed by such rules, and for supplementing such contributions out of the funds of the Board :

Provided that a Government servant employed as an officer or servant of the Board shall not be entitled to leave or leave allowances otherwise than as may be prescribed in any general or special order of the Government for regulating the transfer of Government servants to foreign service.

**32.** Subject to any directions contained in any statement prepared under section 30 and any rules made under section 31, and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Board, and reducing, suspending or dismissing them for misconduct, and

Powers of appointment, etc., in whom vested.

dispensing with their services for any reason other than misconduct, shall be vested—

(a) in the case of officers and servants whose monthly salary does not exceed three hundred rupees—in the Chairman, and

(b) in other cases—in the Board :

Provided that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended or dismissed by the Chairman may appeal to the Board, whose decision shall be final.

**Note:**—The power conferred by this section upon the Chairman is his personal power and cannot be delegated (Vide section 35, Post.)

**33.** (a) All statements prepared under section 30, so far as they relate to officers carrying a salary of more than one thousand rupees *per mensem*,  
**Sanction of Local Government required to certain statements, rules and orders.**

(b) all rules made under clause (b) or clause (c) of section 31, and

(c) all orders passed by the Board under section 32, and relating to any officer appointed to hold an office carrying a salary of more than one thousand rupees *per mensem*, except orders granting leave to, or suspending, any such officer,

shall be subject to the previous sanction of the Local Government.

**34.** The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Board; and, subject to the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances.

**35.** (1) The Chairman may, by general or special order in writing, delegate to any officer of the Board any of the Chairman's powers, duties or functions under this Act or any rule made hereunder, except those conferred or imposed upon or vested

**Delegation of certain of Chairman's functions.**



in him by sections 18, 21, 29, 55, 108, 112, 116, 118, 154 and 158 :

Provided as follows :—

- (a) the Chairman shall not delegate his power under section 25 to make on behalf of the Board any contract involving an expenditure exceeding one thousand rupees ;
- (b) the Chairman shall not delegate his power under section 32 to make appointments to offices carrying a salary of more than one hundred rupees *per mensem* ;
- (c) the Chairman shall not delegate to any officer his power under section 32 to grant leave to, or to reduce, suspend, dismiss, dispense with the services of, any employee, unless such employee was appointed by such officer by virtue of a delegation of the Chairman's power of appointment conferred by that section.

(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.

### CHAPTER III.

#### **Improvement Schemes and Re-housing Schemes.**

This is the most important Chapter in the Act. It deals with (1) Framing of Schemes for Improvement by the Board (2) Right of the Local Government to sanction, modify or reject the same. (3) Execution of the works of improvement by the Board.

This Chapter treats of improvement schemes and rehousing schemes. Comprises sections 36—67. Sections 36—39 read together show that improvement schemes are of two kinds, viz, general improvement schemes and street schemes, while Sec



52 shows that in addition to these schemes there may be re-housing schemes 21 C.W.N. 8.

**36.** Whenever it appears to the Board, whether upon an official representation made under section 37 or without such a representation,—

When general improvement scheme may be framed,

(a) that any buildings in any area which are used, or are intended or are likely to be used, as dwelling places, are unfit for human habitation, or

(b) that danger to the health of the inhabitants of buildings in any area, or in any neighbouring buildings, is caused by—

(i) the narrowness, closeness, and bad arrangement and condition of streets or buildings or groups of buildings in such area, or

(ii) the want of light, air, ventilation or proper conveniences in such area, or

(iii) any other sanitary defects in such area,

and that the most satisfactory method of dealing with the evils connected with such buildings and the sanitary defects in such area is a general improvement scheme for the re-arrangement and re-construction of the streets and buildings or some of them, within such area,

the Board may pass a resolution to the effect that such area is an unhealthy area, and that a general improvement scheme ought to be framed in respect of such area,

and may then proceed to frame such a scheme.

**Note** :—The section is practically identical with section 23 of the Bombay Act IV of 1888. The conditions precedent for an improvement scheme under the section are that there must be

(a) official representation, or

(b) independent evidence or representation other than official, that any buildings in any area for dwelling purposes, are unfit for human habitation or can not be used without danger to health and are insanitary and without light, air, ventilation or insanitary and defective, and

- (c) in proof thereof to the satisfaction of the Board that they are insanitary and can not be used without risk and danger to health, and
- (d) that the evils can not be remedied without a general Improvement scheme both as regards the street and building. It then shall pass a resolution to that effect in a meeting of the Trustees and frame a scheme. The question is, "what is official representation?" and it has been defined in the following section.

**Authority for making an official representation for a general improvement scheme.**

**37.** (1) An official representation referred to in section 36 may be made by the Corporation—

- (a) of their own motion, or
- (b) on a written complaint by the Health Officer of the Corporation; or
- (c) in respect of any area comprised in a municipal ward,—on a written complaint signed by twenty-five or more residents of such ward who are liable to pay either the owner's share or the occupier's share of the consolidated rate leviable under the Calcutta Municipal Act, 1899.

(2) If the Corporation decide not to make an official representation on any complaint made to them under clause (b) or clause (c), they shall cause a copy of such complaint to be sent to the Board with a statement of the reasons for their decision.

**Note.**—The origin of this section and section 42 of the Bombay Act IV of 1898 may be traced to sec. 4 of the Housing of the Working Classes Act 1890.

**38.** (1) The Board shall consider every official representation made under section 37, and if satisfied as to the truth thereof and as to the sufficiency of the resources, shall decide whether a general improvement scheme to carry such representation into effect should be framed forthwith or not, and shall forthwith intimate their decision to the Corporation.

(2) If the Board decide that it is not necessary or expedient to frame a general improvement scheme forthwith, they shall inform the Corporation of the reasons for their decision.

(3) If the Board fail, for a period of twelve months after the receipt of any official representation made under section 37 to intimate their decision thereon to the Corporation,

or if the Board intimate to the Corporation their decision that it is not necessary or expedient to frame a general improvement scheme forthwith,

the Corporation may, if they think fit, refer the matter to the Local Government.

(4) The Local Government shall consider every reference made to it under sub-section (3), and

(a) if it considers that the Board ought, under all the circumstances, to have passed a decision within the period mentioned in sub-section (3), shall direct the Board to pass a decision within such further period as the Local Government may think reasonable, or

(b) if it considers that it is, under all the circumstances, expedient that a scheme should forthwith be framed, shall direct the Board to proceed forthwith to frame a scheme.

(5) The Board shall comply with every direction given by the Local Government under sub-section (4).

**39.** Whenever the Board are of opinion that, for the purpose of—

When street scheme may be framed.

(a) providing building-sites, or

(b) remedying defective ventilation, or

(c) creating new, or improving existing, means of communication and facilities for traffic, or

(d) affording better facilities for conservancy,

it is expedient to lay out new streets or to alter existing streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as they may think fit.

**Note :—**The first stage in a street scheme is when the Board passes a resolution that it is expedient to lay out a new street or to alter an existing street because the Board are of opinion that such a course is necessary for one or more of the four purposes enumerated in cls (a), (b), (c) (d) of sec 39.

**Matters to be considered when framing improvement schemes.**

**40.** When framing an improvement scheme in respect of any area regard shall be had to—

- (a) the nature and the conditions of neighbouring areas and of Calcutta as a whole ;
- (b) the several directions in which the expansion of Calcutta appears likely to take place ; and
- (c) the likelihood of improvement schemes being required for other parts of Calcutta.

**Matters which must be provided for in improvement schemes.**

**41.** Every improvement scheme shall provide for—

- (a) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be required for the execution of the scheme ;
- (b) the laying out or re-laying out of the land in the said area ;
- (c) such demolition, alteration or reconstruction of buildings, situated on land which it is proposed to acquire in the said area, as the Board may think necessary ;
- (d) the construction of any buildings which the Board may consider it necessary to erect for any purpose other than sale or hire ;
- (e) the laying out or alteration of streets (including bridges, causeways and culverts), if required ; and
- (f) the levelling, paving, metalling, flagging, channelling, sewerage and draining, of the said streets, and the provision therein of water, lighting and other sanitary conveniences ordinarily provided in a Municipality.

**Matters which may be provided for in improvement schemes.**

**42.** Any improvement scheme may provide for—

- (a) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be affected by the execution of the scheme ;



- (b) raising, lowering or levelling any land in the area comprised in the scheme ;
- (c) the formation or retention of open spaces ; and
- (d) any other matters, consistent with this Act, which the Board may think fit.

**Note:—**Sections 41 and 42 specify respectively matters which must be and which may be provided for in Improvement schemes. Cl (a) of section 41 lays down that every improvement scheme shall provide for the acquisition by the Board of any land in the area comprised in the scheme which will, in their opinion, be required for the execution of the scheme. Two points require to be noted in connection with this clause. First, the term "acquisition" does not mean compulsory acquisition under the provisions of the Land Acquisition Act. This is clear from section 68 & 69 Post, which refer respectively to acquisition by agreement and compulsory acquisition. Secondly the area comprised in the scheme is obviously larger than the land to be acquired as required for the execution of the scheme ; in other words the land required for what may be called the "Engineering works" forms a part only of the area for which the improvement is made."

"Cl (b) of section 41 lays down that every improvement scheme shall provide for the "laying out" and "relaying out" of the land in the said area (i. e. the area comprised in the scheme). There has been much discussion at the Bar as to the precise meaning of the expressions "lay out land" and "relay out land." These words don't appear to have been used as words of art or technical word. The expression "lay out" is explained in the Oxford Dictionary vol VI p, 131, to mean "to plot or plan out," "to plan or map out" "to apportion for a purpose." The expression "relay out" can be fittingly applied to those lands that have been previously "laid out".

"On behalf of the Trustees, the Advocate General has maintained that the term "affected" in section 42 subsection (a) means "beneficially affected," so that the Trustees are entitled to acquire compulsorily any land comprised in the scheme, if they are of opinion that the land will be benefited by the execution of the scheme."

"We are clearly of opinion that we should not adopt the forced and unnatural construction put forward by the appellant." Trustees for the Improvement of Calcutta vs Chandrakant Ghosh, I.L.R. 44 Cal 219 21 C.W.N.8.

Fletcher J. in delivering the judgment of the Full Bench in Mani Lal Singh Vs the Trustees for the Improvement of Calcutta, 22 C.W.N. 1. says "The decision of Mukerjee and Cuming J.J. comes to this that in sec. 42 (a) of Act V of 1911 (B.C.) "affected" means "injuriously affected." With this result I am unable to agree. I agree with Woodroffe, J. in his opinion in making the reference that "affected" in sec 42 (a) mean "affected in any way." This view has been held by the majority of judges sitting in the Full Bench excepting Chatterjee N.R.J. who delivered a dissentient judgment.

**Preparation, publication and transmission of notice as to improvement scheme, and supply of documents to applicants.**

**43.** (1) When any improvement scheme has been framed, the Board shall prepare a notice stating—

- (a) the fact that the scheme has been framed,



- (b) the boundaries of the area comprised in the scheme, and
  - (c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire, may be seen at reasonable hours.
- (2) The Board shall—
- (i) cause the said notice to be published weekly for three consecutive weeks in the Calcutta Gazette and in local newspapers, with a statement of the period within which objections will be received, and
  - (ii) send a copy of the notice to the Chairman of the Corporation and to the Chairman of any Municipality constituted under the Bengal Municipal Act, 1884, in which any portion of the area comprised in the scheme is situated.

(3) The Chairman shall cause copies of all documents referred to in clause (c) of sub-section (1) to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 138.

**Note.**—If there is mistake or misdescription in the notice, no action for damages lies in the Civil Court. *Rameswar Sing vs Secretary of state* I.L.R. 34, Cal. 470.

**44.** The Chairman of the Corporation, and the Chairman of any Municipality to whom a copy of a notice has been sent under clause (ii) of section 43, shall, within a period of sixty days from the receipt of the said copy, forward to the Board any representation which the Corporation or Municipality may think fit to make with regard to the scheme.

**Transmission to Board of representation by Corporation or Municipality as to improvement scheme.**

**45.** (1) During the thirty days next following the first day on which any notice is published under section 43 in respect of any improvement scheme, the Board shall serve a notice on—

**Service of notice as to proposed acquisition of land.**

- (i) every person whose name appears in the Municipal assessment-book as being primarily liable to pay the owner's share of the consolidated rate or the rate on the annual value of holdings, as the case

may be, in respect of any land which the Board propose to acquire in executing the scheme, and

(ii) the occupier (who need not be named) of each premises or holding, entered in the Municipal assessment-book, which the Board propose to acquire in executing the scheme.

(2) Such notice shall—

(a) state that the Board propose to acquire such land for the purpose of carrying out a general improvement scheme or a street scheme, as the case may be, and

(b) require such person, if he dissents from such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by, or by the order of the Chairman.

**46.** The Chairman of the Corporation, and the Chairman

**Furnishing of copy of, or extracts from the municipal assessment-book.**

of any Municipality constituted under the Bengal Municipal Act, 1884, in any part of which this section is for the time being in force shall respectively, furnish the Chairman, at his request, with a copy of, or extracts from the Municipal assessment-book at such charge as may be fixed by a rule made under section 137.

**Abandonment of improvement scheme, or application to Local Government to sanction it.**

**47.** (1) After the expiry of the periods respectively prescribed under section 43, clause (i), and by section 44 and section 45, clause (b), in respect of any improvement scheme, the Board shall consider any objection, representation and statement of dissent received thereunder, and, after hearing all persons making any such objection, representation or dissent who may desire to be heard, the Board may either abandon the scheme or apply to the Local Government for sanction to the scheme, with such modifications (if any) as the Board may consider necessary.

(2) Every application submitted under sub-section (1) shall be accompanied by—

- (a) a description of, and full particulars relating to, the scheme, and complete plan and estimates of the cost of executing the scheme ;
- (b) a statement of the reasons for any modifications made in the scheme as originally framed ;
- (c) a statement of objections (if any) received under section 43 ;
- (d) any representation received under section 44 ;
- (e) a list of the names of all persons (if any) who have dissented, under section 45, clause (b), from the proposed acquisition of their land, and a statement of the reasons given for such dissent and
- (f) a statement of the arrangements made or proposed by the Board for the re-housing of persons of the poorer and working classes who are likely to be displaced by the execution of the scheme.

(3) When any application has been submitted to the Local Government under sub-section (1), the Board shall cause notice of the fact to be published for two consecutive weeks in the Calcutta Gazette and in local newspapers.

**Note:**—This section provides the conditions which are required to be fulfilled by the Board before a scheme is submitted for sanction to the Local Government. They are (1) the expiration of three weeks as provided in section 43 sub-section (2) clause, (1), (2) the expiration of 60 days as provided in section 44, (3) after hearing the objection, if any, the Board may either abandon the scheme or apply to the Local Government for sanction and the application of the Board shall be accompanied with the materials specified in clauses (a) (b) (c) (d) (e) (f) of sub-section (2) section 47.

Objections to the scheme and their nature:—The objections by the owners and occupiers of properties affected by the scheme must be real and substantial objections of Law and Policy. Mere sentimental objection that the properties are ancient dwelling-house of the parties or the only residential house or property of the party or that a deity is worshipped in the house concerned will not have any effect in the change of the scheme, though regard is always paid by the Board to avoid acquisition as far as practicable of any public temple, mosque and church. The objections referred to in this section are objections denoted in sections 36-42 ante.

**48.** The Local Government may sanction, either with or without modification, or may refuse to sanction, any improvement scheme submitted to it under section 47.

**Power to sanction or reject improvement scheme.**

**49.** (1) Whenever the Local Government sanctions an improvement scheme, it shall announce the fact by notification, and the Board shall forthwith proceed to execute the scheme.

(2) The publication of a notification under sub-section (1), in respect of any scheme, shall be conclusive evidence that the scheme has been duly framed and sanctioned.

**50.** At any time after any improvement scheme has been sanctioned by the Local Government, and before it has been carried into execution, the Board may alter it;

Alteration of improvement scheme after sanction.

Provided as follows :—

(a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than five *per cent.* of such cost, such alteration shall not be made without the previous sanction of the Local Government;

(b) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the Local Government, the procedure prescribed in the foregoing sections of this Chapter shall, so far as applicable, be followed, as if the alteration were a separate scheme,

**Note:**—Clause (b) of the proviso requires that if the alteration involves the compulsory acquisition of further land, a fresh application has to be made to Government after compliance with the prescribed preliminaries (C.W. 8).

**51.** Any number of areas in respect of which improvement schemes have been, or are proposed to be, framed may at any time be included in one combined scheme.

Combination of improvement schemes.

### Re-housing schemes.

**52.** (1) The Board may frame schemes (herein called re-housing schemes) for the construction, maintenance and management of such and so many dwellings and shops as they may consider ought to be provided for persons of the poorer and working classes who—

Re-housing persons displaced by improvement schemes.



- (a) are displaced by the execution of any improvement scheme sanctioned under this Act, or
- (b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the Local Government for sanction, under this act.

(2) Every re-housing scheme shall be submitted to the Local Government, who may either sanction it, with or without modification, or refuse to sanction it.

(3) The Board shall not themselves construct dwellings or shops under a re-housing scheme unless they are satisfied, after due inquiry, that no other person is willing and able to construct them and is prepared to construct, maintain and manage them under the control of the Board.

**Note:**—In the Bombay Act, the re-housing scheme is a part and parcel of the general improvement scheme under section 25 of the said Act. Clause 3 is new.

### Street schemes.

**53.** No street laid out or altered by the Board shall be of less width than—

- (a) forty feet, if the street be intended for carriage traffic ; or
- (b) twenty feet, if the street be intended for foot traffic only ;

Provided as follows:—

- (i) the width of an existing street need not be increased to the minimum required by this section, if the Board consider it impracticable to do so ;
- (ii) nothing in this section shall be deemed to prevent the Board from laying out service passages for sanitary purposes of any width less than twenty feet.

**Note:**—Three kinds of streets are referred to in this section.

- (1) streets not less than 40 feet intended for carriage traffic.
- (2) streets not less than 20 feet intended for foot traffic only.
- (3) streets less than 20 feet called "service passages," for sanitary purposes.



**Transfer to Board, for purposes of improvement scheme, of building or land vested in Corporation or Municipality.**

**54.** (1) Whenever any building, or any street, square or other land, or any part thereof, which—

(a) is situated in the Calcutta Municipality and is vested in the Corporation, or

(b) is situated in any part of any Municipality constituted under the Bengal Municipal Act, 1884, in which this section is for the time being in force, and is vested in the Commissioners of that Municipality,

is required for executing any improvement scheme, the Board shall give notice accordingly to the Chairman of the Corporation or the Chairman of such Municipality, as the case may be ;

and such building, street, square, land or part shall thereupon vest in the Board, subject, in the case of any building or any land (not being a street or square), to the payment to the Corporation, or to such Commissioners, as the case may be, of such sum as may be required to compensate them for actual loss resulting from the transfer thereof to the Board.

(2) If any question or dispute arises as to the sufficiency of the compensation paid or proposed to be paid under subsection (1), the matter shall be referred to the Local Government whose decision shall be final.

**Note:**—The corresponding section in the City of Bombay Improvement Act IV of 1898 is section 41.

In *Ratanlal Choonilal vs The Municipal Commissioners for the city of Bombay* 23. C.W.N. 441, their Lordships of the Judicial Committee of the Privy Council, have held, "that the whole theory of the Trust's case, namely, that in virtue of a notice taking over from the Municipality, a certain street of Bombay to be formed as a new Street by the Trust, thereby vested the whole of the old street in it although a strip of the old street never was formed as a new street, falls to the ground. What then happened to the strip of the old street which never "formed" into new street? The answer is that nothing happened to it. It remained under the jurisdiction, and in all respects as before the property of the Municipality."

**55.** (1) Whenever any street or square or part thereof which is not vested in the Board or in the Corporation or in the Commissioners of any Municipality constituted under the Bengal Municipal Act, 1884, is required for executing

**Transfer of private street or square to Board for purposes of improvement scheme.**

any improvement scheme, the Board shall cause to be affixed, in a conspicuous place in or near such street, square or part, a notice, signed by the Chairman, and

- (a) stating the purpose for which the street, square or part is required, and
- (b) declaring that the Board will, on or after a date to be specified in the notice, take over charge of such street, square or part from the owner thereof ;

and shall simultaneously send a copy of such notice to the owner of such street, square or part.

(2) After considering and deciding all objections (if any) received in writing before the date so specified, the Board may take over charge of such streets, square or part from the owner thereof ; and the same shall thereupon vest in the Board.

(3) When the Board alter or close any street or square or part thereof which has vested in them under sub-section (2), they shall pay reasonable compensation to the previous owner for the loss of his rights therein.

(4) If the alteration or closing of any such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto, or to residents in the neighbourhood, the Board—

(i) shall forthwith provide some other reasonable means of access for the use of persons who were entitled to use such street, square or part as a means of access to any property or place, and,

(ii) If the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

**Note:**—This section provides the Board with authority for the compulsory acquisition of any street or square or part thereof which is vested in a company or an individual independently of the Land Acquisition Act and to pay compensation for the same to the owner thereof. The owner has the right to refuse acceptance of compensation money on the ground that the same does not represent the proper value etc and may obtain a reference under section 64 to the Tribunal for determination of the question of sufficiency, within three months from the date on which the street or square or part thereof was altered or closed by the Board.

**56.** (1) When any building, or any street, square or other land, or any part thereof, has vested in the Board under section 54 or section 55, no municipal drain or water-work therein shall vest in the Board until another drain or water-work (as the case may be), if required, has been provided by the Board, to the satisfaction of the General Committee or of the Commissioners of the Municipality constituted under the Bengal Municipal Act, 1884, as the case may be, in place of the former drain or work.

(2) If any question or dispute arises as to whether another drain or water-work is required, or as to the sufficiency of any drain or water-work provided by the Board, under sub-section (1), the matter shall be referred to the Local Government, whose decision shall be final.

**57.** (1) Sections 337, 338 and 355, and clause (e) of section 354, of the Calcutta Municipal Act, 1899, shall not apply to any street which is vested in the Board.

(2) Sections 345 and 346 of the said Act shall not apply when any drain, pavement or surface referred to in the said section 345 is opened or broken up by the Board, or when any public street is under construction by the Board.

**Maintenance and repair of public streets.**

Section 337 of the Calcutta Municipal Act 1899 is as follows :—

“The General Committee shall, out of the funds to be allotted by the Corporation cause the public street to be maintained and repaired and for these purposes may do all things necessary for the public safety or convenience, including the construction and maintenance of bridges causeways and culverts,”

“Section 338. “The Chairman shall, so far as he may consider it necessary so to do for the public convenience cause the chief public streets, and squares to be watered, and for that purpose may provide such water-carts, animals and apparatus as he may think necessary.”

Section 355. “When any public street is permanently closed under section 354, the corporation may sell or lease the site of so much of the roadway and footpath as is no longer required, making due compensation to any person injured by the such closing.”

Section 354 cl (c). “The General Committee, with the sanction of the corporation, may—

(c) turn, divert, discontinue or permanently close any public street, or part thereof ;”

**Repair and watering of streets vested in Board.**

**58.** Whenever the Board allow any street vested in them to be used for public traffic,—

- (a) they shall, as far as practicable, keep the street in good repair and do all things necessary for the safety and convenience of persons using it, and
- (b) they shall cause the street to be watered, if they consider it necessary to do so for the public convenience.

**Guarding and lighting when street vested in the Board is opened or broken up, or when street is under construction and speedy completion of work.**

**59.** Whenever any drain in, or the pavement or surface of, any street vested in the Board is opened or broken up by the Board for the purpose of carrying on any work,

or whenever the Board allow any street which they have under construction to be used for public traffic,

the Board shall cause the place to be fenced and guarded and to be sufficiently lighted during the night, and shall take proper precautions for guarding against accident by shoring up, and protecting adjoining buildings,

and shall, with all convenient speed, complete the said work, fill in the ground, and repair the said drain, pavement or surface, and carry away the rubbish occasioned thereby or complete the construction of the said street, as the case may be.

**60.** (1) When any work referred to in section 59 is being executed by the Board in any public street vested in them, or when any other work which may lawfully be done is being executed by the Board in any street vested in them, the Board may direct that such street shall, during the progress of such work, be either wholly or partially closed to traffic generally or to traffic of any specified description.

(2) When any such direction has been given, the Board shall set up in a conspicuous position in or near the street an order prohibiting traffic to the extent so directed, and shall fix

such bars, chains or posts across or in the street as they may think proper for preventing or restricting traffic therein, after notifying in local newspapers their intention to do so.

**Provision of facilities, and payment of compensation, when work is executed by Board in public street vested in them.**

**61.** (1) When any work is being executed by the Board in any public street vested in them, the Board shall, so far as may reasonably be practicable, make adequate provision for—

- (a) the passage or diversion of traffic ;
- (b) securing access to all premises approached from such street ; and
- (c) any drainage, water-supply or means of lighting which is interrupted by reason of the execution of the work.

(2) The Board shall pay reasonable compensation to any person who sustains special damage by reason of the execution of any such work.

**Note :—**In case of difference as to the “reasonable compensation,” between the claimant and the Board under this section the Tribunal is the final authority to decide the question, if the matter is referred to the Tribunal within three months under Section 64, Post.

**Power of Board to turn or close public street or square vested in them.**

**62.** (1) The Board may—

- (a) turn, divert, discontinue the public use of, or permanently close, any public street vested in them, or any part thereof, or
- (b) discontinue the public use of, or permanently close, any public square vested in them, or any part thereof.

(2) Whenever the Board discontinue the public use of, or permanently close, any public street vested in them, or any part thereof, they shall pay reasonable compensation to every person who was entitled, otherwise than as a mere licensee, to use such street or part as a means of access and has suffered damage from such discontinuance or closing.

(3) Whenever the Board discontinue the public use of, or permanently close, any public square vested in them, or any



part thereof, they shall pay reasonable compensation to every person—

- (a) who was entitled, otherwise than as a mere licensee, to use such square or part as a means of access, or
  - (b) whose immovable property was ventilated by by such square or part,
- and who has suffered damage,—
- (i) in case (a), from such discontinuance or closing, or
  - (ii) in case (b), from the use to which the Board have put such square or part.

(4) In determining the compensation payable to any person under sub-section (2) or sub-section (3), the Board shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street or square at or about the same time that the public street or square or part thereof, on account of which the compensation is paid, is discontinued or closed.

(5) When any public street or square vested in the Board, or any part thereof, is permanently closed under sub-section (1), the Board may sell or lease so much of the same as is no longer required.

**Note** :—The Tribunal is the final authority to decide the question of reasonableness of compensation payable by the Board under this section, if the matter be referred to the Tribunal within three months: vide, sec. 64 Post.

**63.** (1) The Board may from time to time in regard  
**Projected Public street.** to any area—

- (a) within the Calcutta Municipality, or
  - (b) in the neighbourhood of the said Municipality,
- make plans of proposed public streets showing the direction of such streets, the street alignment and building line (if any), on each side of them, their intended width and such other details as may appear desirable.

(2) When a plan of proposed public street has been made under sub-section (1), the Board shall prepare a notice stating—

- (a) the fact that such plan has been made,
- (b) particulars of the land (shown in such plan) through which the proposed public street will pass,
- (c) the place at which the said plan and particulars may be seen at reasonable hours, and
- (d) the period (which shall be not less than sixty days) within which objections to the said plan may be submitted to the Board ;

and the Board shall thereupon—

- (i) cause the said notice to be published weekly for two consecutive weeks in the *Calcutta Gazette* and in local newspapers, and in such other manner as the Board may direct, and
- (ii) forward a copy of the said notice to any person whose name appears in the Municipal assessment book as being primarily liable to pay the owner's share of the consolidated rate, or the rate on the annual value of holdings, as the case may be in respect of any land included within the proposed public street, and
- (iii) forward a copy of the said notice and of the plan to which it relates to the Chairman of the Corporation and, if any area in the neighbourhood of the Calcutta Municipality is included in such plan, to the Chairman of the local authority administering any portion of such area, and
- (iv) cause copies of the said notice and plan to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 138.

(3) On or after a date (not being less than sixty days from the date of the first publication of the notice) to be appointed by the Board in this behalf, the Board shall consider—

- (a) all objection in writing received from any person affected by the proposed public street contemplated by such plan, and

(b) any representation in regard to such street made to the Board by the Corporation or the aforesaid local authority ;

and the Board may thereupon either withdraw the plan or apply to the Local Government for sanction thereto with such modifications (if any) as the Board may consider necessary.

(4) If the Board apply for sanction as provided in sub-section (3), they shall simultaneously forward to the Local Government a full statement of all objections and representations made to them under the said sub-section.

(5) When a plan of a proposed public street has been submitted to the Local Government under sub-section (3), the Board shall cause notice of the fact to be published for two consecutive weeks in the *Calcutta Gazette* and in local newspapers.

(6) The Local Government may sanction, either with or without modification, or may refuse to sanction, any plan of a proposed public street submitted to it under sub-section (3).

(7) Whenever the Local Government sanctions a plan of a proposed public street, it shall announce the fact by notification, and the publication of such notification shall be conclusive evidence that the plan has been duly made and sanctioned ;

and the proposed public street to which such notification refers shall be deemed to be a projected public street, and shall be so deemed until—

(a) such street has been declared, under section 65 or section 66, as the case may be, to be a public street, or

(b) the said notification has been cancelled by another notification :

Provided that such cancellation shall not affect the validity of any action taken by the Board in pursuance of the said notification.

(8) If any person desires to erect, re-erect or add to any wall (exceeding ten feet in height) or building which falls within the street alignment or building line of a projected public street

shown in any plan sanctioned by the Local Government under this section, he shall submit an application in writing to the Chairman for permission so to do :

Provided as follows :—

- (i) no such application shall be necessary for permission to erect or re-erect, between a building line and the street alignment,—
- (ii) a porch or balcony, or
- (b) along not more than one-third of the frontage an outhouse not exceeding fifteen feet in height ;
- (iii) nothing in this sub-section shall relieve any person from the liability to obtain such sanction as it may be necessary to obtain under any law for the time being in force from any local authority.

(9) The Chairman shall in no case refuse an application submitted under sub-section (8) if the applicant executes an agreement binding himself and his successors in interest to remove, without compensation, any wall or building to which that application relates, in the event of the Board—

- (a) deciding (at any time after an improvement scheme has been sanctioned under section 48 for an area within which such building or wall is situate) that the said wall or building, or any portion thereof, ought to be removed, and
- (b) calling upon the owner for the time being, by written notice, to remove the same within a time (not being less than sixty days from the date of the service of the notice) to be specified in the said notice.

(10) If the Chairman does not, within thirty days from the receipt of an application submitted under sub-section (8), grant or refuse the permission applied for thereunder, such permission shall be deemed to have been granted.

(11) If the Chairman refuses permission to any person to erect, re-erect or add to any wall or building as aforesaid which falls—

- (i) within the street alignment, or
- (ii) between the street alignment and the building line

of a projected public street, the owner of the land on which it was sought to erect, re-erect or add to such wall or building, may call upon the Board, at any time within three months from the date of such refusal, either—

- (a) to pay him compensation for any damage sustained by him in consequence of such refusal, or
- (b) to acquire so much of his land as falls within the street alignment, or between the street alignment and the building line, as the case may be ;

and the Board shall thereupon—

in case (a), make full compensation to the said owner for any damage which he may be found to have sustained in consequence of such refusal, and

in case (b), forthwith take steps to acquire the said land :

Provided that, in the case of such land as falls within street alignment only, it shall be optional with the Board to acquire the same in lieu of paying compensation therefor.

(12) An appeal shall lie to the Board from any refusal by the Chairman to grant an application under this section.

**Note**—The above section has been substituted by act III of 1915 in the place of the old section which is repealed.

Section 39 lays down, as to when street schemes are to be framed and section 63 lays down the procedure to be followed after they have been framed.

Sub-section (8) lays down that any person desiring to erect, re-erect, add to any wall or building which falls within the street alignment and building line of a "projected public street" shown in any plan *Sanctioned by the Local Government* must have permission to do so from the Chairman.

Sub section (11) lays down that in case the Chairman refuses permission the owner may within three months from the date of refusal call upon the Board to pay compensation by way of damage or to forthwith acquire the land, and the Board is bound to make full compensation to the owner or acquire the land. It will be noticed that this permission is necessary only in case of erecting, re-erecting, adding to any wall or



building which falls within the street alignment and building line of a projected public street shown in any plan sanctioned by the Local Government. This permission is not necessary before any plan is sanctioned by the Local Government. The section contemplates those cases in which there is delay between sanction by the Local Government and acquisition by the Board.

For determination of the question as to what the "reasonable compensation" is, a reference lies to the Tribunal under section 64 post, within three months from the date of the receipt of notice fixing the amount of compensation to be paid to the claimant by the Board.

**Reference of disputes to Tribunal.**

**64.** (1) If any question or dispute arises—

(a) between the Board and the previous owner of any street or square or part thereof which has vested in the Board under section 55 and has been altered or closed by them, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or

(b) between the Board and any person who was entitled, otherwise than as a mere licensee, to use as a means of access any street or square or part thereof which has vested in the Board under section 55,

(i) as to whether the alteration or closing of such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or

(ii) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section 55 are reasonably sufficient, or

(iii) as to the sufficiency of any compensation paid or proposed to be paid under the said sub-section (4), or

(c) between the Board and any person, as to the sufficiency of any compensation paid or proposed to be paid to him under section 61, section 62 or 63,

the matter shall be determined by the Tribunal, if referred to it, either by the Board or by the claimant, within a period of three months from—

in case (a) or case (b)—the date on which the street or square or part thereof was altered or closed by the Board, or

in case (c)—the date on which the said person was informed of the decision of the Board fixing the amount of compensation to be paid to him ;

and the determination of the Tribunal shall be final.

(2) If a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Board shall be final.

(4) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses, documents and costs which it would have if the Land Acquisition Act, 1894, as modified by section 71 of this Act, were applicable to the case.

**Note.**—Under section 556 of the Calcutta Municipal Act, 1899 the Corporation is vested with the authority of acquisition of any land or building, whether situated in Calcutta or not which may in their opinion be needed for carrying out any of the purposes of the said Act, and under section 557 the Chairman is vested with the right of a Collector under the Land Acquisition Act 1894, for acquiring lands and building under the provisions of the said Act. The said acquisition by the Chairman of land and building being governed by the provisions of the L. A. Act, reference would lie to the L. A. Court at Alipur ; the said Court being specially appointed by the Local Government to have original Civil Jurisdiction in land acquisition matter in Calcutta ; but the Chairman of the Corporation is seldom known to have exercised his L. A. Jurisdiction.

Similarly, by this section the Board is authorized to acquire lands or buildings that may, in their opinion, be necessary for execution of the scheme, under this Act, independently of the Land Acquisition Act of 1894, and in case they choose to exercise that power, the question is "to whom shall the reference lie ?" It has therefore been enacted that the reference shall lie to the "Tribunal" which shall be a principal Court of original Jurisdiction to deal with all references made to it, with this difference that no appeal lies to the High Court against the decision of the Tribunal.

**Vesting in Corporation of streets laid out or altered and open spaces provided, by the Board under an improvement scheme.**

**65.** (1) Whenever the General Committee are satisfied—

(a) that any street laid out or altered by the Board has been duly levelled, paved, metalled, flagged, channelled, sewered and drained in the manner provided in the plans