1963

April 9

THE BIHARI MILLS AND ANOTHER

v.

THE AHMEDABAD MUNICIPAL CORPORATION

(B. P. SINHA C. J., J. C. SHAH and N. RAJAGOPALA AYYANGAR JJ.)

Appeal—Order by Officer under statute—Statute providing for appeal to authority specified—Statute repealed—New statute substituting new officer and new appellate authority—Order under old statute—If appealable to authority under new statute—Bombay Town Planning Act, 1915 (Bom. I of 1915). Bombay Town Planning Act, 1954 (Bom. 27 of 1955), s. 90.

In 1942, a scheme was sanctioned under the Bombay Town Planning Act, 1915, for an area under the Ahmedabad Municipal Borough. The Arbitrator appointed under the 1915 Act finalised the scheme. From July 1, 1950, the Borough was converted into the Ahmedabad Municipal Corporation. The 1915 Act was repealed by the Bombay Town Planning Act 1954, with effect from April 1, 1957. On March 28, 1958, the Arbitrator passed certain orders affecting the appellants. Against the decisions of the Arbitrator the appellants preferred appeals before the Board of appeal set up under the Act. The question was whether the appeals were competent.

Held that no appeal lay from the order of the Arbitrator appointed under the 1915 Act to the Board of Appeal set up under the 1954 Act. Under the 1915 Act an appeal lay from an order of the Arbitrator to the Tribunal of Arbitration. In the 1954 Act the Arbitrator was substituted by a Town Planning Officer and the Tribunal of Arbitration by Board of Appeal. The saving clause in s. 90 of the 1954 Act continued the appointment of the Arbitrator made under the 1915 Act and also kept alive the proceedings before him, but it did not provide for the continuance of the Tribunal of Arbitration. The Arbitrator did not become a Town Planning Officer and his decision or order did not have the effect of an order by the Town Planning Officer so as to become appealable to the Board of appeal.

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 133 and 134 of 1962.

Appeals by special leave from the judgment and order dated January 23, 1959 of the Board of Appeal constituted under the Bombay Town Planning Act No. 27 of 1955 in Tribunal Appeals Nos. 140—47 of 1958.

G. B. Pai, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellants.

S. T. Desai and *I. N. Shroff*, for the respondents.

1963. April 9. The Judgment of the Court was delivered by

Sinha C. J.

SINHA C. J.—These two consolidated appeals, by special leave, raise the question of the interpretation of certain provisions of the Bombay Town Planning Act, 1954 (Bombay XXVII of 1955) which hereinafter will be referred to as the Act, with particular reference to the scope and effect of s. 90 of the Act, whereby the Bombay Town Planning Act (Bombay I of 1915) was repealed, and certain orders of the State Government saved from the effect of the repeal.

It appears that the Ahmedabad Municipal Borough, which was replaced by the Ahmedabad Municipal Corporation—the sole respondent in these appeals and which hereinafter will be referred to as the Borough and the Corporation respectively—declared its intention by a resolution dated October 1, 1941, to promulgate a scheme under the Act of 1915 in respect of the area known as Khokhara—Mohmedabad. The said Scheme was in due course sanctioned by the Government of Bombay on July 14, 1942. Under that Act an arbitrator was appointed in respect of the said Scheme, as required

under the Act. Shri R. N. Parikh was eventually appointed the Arbitrator under the Act. He finalised the Scheme under the Act of 1915. The Borough was converted into the Ahmedabad Municipal Corporation under the Bombay Provincial Municipal Corporation Act of 1949 with effect from July 1, 1950. The Act of 1915 was repealed by the Act which came into force from April 1, 1957. The said Arbitrator notified to the appellants a memorandum dated March 23, 1958, extracting his decision in respect of the said Scheme, in so far as it affected the appellants. The Government of Bombay constituted a Board of Appeal under the Act, consisting of three persons whom it is not necessary to specify. The appellants filed two appeals against the award of the said Arbitrator. The said Board of Appeal heard the appellants' appeals, as also appeals by other persons, in all 151 appeals, in respect of the said Scheme. It is from the decision, dated January 23, 1959, of the said Board of Appeal that the appellants have appealed to this Court, on obtaining special leave.

Section 30 of the Act of 1915 lays down the duties of the Arbitrator in some detail, running into ten clauses, and a number of sub-clauses. The decision of the Arbitrator, except on matters covered by sub-sections (3A), (3B), (3C), (4), (6) and (9) of s. 30 have been declared by s. 31 to be final. The matters in respect of which his decision has not been declared to be final, as aforesaid, the Arbitrator's conclusions have been characterised as proposals by s. 32 of the Act of 1915, and those matters were to be submitted to the Tribunal of Arbitration, constituted under s. 33 (1), for its decision. It would thus appear that on certain matters which came under the purview of the Arbitrator's powers, the decision of the Arbitrator was final, and in other matters they were merely proposals to be submitted for the decision of the Tribunal of Arbitration. When the

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Act of 1915 was repealed by the Act, it saved certain orders and proceedings by s. 90, which will be set out and discussed later. Under the Act, s. 31 contemplates the appointment of a Town Planning Officer, who is a substitute of the Arbitrator under the Act of 1915. Section 32 lays down in great detail the duties of the Town Planning Officer, which may be equated with s. 30 of the Act of 1915. Section 33 declares certain decisions except under s. 32 (1), cls. (v), (vi), (viii), (ix), (x) and (xiii), of the Town Planning Officer to be final and conclusive and binding on all persons, while decisions of the Town Planning Officer, under the above clauses, are subject to appeal to the Board of Appeal, under s. 34, to be constituted under s. 35. It will thus appear that the Act has equated the Arbitrator under the Act of 1915 with the Town Planning Officer and the Tribunal of Arbitration with the Board of Appeal. Though under the former Act the Arbitrator is a part of the Tribunal of Arbitration, under the Act certain decisions of the Town Planning Officer are appealable to the Board of Appeal. It is common ground that Shri Parikh, the Arbitrator under the Act of 1915, has not been, in terms, appointed the Town Planning Officer under the Act.

After setting out the relevant provisions of the Act of 1915 and the Act, it is necessary to State that the decision given by the Arbitrator, Shri R.N. Parikh, functioning under the Act of 1915, could be reviewed by the Tribunal of Arbitration, but as there was no such Tribunal in existence on and after that date, the appellants preferred appeals to the Board of Appeal, constituted under the Act. Those appeals were disposed of by the Board by its order dated January 23, 1959. It is the legality of that order that is in question before us.

It is submitted on behalf of the appellants that they preferred their appeals to the Board, which

was the only appellate authority in existence, and which mistakenly they were advised to be the competent tribunal to deal with the appeals. It was further argued that on a true construction of the provisions of the Act and the Act of 1915, it is clear that the Board of Appeal had no jurisdiction to render any judgment in respect of the decisions or proposals of the Arbitrator. In our opinion, this contention is well-founded. Reliance was placed in this connection on the provisions of s. 90 of the Act, the relevant portions of whieh may be set out below :

> "(1) The Bombay Town Planning Act, 1915, is hereby repealed.
>
> (2) Notwithstanding the repeal of the said Act.....any appointment made of an arbitrator, any proceedings pending before the Arbitrator...under the repealed Act shall, in so far as it is not inconsistent with this Act, continue in force thereunder and provisions of this Act shall have effect in relation to such..... proceedings.....".

It is clear that the saving clause was effective to continue the appointment of the Arbitrator made under the repealed Act, and also to keep alive the proceedings before him. But the proposals made by him had to be dealt with by the Tribunal of Arbitration, which was not continued by the saving clause, aforesaid. The board of Appeal constituted under s. 35 of the Act was competent to deal with any decision of the Town Planning Officer, but the Arbitrator under the old Act did not *ipso facto* become, without an express order of the Government appointing him, a Town Planning Officer; and any decision or order by the Arbitrator would not have the effect of an order by the latter. That lacuna

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does not appear to have been removed by any subsequent legislation or order of the Government of Gujrat, under the Act. Some lacunae were discovered in the working of the Act and the Government of Maharashtra came out with the Bombay Town Planning (Amendment and Proceedings Validation) Act, 1960 (Maharashtra Act XXIV of 1960). By s. 2, sub-s. (4) of this Act, it has been provided that "reference to Town Planning Officer in this Act shall include reference to an Arbitrator whose appointment is continued in force under sub-section (2)", set out above. No such action was taken by the Government of Gujrat, nor any validating Act passed by the Gujrat Legislature. It is thus manifest that the appeals preferred by the appellants against the order of the Arbitrator as such did not lie to the Board of Appeal, and, therefore, the Board was incompetent to deal with them, with the result that the orders purported to have been passed by the Board on those appeals are without jurisdiction. We need not go into the further question as to the effect of the orders of the Arbitrator which had been challenged by the appellants as it now appears without effect.

In the result, these appeals are allowed. But in view of the fact that the appellants themselves were at least partly responsible for making those infructuous appeals, there will be no order as to costs in this Court.

Appeals allowed.