

BOVILL,
C.J.
&
SMITH, J.
1892.
March 31.
—

[BOVILL, C.J. AND SMITH, J.]

NICOLA ROSSOS

Plaintiff,

v.

KALLIOPE HADJI YANNI MICHAIL
ROSSINI

Defendant.

MUNICIPAL COUNCIL—COMPULSORY ACQUISITION OF HABITABLE HOUSE—WIDENING OF STREET—MUNICIPAL COUNCILS LAW, 1885, SECTION 3—MEJELLE, § 1216.

Section 3 of the Municipal Councils Law, 1885, which provides that a Municipal Council may, with the consent of the High Commissioner in Council, undertake the arrangement and execution of general plans for the widening and straightening of roads within the Municipal limits, taken in conjunction with Article 1216 of the Mejellé, does not authorise the compulsory acquisition by the Municipal Council of habitable houses required for the widening of a street.

APPEAL of the defendant from the judgment of the District Court of Larnaca.

The action was brought claiming that the defendant should, on payment to her of the sum of £30, be ordered to deliver up possession of a part of a house owned by her in Larnaca.

The plaintiff is the President of the Municipal Council of Larnaca. The Council by resolution decided that a certain street situate within the Municipal limits should be widened and straightened.

The defendant was the owner of a house situate in the street, and it was necessary that a portion of this house should be demolished if the street was to be widened and straightened in accordance with the resolution of the Council.

A plan was prepared showing the proposed line of the street running through a portion of the defendant's house and submitted to the High Commissioner. This plan was put in evidence on behalf of the plaintiff, and bore the word "approved," with the signature of the High Commissioner.

The plaintiff estimated the value of the portion of the defendant's house which would be destroyed at £30, and tendered to her this amount. The defendant having refused to accept it this action was brought.

The District Court gave judgment that the defendant should, on payment to her of the sum of £30, and on the plaintiff undertaking to do certain works, deliver up possession of the portion of the premises required for the road.

The defendant appealed.

Diran Augustin, for the appellant.

The claim of the plaintiff is founded on Article 1216 of the *Mejellé* combined with the Municipal Councils Law, 1885, but the powers of the Municipal Council depend upon the law of 1885. The law gives power (Section 3) to a Municipal Council, with the consent of the High Commissioner in Council, to undertake the execution of general plans for the widening and straightening of roads; there is no evidence in this case of the consent of the High Commissioner in Council to this plan. The consent of the High Commissioner does not authorise the pulling down of a part of this house. There is no law authorising a Municipal Council to pull down a house for the purpose of widening a street. The price ordered to be paid is altogether inadequate; one of the plaintiff's own witnesses said that it would cost £140 to rebuild this house.

The respondent in person.

This Court will not interfere with the finding of the Court below as to the value of the property. That is a question of fact which the District Court has decided. I contend that the signing of the plan, which is headed "showing private property to be taken in construction of street," by the High Commissioner, is sufficient authority for the Municipal Council to take this house. This work is the execution of a plan for the widening of a street, and that must include the acquisition of the property necessary to widen the street.

Judgment: In this action the defendant appeals against the judgment of the District Court of Larnaca deciding that the plaintiff, as President of the Municipal Council

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BOVILL, of Larnaca, is entitled to judgment authorising the Council, on payment of £30, to take possession of a portion of the house belonging to the defendant, for the purpose of widening a public road.

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This decision, as far as we understand, purports to be based on the combined effect of Article 1216 of the Mejellé, and that portion of Section 3 of the Municipal Councils Law of 1885 which enacts that: "It shall be lawful for every Municipal Council, with the consent of the High Commissioner in Council, to undertake the arrangement and execution of general plans, for the widening and straightening of roads and other places within the Municipal limits."

The plaintiff claims that the meaning of this enactment is that, when the Municipal Council has submitted to the High Commissioner in Council a scheme for widening and straightening streets, and has obtained the High Commissioner's approval of the scheme, the Council may then without further formality do all that is necessary for carrying out the work proposed, and among other things may compulsorily acquire lands and houses of private persons. That view has apparently been adopted in the District Court, and was enunciated in this Court, as though it were the unmistakable and only possible meaning of this enactment. We do not, however, on reflection, consider that the words of the enactment have so large an effect as is contended for, or that there is any necessity for assuming that those who enacted this law contemplated that it should have such an effect.

The enactment according to our view merely means, that Municipal Councils are not to embark upon extensive schemes of street improvement, without the authority of the High Commissioner in Council—and the reason for such enactment is not, in our opinion, difficult to see.

The widening and improvement of existing streets is usually a matter of considerable expense, and it was no doubt thought right, that the highest authority in the island should exercise some control over the actions of Municipal Councils in cases where the expenditure of considerable sums of public money might be involved. But we do not see that the law in practically forbidding Municipal

Councils to carry out certain works, without the authority of the High Commissioner in Council, has enacted that when they have obtained that authority, they have any larger or more defined powers of carrying out their work than they had before the law of 1885 was passed.

We nowhere find a power conferred on any public authority to compulsorily acquire the ownership of existing buildings. We do not think that in the absence of the provision which we have quoted from the Municipal Law of 1885, anyone would have suggested that any Municipal Council could compulsorily acquire the possession of habitable and inhabited dwelling houses.

There are laws* under which certain public authorities are empowered to acquire land, but under these laws houses may not be acquired unless, or until, they are in a condition which needs that they should be repaired.

We believe that no such power is created by any law. Certainly it is not created by Section 3 of the Municipal Councils Law of 1885.

Under the circumstances we must hold that the Municipal Council of Larnaca have no right to compulsorily acquire the defendant's house. We must, therefore, reverse the judgment of the District Court and decide that the action be dismissed with costs.

Appeal allowed.

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* See Reglement des Routes et des Constructions, Leg. Ott., Vol. III., p. 200