

(1943) 08 MAD CK 0020
In the Madras High Court

A. Kuppuswami Konar (since deceased) and Another	APPELLANT
Vs	
The District Board of Tanjore	RESPONDENT

Date of Decision : 17-08-1943

Acts Referred:

Madras Local Boards Act, 1884 — Section 199(1)(d)

Citation : AIR 1943 Mad 754 : (1944) ILR (Mad) 423 : (1943) 56 LW 550 : (1943) 2 MLJ 393

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellant is the legal representative of a market toll contractor who took a series of leases from the District Board of

Tanjore in respect of a market which is the property of the Chatram Estate administered by the District Board. The District Board in three

resolutions sanctioned certain remissions of the rent due from the contractor. On objections being raised that these remissions were beyond the

powers of the District Board, the matter was referred to the Inspector of Local Boards who refused his sanction, and on a further representation to

the Government, enquiry was made into the circumstances in which these remissions were claimed and granted and the Local Government upheld

the action of the Inspector of Local Boards and directed the District Board to recover from the contractor the amounts remitted. The suit was

decreed and hence the appeal.

2. The essential facts are that the contractor took the lease of the market at Aran-tangi, a union village, for faslis 1341 to 1343 and again for faslis

1345 to 1349. In respect of the rent for fasli 1345, the contractor sent a petition to the District Board asking for remission on account of the

unseasonable weather and in Ex. B dated 9th July, 1936, a resolution was passed sanctioning a remission of Rs. 421-2-0. For fasli 1346 a

representation was made that the contractor had suffered loss owing to cholera. and in Ex. D, dated 20th August, 1937, the Board sanctioned

remission of Rs. 626-14-9. In 1939 representation was made that the contractor had suffered loss owing to congress activities and in Ex. E dated

20th May, 1939, a resolution was passed sanctioning the remission of two sums, Rs. 128-8-0 being a further remission in respect of fasli 1346,

and Rs. 567 being remission for fasli 1347. We are not concerned with any remission in respect of the two last faslis of the lease, 1348 and 1349.

Objection was taken to the validity of these resolutions, presumably in the course of the audit, and an application was made to the Inspector of

Local Boards who in Ex. G dated 18th September, 1939, refused to sanction these remissions. Ex. F is the order of Government directing the

recovery of the amounts remitted.

3. The relevant rules are embodied in G.O. No. 2716, Local and Municipal, dated 7th June, 1934, which has been exhibited as Ex. J. These rules

purport to be issued under Sub-section (1) and Clause (d) of Section 199 of the Madras Local Boards Act. Rule 1 provides that no remissions

shall be granted to lessees of revenue from local boards or persons who have entered into contracts with local boards except in accordance with

the provisions of Rule 2. Rule 2 provides that remission should only be granted where the contractor has been damnified by the "" occurrence of

some extraordinary extrinsic cause which could not reasonably have been anticipated."" It also provides that in the case of. a District Board, when

the amount remitted exceeds Rs. 250, "" the previous sanction of the Inspector of Local Boards shall be obtained therefor."" It seems to us quite

clear that the word ""therefor"" means "" for the amount remitted "" and not for the excess over Rs. 250 as has been argued.

4. Three main contentions have been argued before us by Mr. Unikanda Menon for the appellant, firstly, that these rules embodied in Ex. J are

ultra vires, secondly, that if the remissions have been granted by a procedure which is against the rules, the recovery from the lessor is not the

proper remedy, and thirdly, that the suit is barred by limitation u/s 222 of the Madras Local Boards Act.

5. On the first question, the rule purports to have been issued u/s 199 which empowers the Provincial Government to make rules ""as to the conditions on which... property vested in or belonging to such Board may be transferred by sale, mortgage, lease, exchange or otherwise."" It

seems to us that the rule governing the power of the District Board to grant remission under a lease of property vested in that District Board is within the powers of the Provincial Government under this section.

6. On the second point, it is argued that though, the District Board granted remissions in excess of Rs. 250 without the sanction of the Inspector of

Local Boards, their failure to comply with the rules should not damnify third parties and should not affect a discharge given to third parties under

the contract. It is not quite clear on the evidence before us whether there was or was not a completed act of remission in respect of each of these

payments. It would appear that the last resolution, Ex. E, was officially communicated to the lessee. The two earlier resolutions, Exs. B and D, do

not purport to have been officially communicated, though in all probability the lessee did receive some intimation, and it certainly seems clear that

the balance of the rent was collected from him on the basis that certain portions had been remitted. We may take it for the purposes of the present

case that the District Board did intimate to the lessee the fact that each of these remissions had been granted. No doubt if it had merely been a

matter of irregularity in the procedure of the District Board, it might well be argued that the lessee would not be damnified thereby and that the

remedy for the irregularity would be the surcharging of the persons in default. As it appears to us, however, this is not a case of a mere irregularity.

The rules in Ex. J must be read as having been incorporated in the Act by Section 200(c). The Board is therefore in the position of having a power

to grant the lease subject to the proviso that under that lease it cannot give remission except in accordance with and subject to the restrictions of

these rules. The rules do not merely prescribe the procedure for the grant of remissions but embody an absolute prohibition of the grant of

remissions in excess of Rs. 250 except with the sanction prescribed. The obtaining of the sanction is a condition precedent to the subsistence of the

power to grant the remission. When the sanction has not been obtained, the Board is entirely without power to grant a remission in excess of Rs.

250. The decision in *Pacific Coast Coal Mines, Ltd. v. Arbuthnot* (1917) A.C. 607 is authority for the view that when a corporation is

empowered to do an act provided that a certain condition precedent is performed and that condition is not performed, the corporation has not the

power to do the act and the act, if done, is void. We are, therefore, of the opinion that the remissions granted by the Board in violation of the rules

are void. The rent therefore remains due notwithstanding this invalid remission and a suit lies for the recovery thereof.

7. Turning to the third point, the question of limitation, we will assume for the purpose of this discussion that the market in question is a public

market, though the plaint asserts it to be a private market and there is no denial of this assertion. It is, however, arguable from the definition of a

public market"" in Section 167 of the Local Boards Act read with the provisions of Section 212(3) of that Act, that the District Board when it

contracted with the lessee did so under the power to farm out the collection of a licence fee leviable under the Act. The question whether payments

made to the District Board of funds due to the Chatram Estate, the administration of which was vested in the Board, can be deemed to be money

due to a local authority has been considered at length by Mockett, J., in the case of *The District Board of West Tanjore Vs. Ponnuswami*

Pallavarayar, . It was held that the income from the endowments recoverable by the District Board was part of the district fund. That decision has

been followed by one of us in *Venkatasubba Bagavathar as Secretary to the Tirukkurungudi Chatram Ryots' Association on behalf of the ryots*

Vs. Manager, L.F., Chatram, and we see no reason to doubt its correctness. It is argued that assuming the market in question to be a public

market and assuming the rental payable by the lessee to be part of the District fund collected by the District Board, Section 222 of the Local

Boards Act will bar the suit in respect of all three faslis, the plaint having been filed on nth December, 1940. It is clear that unless Section 222

stands in the way, the suit would be within time, under Article 116 of the Limitation Act, the lease being by registered document. Section 222

provides:

...No suit shall be instituted...in respect of any sum due to a local board under this Act after the expiration of a period of three years from the date

on which a suit might first have been instituted....

8. No doubt in the view of the law which we have assumed to be correct, the District Board may be deemed to have given this lease under its

powers as a Local Board operating under the Madras Local Boards Act; but is this a sum due to the local board under this Act? It must be

pointed out that we are not now concerned with a suit to recover any toll or license fee prescribed under any provision of the Local Boards Act.

We are concerned with the recovery of a portion of the consideration for a contract with reference to which it might be said that though the Act

empowers the Board to enter into the contract, there is no provision of the Act governing precisely its terms. On this subject there is no direct

decision so far as we are aware, but there are a series of Madras decisions, e.g., *Abdul Azeez Sahib v. Cuddapah Municipality* I.L.R.(1902)

Mad. 475 and *In re Punya Syamalo* I.L.R.(1923) *Mad. 381* relating to the effect of very similar words. Section 221 is a provision giving powers

to recover in the manner laid down by the rules certain classes of payments "" which under this Act or any other law or rules or by-laws made

thereunder "" are due by any person to the local board. It has been held with reference to this provision that when there has been a lease to a

contractor of the right to collect tolls leviable under the Act, the payment due from the contractor to the board in consideration for the contract is

not an amount due under the Act. It seems to us that the same reasoning applies in the present case. Assuming that the market tolls collected by the

lessee were sums due under the Act, the rent due from the lessee to the District Board is due solely under the contract and is not a payment the

amount of which is fixed by the Act. We are therefore of the opinion that the suit is not barred by Section 222 of the Madras Local Boards Act.

9. In the result, therefore, the appeal is dismissed with costs.