

(1930) 09 MAD CK 0029
In the Madras High Court

A.K. Kannayya Chetty and Others

APPELLANT

Vs

The President, Union Board

RESPONDENT

Date of Decision : 10-09-1930

Acts Referred:

Land Encroachment Act, 1905 — Section 2(2)

Madras Local Boards Act, 1884 — Section 207(1)(a)

Citation : AIR 1931 Mad 424 : (1931) 33 LW 254 : (1931) 60 MLJ 462

Hon'ble Judges : Krishnan Pandalai, J

Bench : Division Bench

Judgement

Krishnan Pandalai, J.—The petitioners in these cases are owners or occupiers of houses in the southern row of a street called South Car Street in Tirukoilur Union. They and some other house owners who have not applied to this Court were convicted by the Stationary 2nd Class Magistrate, Tirukoilur, which conviction was affirmed on appeal to the Sub-divisional Magistrate, Tirukoilur, u/s 207 (1) (a) of the Local Boards Act for failure to remove encroachments into the street in front of their several premises consisting of thatched roofs supported on posts planted in the ground. The common defence of all the petitioners was that the roofs were not encroachments, because the strip of land occupied by them which is at the southern margin of the road was not part of the road but Government land under which there was a water channel called Theppakulam Channel covered by stone slabs laid across the top. This defence was rejected by both the Courts below who found that though the Theppakulam Channel which has been out of use for several years and the stone coverings, to it belong to Government, the surface is part of the "road" according to the definition in the Local Boards Act and vests in the Union Board. It was proved that the site of the channel was surveyed as part of the road in 1920 to which no objection was then taken by any of the adjacent house owners, and that in 1915, when proceedings under the Land Encroachment Act for levying penal assessment against the petitioner in Cr. Rev. Case No. 932 were taken, the Collector while excusing the levy ordered by the Tahsildar and permitting the continuance of the encroaching

roof so long as the owner did not interfere with the repairs of the channel made it quite clear, which that petitioner admitted, that the site belonged to Government liable to assessment under the Act. On these findings the petitioners were convicted and fined Rs. 25 each.

2. In this Court the advocate for the petitioners has advanced the argument that the definition of "public road" in the Local Boards Act, 1920, is different from that of "Road," "Public road" in Act VI of 1900 which itself amended the original definition of "Street" and "Public street" in the Act of 1884. It was contended that the result of this change of definition is that though the site of the Theppakulam Channel with its covering may have been part of the road or street according to the older definition, yet the present definition excludes it from the road, as it has become "the adjacent property" belonging to Government. This is the main question in these cases.

3. The present Local Boards Act came into force on 1st April, 1921, till when the former Act of 1884 as amended in 1900 was in force. According to Section 235 of the Act of 1920 all property, rights, and interests of whatever kind owned by or vested in a Local Board as constituted under the old Act, passed to the corresponding Local Board constituted under the, new Act. If, therefore, the site of the Theppakulam Channel could be shown to have formed part of a public road under the old Act, it would necessarily form part of the same road under the new Act unless indeed there were something in the new Act (e.g., the definition of public road) which necessarily excludes it therefrom in spite of Section 235. A comparison of the old definition of "road" and "street" with the new definition of "public road" does not support the petitioner's contention. "Road" in the Act of 1884 as amended in 1900 includes

any road, street, square, court, alley or passage, whether a thoroughfare or not, over which the public has a right of way, together with the (Trains on either side and with the land, whether covered or not by any pavement, verandah or other erection, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property be private property or property reserved by Government for other purposes, and also includes the roadway over any public bridge or causeway.

4. "Public road" in the same Act means

any road which is now vested in a local board or which may hereafter be made at the cost of the local fund or which may hereafter be declared u/s S3 to be a public road.

5. The idea contained in the above definition of including in a road the marginal land between the roadway and the adjacent property was continued from the still older definition of "street" in the Act of 1884 as originally passed as

any road, street, square, court, alley or passage, whether a thoroughfare or not, over which the public has a right of way, together with the land (not being

private property) whether covered or not by any pavement, verandah, or other erection, which lies between the roadway and the main wall of any house adjacent thereto and also the roadway over any public bridge or causeway.

6. Similarly, "public street" in the Act of 1884 as originally passed meant

any street which now is a public street or may hereafter be declared to be a public street in manner hereinafter provided.

7. In the Act of 1920 "public road" means

any street, road, square, court, alley, passage Cr. riding-path, whether a thoroughfare or not, over which the public have a right of way and includes

(a) the roadway over any public bridge or causeway;

(b) the footway attached to any such road, public bridge or causeway; and

(c) the drains attached to any such road, public bridge or causeway, and the land, whether covered or not by any pavement, verandah or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private property or property belonging to Government.

8. In the same Act "private road" means

any street, road, square, court, alley, passage or riding-path which is not a "public road" but does not include a pathway made by the owner of premises on his own land to secure access to, or the convenient use of, such premises.

9. From the above it is clear that in the Acts of 1884 and the Amending Act of 1900 there was no definition of private street or private road and that the word "street" in 1884 and "road" in 1900 were defined as connoting all the attributes of a public street or road. The expression "public street" for which therefore there was no necessity for a fresh definition in 1884 was declared to mean streets which were then or were declared afterwards to be public. Similarly the substituted expression "public road" for which there was no necessity for a fresh definition in 1900 was declared to mean roads which were then vested in the Local Board or were afterwards made at the cost of the Local Fund or afterwards declared to be public. The amendments of 1920 were, so far as the present matter goes, not of substance but of arrangement and merely verbal. The definition of "public road" of 1920 corresponds to "street" in 1884 and to that of "road" in 1900. Through all of them the same idea runs--of a road or other way over which the public have a right of way--and all of them include the marginal spaces on either side between the actual roadway and the adjacent property. It is only in describing the limit of the adjacent property that some alteration of language has occurred. In 1884 the limit was described as the main wall of any adjacent house. This left out cases where there was no house adjacent. Therefore in 1900 the limit was described as the boundary of the adjacent property whether it be private property or property reserved by Government for

other purposes. This language seemed liable to the interpretation that unless Government property adjacent to a road were "reserved" for some other purpose than a road, it would come within the definition of "road." Of very few properties can it be properly said that they are reserved by the owner for any purpose. If they are Government property, they may be used for any purpose at the pleasure of Government any previous reservation notwithstanding. Therefore, the definition was too wide and the limit of the adjacent property really illusory. This was corrected in 1920 by omitting the words as to reservation by Government and we have now as the limit of a public road boundaries of the adjacent property whether it be private property or Government property.

10. There is nothing in the alteration of the language of the definition of public road in the Act of 1920 which supports the petitioner's argument that it excludes a road margin belonging to the Government which might have been included in it under the older Act. Under both Acts the real question is whether the disputed Government property is really only adjacent to the road and not a part of the road in the sense of being used or treated or intended to be used or treated as part of the road. So far as the present cases are concerned the findings of the Courts leave no room for doubt in the matter. The Thoppakulam Channel which has for many years been out of use and which runs underground along the southern margin of the South Street is undoubtedly Government property. In 1915 the petitioner in 932 was assessed to penal assessment under the Land Encroachment Act for keeping the overhanging roof. The Collector excused the assessment and allowed the roof to remain but on condition that the owner did not interfere with the repairs to the channel. By Section 2 (2) of the Land Encroachment Act all public roads, streets, vested in a local authority are; Government property within the meaning of that section. By the proviso to Section 3 payment of penal assessment does not confer any right of occupancy in the unauthorised occupant. Nor can the fact that the Collector did not then consider it necessary to levy the assessment or to evict the occupant affect in any manner his liability to action under Sections 98 and 98-A of the Local Boards Act (1884) as amended in 1900 which was then in force. In May, 1920, the street in question was surveyed. In the survey plan the Thoppakulam Channel is not separately demarcated as a different Government property but is included in the width of the street. No question or objection was raised by Government or any one else as to this and it is idle for petitioners now to contend that the width of the road does not include the width of the channel and that the latter is a separate property adjacent to, but not forming part of the road. I have no doubt that on the evidence before the Lower Courts they were right in concluding that the space over which the petitioners have erected the roofs is part of a public road and that the roofs were therefore encroachments. The petitions are dismissed.