

---

**(1931) 02 MAD CK 0011**  
**In the Madras High Court**

|                                                  |            |
|--------------------------------------------------|------------|
| Appu L. Rm. Lakshmanan Chetti (died) and Another | APPELLANT  |
| Vs                                               |            |
| The Union Board of Devakottai                    | RESPONDENT |

---

**Date of Decision :** 04-02-1931

**Acts Referred:**

Madras Local Boards Act, 1920 — Section 225

**Citation :** AIR 1931 Mad 520 : (1931) 33 LW 532 : (1931) 60 MLJ 600

**Hon'ble Judges :** Madhavan Nair, J

**Bench :** Division Bench

---

## Judgement

Madhavan Nair, J.—The plaintiff is the petitioner. This Civil Revision Petition arises out of a suit instituted by the plaintiff against the

defendant, the Union Board of Devakottah, for a declaration that the Board is not entitled to levy profession tax from him for the year 1924-25,

that the assessment and the collection thereof are illegal and for the recovery of Rs. 100 paid by him with interest from the date of collection. The

defendant amongst other things contended that the suit is not maintainable as no notice as required u/s 225 of the Local Boards Act (XIV of 1920)

was given by the plaintiff before the suit. The petitioner's contention with reference to this objection regarding the maintainability of the suit was

twofold: (1) that the present suit does not fall within the scope of the section inasmuch as the section contemplates only suits for compensation and

damages, and (2) that even if notice is required he has complied with this requirement as he had sent Ex. A to the President of the Union Board.

Ex. A is described as an appeal petition to the President relating to profession tax. In the cover the sender is described as the petitioner in respect

of the profession tax. The petition ends with the sentence, "I shall wait for one month and on the strength of this very registered petition I shall file a

suit in the local District Munsif's; Court." Ex. A was taken by the Union Board as an appeal preferred against the assessment made by the President.

2. The two points for decision arising from these contentions are: (1) whether a notice u/s 225 of Madras Act (XIV of 1920) is necessary in this case, and (2) if it is necessary, whether Ex. A would constitute a proper and valid notice under the section. On both these points both the Lower Courts decided against the petitioner. In the present Civil Revision Petition the validity of the decisions of the Lower Courts on both the points is questioned by the appellant.

3. Section 225, Sub-clause (1) of the Madras Local Boards Act (XIV of 1920) enacts that

No action shall be brought against any Local Board, or against any member or servant of such Board, or against any person acting under the

directions of such Board or of a member or servant of such Board, on account of any act done or purporting to be done in pursuance or execution

or intend-(1 execution of this Act, in respect of any alleged neglect or default in the execution of this Act, until the expiration of two months next

after notice in writing shall have been delivered or left either at the office of the Local Board or at the place of abode of such member or servant or

of such person, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of

abode of the intended plaintiff; and unless such notice be proved to have been so delivered or left, the Court shall find for the defendant.

4. It is contended on behalf of the petitioner that this section contemplates only suits for compensation and for damages against the Local Board

and as the petitioner's suit which is one for refund of profession tax illegally levied is not a suit for compensation and damages at all, that Section

225 does not apply to this case, and that therefore the notice required under the section is not necessary. In support of this argument reliance is

placed mainly on three decisions of this Court in Syed Ameer Sahib v. Venkatarama ILR (1892) 16 M. 296, President of the Taluk Board,

Sivaganga v. Narayanan ILR (1892) 16 M. 317 : 3 M.L.J. 12, Srinivasa v. Rathnasabapathi ILR (1892) 16 M. 474 : 3 M.L.J. 124 and Govinda

Pillai v. The Taluk Board, Kumbakonam ILR (1908) 32 M. 371 : 19 M.L.J. 333.

These decisions are no doubt under the old Local Boards Act

and the old Madras District Municipalities Act; but a comparative study of the scope of the corresponding sections of the old and the present

Local Boards Act and of the old District Municipalities Act, that is, Section 156 of Act V of 1884, Section 225 of Act XIV of 1920 and Section

261 of Act IV of 1884 will show that the petitioner's contention is well founded. Section 156 of the Local Boards Act (V of 1884)

(corresponding to Section 225 of the present Local Boards Act) on which were based the two decisions in Syed Ameer Sahib v. Venkatarama

ILR (1892) 16 M. 296 and President of the Taluk Board, Sivaganga v. Narayanan ILR (1892) 16 M. 317 : 3 M.L.J. 12 so far as it is relevant for

the present purpose is as follows:

No action shall be brought against any Local Board or panchayat or against any member or servant of such Board or panchayat or against any

person acting under the directions of such Local Board or panchayat or of a member or servant of such Board or panchayat, on account of any act

done or purporting to be done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the

execution of this Act, until the expiration of one month next after notice in writing shall have been delivered or left either at the office of the Local

Board or panchayat, or at the place of abode of such member or servant or of such person, explicitly stating the cause of action, the nature of the

relief sought, the amount of compensation claimed and the name and place of abode of the intended plaintiff; and unless such notice be proved to

have been so delivered or left, the Court shall find for the defendant ...

5. In Syed Ameer Sahib v. Venkatarama ILR (1892) 16 M. 296 it was held that this section is only applicable to suits for compensation claimed

for wrongful acts committed under the colour of the Act and was therefore not applicable to the suit in question which was one for ejectment

brought on the ground that the land upon which the defendant had entered belonged to the plaintiff. In President of the Taluk Board, Sivaganga v.

Narayanan ILR (1892) 16 M. 317 : 3 M.L.J. 12 it was held that the cases contemplated in Section 156 are suits for compensation and for

damages and the principle is to allow public bodies time for tender of amends to the parties to avoid litigation. The latter observation regarding the

tender of amends related to a provision embodied in the last sentence of that section which enacted that

if the person to whom such notice of action is given shall before action brought tender sufficient amends to the plaintiff such plaintiff shall not

recover more than the amount so tendered.

6. A similar provision is enacted also in Clause (2) of Section 225 of the present Act. In the case in question the learned Judge held that the

principle of Section 156 cannot apply ""when the object of the suit is to obtain a declaration of title to immovable property and for an injunction to

restrain interference with immovable property."" The decision in *Srinivasa v. Rathnasabapathi* ILR (1892) 16 M. 474: 3 M.L.J. 124 was u/s 261

of the District Municipalities Act (IV of 1884) which corresponded generally with the necessary modifications to Section 156 of the Local Boards

Act (V of 1884) in essential particulars. In this case it was held that ""the cases contemplated u/s 261 are suits for compensation and for damages

and the principle is to allow public bodies time for tender of amends to the parties so as to avoid litigation,"" and reference was made to President

of the Taluk Board, *Sivaganga v. Narayanan* ILR (1892) 16 M. 317 : 3 M.L.J. 12 already noticed and the cases quoted therein. These decisions

would show that according to the law as it then stood, Section 156 of the Local Boards Act and the similar provision contained in Section 261 of

the District Municipalities Act contemplated only suits for compensation and for damages. This position was made clear by the subsequent

amendments introduced into the two Acts. The Local Boards Act (V of 1884) was amended by Act VI of"" 1900 which split up the section into

four sub-clauses and added after the words ""explicitly stating the cause of action"" in the first clause the words ""the nature and relief sought, the

amount of compensation claimed."" The other amendments need not be noticed. Section 261 of the District Municipalities Act (IV of 1884) had

also by this time been amended in a similar way. The decision in "*Govinda Pitted, v. The Taluk Board, Kumbakonam* ILR (1908) 32 M. 371 : 19

M.L.J. 333 which is that of a Full Bench is under the amended Section 156 (1) of the Madras Local Boards Act of 1884. "Under that decision it

was held that the amended section does not apply to suits for an injunction and the notice described therein is not necessary in the case of such

suits. In support of their decision the learned Judges relied on the three decisions in ILR 16 Madras already referred to and the amendment of

Section 156 which introduced in it the words ""the nature of the relief sought, the amount of compensation claimed."" It is clear that in amending the

Acts by introducing these words, the Legislature acted upon the decisions in ILR 16 Madras which even without the amendment held that Sections

156 and 261 would apply only to suits for compensation and for damages. Section 225 of the Local Boards Act (XIV of 1920), the section which

applies to the present suit, so far as the present point is concerned, corresponds to the amended Section 156 of the old Local Boards, Act and

enacts in similar language the same provisions which are contained in that section. It may well be said therefore as contended for by the petitioner's

learned advocate that the Full Bench decision in *Govinda Pillai v. The Taluk Board, Kumbakonam* ILR (1908) 32 M. 371 : 19 M.L.J. 333 may

be used as an authority for interpreting the scope of Section 225. Section 261 of the old District Municipalities Act is also similar to Section 225 of

the present Local Boards Act though that section has been thoroughly recast in the present District Municipalities Act. It appears to me that

Section 225 of the present Local Boards Act interpreted in the light of these decisions of which one is a Full Bench decision under the Local

Boards Act shows clearly that that section would apply only to suits for compensation and for damages. These decisions were followed by Phillips,

J., in *Municipal Council, Cochin v. Bavu Devussi* AIR 1926 Mad. 235. The petitioner has also relied on the decisions in *Municipal Council of*

*Kumbakonam v. Veeraperumal Padayachi* (1914) 28 M.L.J. 147 and *The Krishna Jute and Cotton Mills Co. Ltd. Vs. The Municipal Council*, in

support of his contention. I do not think it is necessary to discuss these cases as in my opinion the cases already discussed afford abundant

authority in support of his contention. It is clear that the present suit which is for refund of. profession tax that was illegally levied cannot be

described as a suit for compensation and for damages and therefore it cannot be held on the authorities mentioned that it is not maintainable for

want of notice prescribed u/s 225.

7. On behalf of the respondent Mr. Bhashyam Aiyangar argued that having regard to the decisions of this Court in *Municipal Council, Dindigul v.*

Bombay Co., Ltd. ILR (1928) 52 M. 207 : 56 M.L.J. 525 and of the Privy Council Bhagichand Dagadusa v. The Secretary of State (1927) L.R.

54 IndAp 338 : ILR 51 B. 725 : 53 M L.J. 81 (P.C.) it can no longer be maintained that the proposition of law laid down in the cases examined

above to the effect that Sections 156 and 156 (1) of the old Local Boards Act would apply only to suits for compensation and for damages is

correct and that having regard to the comprehensive nature of the words used in Section 225 it should be held that the section is applicable to all

kinds of suits instituted against the Local Board whatever be their nature. I think this contention cannot be accepted. In Municipal Council, Dhidigul

v. Bombay Co., Ltd. ILR (1928) 52 M. 207 : 56 M.L.J. 525 to which I was a party it was held that

a suit by a company for the recovery of a sum wrongfully collected by a Municipality u/s 92 is essentially an equitable action for "money had and

received" and not a suit for "damages and compensation" and the bar of limitation prescribed by Section 350, Clause (2) of the Act will not apply

to such an action.

8. This decision turned upon the scope of Section 350 of the District Municipalities Act which in Clause (1) stated

No suit for damages or compensation shall be instituted against the Municipal Council ....

and we had to consider whether the suit in that case could be described as a suit for damages or compensation. The words of Clause (1) of

Section 350 are totally different from the words of Section 225 which we have to consider here and I fail to see how the decision in that case is in

any way inconsistent with the decisions I have examined above. In the course of my judgment I contrasted the wording of Section 261 of the old

District Municipalities Act (IV of 1884) with the wording of Section 350 and pointed out that "all descriptions of actions as under the English Law

would be included within the scope of Section 261 of the old Act. This observation is relied on to show that according to this view, the opinion in

the earlier decision that that section is confined only to suits for compensation and damages should be held to be incorrect. I do not think that this

conclusion follows from my observation. In making this observation I was only pointing out that Section 350 of the new District Municipalities Act

(V of 1920) having regard to its wording was not so comprehensive in its scope as Section 261 of the old Act which I think is perfectly correct;

and that was all. I was not considering the question as to what kinds of suits will be included within the words "No action shall be brought, etc

used in Section 261 of the old Act. In fact, none of the cases now brought to my notice on behalf of the petitioner was cited before us. In my

opinion, the decision in *Municipal Council, Dindigul v. Bombay Co., Ltd.* ILR (1928) 52 M. 207 : 56 M.L.J. 525 which, as I have already

observed, is a decision u/s 350 of the present District Municipalities Act, has hardly anything to do with the point which I have to decide in this

case.

9. The decision in *Bhagchand Dagadusa v. Secretary of State* (1927) L.R. 54 IndAp 338 : ILR 51 B. 725 : 53 M.L.J. 81 (P.C.) deals with

Section 80, Civil Procedure Code, which states that

No suit shall be instituted against the Secretary of State for India in Council or against any officer for any act purporting to be done by such officer

in his official capacity until the expiration of two months next after notice in writing given in the manner provided by the section.

10. Their Lordships held that the section applies to all forms of suits and whatever the relief sought including a suit for injunction. Though it may be

said that there is a general similarity between the wording of Section 80, CPC and that of Clause (1) of Section 225 it has to be observed--and

this is a very important circumstance--that the words "the nature of the relief sought, the amount of compensation, etc." which were introduced by

the amendment in Section 156 of Act IV of 1884 after the words "explicitly stating the cause of action" do not find a place in Section 80, Civil

Procedure Code. Even without these new words the learned judges in *Syied Ameer Sahib v. Venkatarama* ILR (1892) 16 M. 296 and President

of the Taluk Board, *Sivaganga v. Narayanan* ILR (1892) 16 M. 317 : 3 M.L.J. 12 were prepared to hold that Section 156 of Act V of 1884 as it

then stood was applicable only to suits for compensation and for damages. Apparently, as already observed, this view of the learned Judges was

adopted by the legislature and the amendment was introduced so that there may not be any doubt whatsoever about the scope of the, section. It

may also be pointed out that the provision regarding the tender of amends in

Section 156 which finds a place also in Section 225 on which the learned Judges of this Court relied in support of their interpretation of Section 156 (see *President of the Taluk Board, Sivaganga v. Narayanan* ILR (1892) 16 M. 317 : 3 M.L.J. 12) is absent in Section 80, Civil Procedure Code. Having regard to these important considerations which makes Section 225 of Act XIV of 1920 materially different in its scope from Section 80, Civil Procedure Code, I do not think it is right to rely on the decision in *Bhagchand Dagadusa v. Secretary of State* ILR (1928) 52 M. 207 : 56 M.L.J. 525 in considering what classes of suits are included within the scope of Section 225. My attention was drawn by Mr. Bhashyam Aiyangar to the fact that in *Bhagchand Dagadusa v. Secretary of State* (1927) L.R. 54 IndAp 338 : ILR 51 B. 725 : 53 M L.J. 81 (P.C.) it is pointed out by their Lordships of the Privy Council that the authority of the decisions in *Flower v. Local Board of Low Leyton* (1877) 5 Ch.D. 347 and *Attorney-General v. Hackney Local Board* (1875) 20 Eq. 626 is no longer binding, having regard to the subsequent development of the law in England and so it was argued that these being decisions on which the learned Judges relied in support of their interpretation of the scope of Section 156 (see *Govinda Pillai v. The Taluk Board, Kumbakonam* ILR (1908) 32 M. 371 : 19 M.L.J. 333 , it should be held that that decision and the other earlier decisions are no longer good law. If our legislature in understanding Section 156 accepted the view of the law enunciated in those two cases and in order to make the position clear amended the section by introducing suitable words, then, there can be no force in the argument now urged, since obviously we have to give effect to the enactment of our legislature so long as it remains unamended with respect to this point. The two English cases referred to may have lost their authority having regard to the subsequent amendments in the wording of the relevant English Acts; but on the point under consideration Section 225 remains the same as Section 156 of the old Act and in this view the observations of their Lordships of the Privy Council in *Bhagchand Dagadusa v. Secretary of State* (1927) L.R. 54 IndAp 338 : ILR 51 B. 725 : 53 M.L.J. 81 (P.C.) regarding the decisions in *Flower v. Local Board of Low Leyton* (1877) 5 Ch.D. 347 and *Attorney-General v. Hackney Local Board* (1875) 20 Eq. 626 do not in any way affect the

present question. In my opinion neither the decision in Municipal Council, Dindigul v. Bombay Co., Ltd. ILR (1928) 52 M. 207 : 56 M.L.J. 525

nor the decision in Bhagchand Dagadusa v. Secretary of State (1927) L.R. 54 IndAp 338 : ILR 51 B. 725 : 53 M.L.J. 81 (P.C.) can be

understood as throwing doubts on the correctness of the prior decisions of this Court in Syed Ameer Sahib v. Venkatarama ILR (1892) 16 M.

296, President of the Taluk Board, Sivaganga v. Narayanan ILR (1892) 16 M. 317 : 3 M.L.J. 12 and Govinda Pillai v. The Taluk Board,

Kumbakonam ILR (1908) 32 M. 371 : 19 M.L.J. 333.

11. Another branch of the learned advocate's argument was that the words of Section 225 are of sufficient amplitude to cover cases of the present

description and that the words "the amount of compensation claimed" do not in any way narrow down the meaning of the words the "cause of

action" or "the nature of the relief sought" appearing in the section. This argument is supported by a decision of the Allahabad High Court in Munir

Khan v. Municipal Board, Allahabad (1929) 122 I.C. 742 about the scope of Section 326 of the United Provinces Municipalities Act (II of 1916)

which except as regards Clause (4) in substantial particulars agrees in its wording with Section 225 of the Madras Local Boards Act. The wording

of Clauses (1) and (2) of the two sections are similar in all material particulars. (See the United Provinces Act (II of 1916) printed in I.C. Acts,

Vol. 1916). It was held in Munir Khan v. Municipal Board, Allahabad (1929) 122 I.C. 742 that the words "the cause of action" occurring in

Clauses (1) and (2) are of sufficient amplitude to cover cases involving the infraction of an absolute right or of a right arising out of a contract and

also of a right to compensation flowing from tort and that the words "the amount of compensation claimed" do not narrow down the denotation of

either "the cause of action" or "the nature of the relief sought," to mere suits for damages founded upon tort and evidently mean no more than this

that where the plaintiff sues he must specify the amount of compensation. This decision no doubt supports the respondent's argument but none of

the cases of this Court or the English cases relied on in the decision of this Court is referred to in the judgment ; and further, what is more

important, we know nothing as regards the history of that enactment. Having regard to the decisions of our Court which are all one way, I cannot

follow the decision of the Allahabad High Court.

12. For the above reasons, I must hold that the decision of the Lower Court that the suit is not maintainable for want of notice u/s 225 cannot be upheld.

13. Having regard to my view that no notice is necessary in this case, the further question whether, if notice is necessary, Ex. A would be a sufficient notice does not arise for consideration, though. I am inclined to hold that it amounts to a sufficient notice within the meaning of the section.

14. In the result, the Civil Revision Petition is allowed with costs throughout and the case is remanded to the Lower Court for disposal on the other issues. The Court-fee in the Lower Appellate Court will be refunded.

15. S.A. No. 2009 of 1927.--No Second Appeal lies in this case. The Second Appeal is dismissed. No costs.