

**(1939) 02 CAL CK 0008**  
**In the Calcutta High Court**

Bando and Co. Ltd.

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

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**Date of Decision :** 17-02-1939

**Acts Referred:**

Calcutta Municipal Act, 1923 — Section 538  
Civil Procedure Code, 1908 (CPC) — Section 80  
Limitation Act, 1963 — Article 48

**Citation :** AIR 1939 Cal 614

**Hon'ble Judges :** Lort-Williams, J; Lord Williams, J

**Bench :** Division Bench

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## Judgement

Lort-Williams, J.—The plaintiffs claim a sum of Rs. 7,43,690-3.5 for work done and material supplied and in respect of retention money and security deposits, under several contracts, and for compensation for loss sustained owing to alleged breaches of those contracts. The defendants deny that anything is due to the plaintiffs and plead inter alia that the suit is barred by limitation owing to the absence of notice u/s 538, Calcutta Municipal Act. It is admitted by the plaintiffs that no such notice was given. A number of issues have been raised, the first being: "Is the suit maintainable in the absence of notice under the provisions of Section 538, Calcutta Municipal Act?" Both parties have asked me to try this issue as a preliminary issue under Order 14, Rule 2, Civil P.C., and for the purposes of this issue, the facts alleged in the (plaint and the contracts, copies of which are contained in Ex. 1, are admitted. Section 538, Calcutta Municipal Act, so far as it is relevant is as follows:

(1) No suit shall be instituted against the Corporation or any Municipal officer or servant, or any person acting under the direction of the Corporation or any Municipal officer or servant in respect of any act purporting to be done under this Act or under any rule or bye-law made there under, until the expiration of one month next after written notice has been delivered or left at the Municipal office or the residence of such officer, servant or person....

(2) Every such suit shall be commenced within four months next after the accrual of the cause of action, and the plaint therein shall contain a statement that a notice has been delivered or left as required by Sub-section (1).

2. It has been argued by the learned Advocate-General on behalf of the defendant Corporation, firstly, that the meaning of the Section is that notice is required of every suit brought against the Corporation or any Municipal officer or servant, and secondly, that the present suit has been instituted in respect of acts purporting to be done under the Calcutta Municipal Act. The first contention depends mainly upon the punctuation of the Section. It is argued that the limitation or qualification "in respect of any act purporting to be done under this Act" does not apply to the corporation or any Municipal officer or servant but only to persons, "acting under the direction of the Corporation or any Municipal officer or servant." The argument is unsound for the following reasons: "In an Act of Parliament there are no such things as brackets any more than there are such things as stops:" *Duke of Devonshire v. O'Connor* (1890) 24 Q.B.D. 468, Lord Esher, M.R.: I see no reason why this rule should not apply to acts of the Bengal Legislature as it was applied to Article 48, Limitation Act, in *Lewis Pugh v. Ashutosh Sen* A.I.R.(1929) P.C. 69 where, at page 100, Lord Warrington of Clyffe remarked that, "if the Article is read without the commas inserted in the print, as a Court of law is bound to do, the meaning is reasonably clear." In previous Acts regulating the activities of the Corporation or its predecessors there were Sections analogous to Section 538. Thus, Section 226, Municipal Act for the Town of Calcutta 1863, provided that:

No action shall be brought against the Justices, or any of their officers, or any person acting under the direction of the Justices, for anything done or intended to be done under the powers of this Act until the expiration of one month next after notice in writing shall have been delivered, &c....

3. Section 357, Calcutta Municipal Consolidation Act 1876, provided that:

No suit shall be brought against the commissioners, or any of their officers, or any person acting under their direction, for anything done, or purporting to be done, under this Act until the expiration of one month, &c....

4. Section 427, Calcutta Municipal Consolidation Act 1888, provided that:

No suit shall be brought against the Commissioners, or any of their officers, or any person acting under their direction, for anything done, or purporting to be done, under this Act until the expiration of one month, &c....

5. Section 634, Calcutta Municipal Act 1899, provided that:

No suit shall be instituted against any Municipal authority, officer or servant, or any person acting under the direction of any Municipal authority, officer or servant, in respect of any act purporting to be done under this Act or any rule, bye-law or regulation made hereunder, until the expiration of one month, &c....

6. It is clear (with or without the punctuation) that the limitation or qualification contained in each of these Sections applied to the Justices and Commissioners, and the Municipal authority, and their officers and servants, just as much as to persons acting under their direction, and it is inconceivable that the Legislature would seek to alter the law or intended so to do, by merely altering the punctuation of a Section. This is confirmed by the fact that when the Bill preceding the present Act was before the Legislative Council certain suggested amendments to Clause 529 (which became Section 538 in the Act) were drawn attention to in the Statement of Objects and Reasons, but nothing was said about any alteration such as has been suggested on behalf of the defendant Corporation. Moreover any enactment which purports to limit the rights of the subject must be strictly construed. If the Legislature had desired to provide that no suit of any kind should be instituted against the Corporation without notice, it could have so provided clearly and unambiguously, as for example has been provided in Section 80, Civil P.C., with regard to the Secretary of State for India in Council. The second contention raises a more difficult question. It is argued on behalf of the plaintiffs that the present suit is not within the Section because it is a suit arising *ex contractu* for work done and material supplied. The proposition has been stated concisely in Vol. 26 of the Hailsham edition of the Laws of England, p. 294, para. 612 as follows:

The performance, or breach, of a contract which a public authority has the power, but not the duty to make is not within the protection.

7. This refers to the protection given by Section 1, Public Authorities Protection Act 1893, which, so far as is relevant, is as follows:

Where after the commencement of this Act any action, prosecution or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty or authority, the following provisions shall have effect:

(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of.

8. The leading authority on the subject is the case in *Bradford Corporation v. Myers* (1916) 1 A.C. 242. The defendants, a Municipal Corporation, were authorized by statute to carry on the undertaking of a gas company, and were bound to supply gas to the inhabitants of a district. They were also authorized to sell the coke produced in the manufacture of the gas, though they were not bound to do so. They contracted to sell and deliver coke to the plaintiff and owing to negligence shot it through his shop window. More than six months afterwards the plaintiff commenced an action of negligence against the defendants. The defendants pleaded Section 1, Public Authorities Protection Act

1893, as a bar to the action. It was held *inter alia* that the act complained of was not an act done in pursuance or execution or intended execution of any statute or in respect of any neglect or default in the execution of any such statute, and that the protection given by the Section extends to any act done in the direct execution of a statute, or in the discharge of a duty owed to the public or in the exercise of a public authority. Lord Buck, master L.C. regarded these latter words as meaning a duty owed to all the public alike or an authority exercised impartially with regard to all the public, and not to duties and authorities which are not public. There was no obligation upon the local authority to dispose of their residual products by sale, still less was there any duty to dispose of them to the plaintiff. No member of the public could have complained if the plaintiff had not been supplied, nor had any member of the public the right to require the local authority to contract with him. These words, in my opinion, are clearly applicable to the facts and circumstances of the present case. Their Lordships attempted without much success, to discover some clear principle which could be followed when applying the Section to particular cases.

9. In my opinion, the most that can usefully be said is that generally speaking such or similar provisions in statutes relating to the powers and obligations of public authorities do not apply to suits arising *ex contractu*, though they may in particular, cases: *Prasaddas Sen and Others Vs. K.S. Bonnerjee*, per Rankin C.J. at p. 1134, *Athimannil Muhammad v. malabar District Board* A.I.R.(1935) Mad 213 per Varadachariar J: at p.749 and (1934) 66 MLJ 506 (Privy Council) The decision in *Bradford Corporation v. Myers*,(1916) 1 A.C. 242 and other decisions in English cases upon which that decision was founded have been followed consistently by Indian Courts, when considering similar though differently worded provisions in, Indian Statutes. Many of these cases were decided prior to the passing of the Calcutta Municipal Act of 1923. It must be presumed that the Bengal Legislature had notice of these decisions, and if it had intended to alter the law so as to apply the provisions of Section 538 to all suits arising out of contract, including contracts such as those in the present suit for work done and material supplied, it could have done so clearly and unambiguously. Apparently the only reported decision touching the construction of Section 538, Calcutta Municipal Act, is in *Corporation of Calcutta Vs. Asoke Kumar De*, . In that case the plaintiff sued the Corporation for the recovery of a sum of money due to the plain, tiff out of the Provident Fund established by rules under the provisions of Section 56(d); of the Act, which it had paid in error to another claimant named Kunjalal. Ran. kin C.J. said at page 1236 as follows:

The first (issue) is whether the suit is barred by limitation. That appears to have reference to the special provisions of Section 538, Calcutta Municipal" Act.... The learned Judge has rightly refused to entertain that argument because that Section applies to suits against the corporation in respect of any act purporting to be done under the Calcutta Municipal Act or under any rule or bye-law made there under This is not a suit against the Corporation for any act which they justify or can justify under the powers conferred by the Calcutta Municipal Act,

1923. This is not a suit for damages for having paid money to Kunjalal. It is a suit against the Corporation asking them to pay a sum of money which the plaintiff says they owe to him.

10. Each issue arising out of the construction and application of Section 538, or of similar Sections in statutes relating to the powers and obligations of public authorities, must be decided upon the facts and the wording of the Section in each particular case. I am satisfied that a suit such as this for money alleged to be payable under contracts for work done and material supplied and for compensation for breaches of those contracts does not come within the provisions of Section 538, Calcutta Municipal Act, and there must be judgment for the plaintiffs upon this issue with costs.