
(1957) 08 MP CK 0018
In the Madhya Pradesh High Court
Case No : F.A. No. 124 of 1953

Bhaiyalal Pannalal

APPELLANT

Vs

Municipal Committee, Murwara

RESPONDENT

Date of Decision : 27-08-1957

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 48, 51

Citation : (1958) MPLJ 251

Hon'ble Judges : T.C. Shrivastava, J;G.P. Bhutt, J

Bench : Division Bench

Advocate : M. Adhikari, for the Appellant; R.S. Dabir, for the Respondent

Final Decision : Allowed

Judgement

This is an appeal by the Plaintiff and is directed against the judgment and decree of the Court of First Additional District Judge, Jabalpur, dismissing his suit (No. 2-B of 1952).

The Plaintiff executed certain works for the Municipal Committee, Murwara, during the years 1948-49, 1949-50 and 1950-51. These works were executed in pursuance of contracts entered into by the committee with the Plaintiff, and consisted of construction of chabutras and drain in the municipal market, repairs and construction of municipal buildings, and construction of roads within the municipal limits. It was alleged that the committee acted dishonestly in preparing the bills, in that it departed from the agreed rates and recorded incorrect measurements. The Plaintiff accordingly sued the committee for recovery of Rs. 15,936/6/- on account of the cost of construction and repairs, and claimed interest on the amount at 1 p. c. p. m. by way of damages. The suit was, however, dismissed as barred by limitation, without any decision on merits.

It was not disputed that the works were within the scope of the committee's duties u/s 50, and also of its discretionary powers u/s 51, C.P. and Berar Municipalities Act, 1922, hereafter called the Act. It was, however, contended

that the view of the lower Court that the suit was governed by Section 48 of the Act was erroneous and accordingly the dismissal of the suit as barred by the special limitation provided therein cannot be maintained.

Sub-section (1) of Section 48 of the Act provides that no suit shall be instituted against a Municipal Committee for anything done or purporting to be done under the Act, until the expiration of two months next after a notice in writing, stating the cause of action, the name and place of abode of the intending Plaintiff and the relief which he claims, has been delivered or left at its office. Sub-section (2) of the said section directs the dismissal of every such suit unless it is instituted within six months from the date of the accrual of the alleged cause of action. The present suit was instituted after the expiry of this special period of limitation.

Sub-section (2) of Section 48 of the Act applies only when the suit is governed by Sub-section (1) *ibid*. This means that the claim must relate to an act done or purporting to be done by a Municipal Committee under the Act. Similar words, used in Section 73 of the C.P. Local Self-Government Act, 1920, were the subject of interpretation by a Division Bench of the late Judicial Commissioner's Court in AIR 1930 179 (Nagpur) in which they were held to relate only to an act done or purporting to be done in direct execution of the Act and not in breach of any duty imposed, or exercise of a power conferred, by a contract. This view was followed by Niyogi J. in *The Amraoti Town Municipal Committee v. Shaikh Bhikan* ILR 1939 Nag. 216 : A I R 1938 Nag. 455 and by Clarke J. in *District Council, Wardha v. Anna* 1941 NLJ 371 : ILR 1942 Nag. 294.

It was, however, urged for the Committee that the above view requires reconsideration. The gist of the argument is that as the committee was authorized u/s 44 of the Act to enter into the contracts for execution of the works in suit, which were admittedly within the scope of its duties and also of its discretionary powers, its omission to pay for them should be deemed to be an act done or purporting to be done under the Act. Reference was also made to Section 63 (2) of the Act, which empowers the committee to apply the municipal fund to the payment of the charges and expenses incidental to such works, and it was urged that this provision also supports the above contention.

It is no doubt true that an Act includes an illegal omission *vide* Clause (2) of Section 3 of the General Clauses Act: see *Prasaddas Sen and Others Vs. K.S. Bonnerjee*, . But the omission to pay a sum due under a contract is not an act done or purporting to be done under the Act but under the contract itself. Similar view was taken in *Municipal Borough of Ahmedabad Vs. Jayantilal Chhotalal Patel*, overruling *Baban Hemraj v. The City Municipality, Poona* I L R 46 Bom. 123 : A I R 1922 Bom. 380 (1), and in *Mavandi v. Mcuhae* I L R 2 Mad. 124 which was approved of in *K.L. Niyogi and Company v. The District Council, Buldana* (*supra*). This view is not affected by the fact that the committee was empowered to pay for the works from the municipal fund and acted dishonestly in withholding the amount. The committee was doubtless empowered under the Act to enter into the contracts in suit to get the works executed, which were

within its duties and discretionary powers, but in the absence of a provision in the Act empowering it to withhold the payment for such works its omission to pay would not be referable to the Act. In this connection, no analogy can be drawn from the decisions u/s 80, Code of Civil Procedure, 1908, in which the words used have a wider amplitude and may in a suitable case cover a suit on a contract that was entered into by a public officer purporting to act in his official capacity. It is not, therefore, necessary to refer to those decisions. The lower Court accordingly erred in holding that the suit was governed by the special law of limitation provided in Section 48 of the Act.

The result is that the appeal is allowed, the decree of the lower Court is set aside and the suit is remitted to it for trial in accordance with law. Costs of the appeal shall abide the result of the suit. A certificate for refund of the court-fees paid on the memo, of appeal shall be issued to the Appellant.