
(1931) 08 BOM CK 0012
In the Bombay High Court
Case No : First Appeal No. 136 of 1626

Chhaganlal Sakerlal

APPELLANT

Vs

The Municipality of Thana

RESPONDENT

Date of Decision : 28-08-1931

Acts Referred:

Bombay District Municipal Act, 1901 — Section 167
Limitation Act, 1908 — Section 15(2)

Citation : AIR 1932 Bom 259 : (1932) 34 BOMLR 143 : (1932) ILR (Bom) 135

Hon'ble Judges : Nanavati, J; Baker, J

Bench : Division Bench

Judgement

Baker, J.—The plaintiff sued the Municipality of Thana by its President, the Municipal Secretary, and the Sanitary Inspector for damages for malicious prosecution for unauthorisedly rebuilding his house. The First Class Subordinate Judge of Thana dismissed the suit. The plaintiff a

2. The record of this case is voluminous, and the arguments have "taken a considerable time. But there is no dispute as to the actual facts, and once the issues of law have been disposed of, the case seems to me to depend on a few salient facts, and many of the details may be omitted. The facts put briefly are, the plaintiff purchased a house in Thana. He applied in March 1922 for the house being entered in his name and for permission to make certain repairs and alterations. This was refused, The Municipality later on in July said that permission was refused because the house was in the regular line. The Municipality also thought of acquiring the house or portions of it for the purpose of widening the street, but nothing came of that. After various representations by the plaintiff, to some of which no answer is given, the plaintiff made certain repairs and alterations, as a result of which the Municipality resolved to prosecute him, and a criminal complaint was filed against him on Match 23, 1923. The plaintiff was acquitted by a majority of the Bench Magistrates on July 17, 1928. He gave a notice to the Municipality u/s 167 of the Bombay District Municipal Act on January 7, 1924, and the present suit is instituted on February

16, 1924. The Subordinate Judge held that the suit against defendants Nos. 2 and 3, the Municipal Secretary and the Sanitary Inspector, was bad for want of notice, but the suit was barred by limitation, and that it was not proved that the charge was preferred without any reasonable cause and maliciously. He accordingly dismissed the suit.

3. So far as defendants Nos. 2 and 3 are concerned, I agree with the Subordinate Judge that the absence of notice to them u/s 167 of the Bombay District Municipal Act is a bar to the suit, nor has this point been pressed by the learned advocate for the appellant. Apart from this, the prosecution having been admittedly instituted after resolution of the Municipality, defendants NOS. 2 and 3, who are merely servants, cannot be held responsible for it: cf. *Town Mun. of Jambusar v. Girjashankar* (1905) 7 Bom. L.R. 655 As against defendants Nos. 2 and 3, therefore, the suit is rightly dismissed, and the appeal fails, and must be dismissed with costs,

4. As regards limitation, Section 167 of the Bombay District Municipal Act requires a suit to be commenced within six months of the act complained of. The material dates are :-

Complaint filed March 23, 1923. Plaintiff acquitted July 17, 1923. Plaintiff's notice to Municipality January 7, 1924, Suit filed February 16, 1924.

5. The learned Judge takes the date of the cause of action to be the acquittal of July 17, 1923. The suit is brought within seven months of that, the plaintiff claiming to add one month's notice u/s 167 to the six months given by the same section, taking advantage of Section 29 of the Indian Limitation Act as amended by Act X of 1922. That section provides that where any special or local law prescribes a different period of limitation from that prescribed by the first schedule to the Indian Limitation Act, the provisions contained in Sections 4, 9 to 18 and 22 shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law. The Subordinate Judge holds that these provisions are expressly excluded by Section 167. The words "expressly excluded" have been considered in *Sati Prasad Garga v. Gobinda Chandra Shee* ILR (1828) Cal. 805 to mean that express reference is made to the specific section in the Act. Section 167 of the Bombay District Municipal Act says that no suit shall be commenced without one month's previous notice in writing, nor after six months from the date of the act complained of. If this excludes the provisions of the Indian Limitation Act above referred to, it excludes them by implication only and not expressly. In order to exclude them expressly it is necessary to add to Section 167, "The provisions contained in Sections 4, 9 to 18 and 22 of the Limitation Act shall not apply " or words to that effect, The legislature have not done this and therefore there is no express exclusion. The exact point does not appear to have come before the High Courts, but there is a Sind ruling in *Rewachand v. Karachi Municipality* AIR [1930] Sind 93 directly in point, holding that the above provisions of the Indian Limitation Act apply to Section 187 of the Bombay District Municipal Act. I agree with the conclusions of

the learned Judge who decided that case, who is now one of the Judges of this Court. The Statement of Objects and Reasons when Act X of 1922 was passed (Gazette of India, dated February 21, 1921) shows that the amendment was made to give effect to the view of the Allahabad High Court in *Dropadi v. Hira Lal* ILR (1912) All. 496. The effect is not to alter the period of limitation, but to alter the date from which limitation is to be calculated. u/s 15 (2) of the Indian Limitation Act the period of the notice is to be excluded. Ordinarily this period is excluded, and if the legislature wanted to make a special exception in the case of suits against a Municipality, it could have said so. Section 29 of the Indian Limitation Act as amended by Act X of 1922 as interpreted by the Calcutta High Court means that it must say so. There can be no exclusion by implication or inference. I hold, therefore, that Section 167 of the Bombay District Municipal Act is subject to Section 15 (2) of the Indian Limitation Act, and, therefore, plaintiff is entitled to exclude the period of one month of notice from the period of limitation for this suit.

6. It was then contended by the learned advocate for the Municipality that Section 167 provides six months from the date of the act complained of. The act complained of is the institution of the prosecution on March 23, 1923, and the suit should have been brought within six months of that. I do not find any reference in the judgment to this argument having been raised in the lower Court. This is an action for malicious prosecution. The cause of action arises when the plaintiff is acquitted. Clearly, if he had been convicted, no action would lie. The Privy Council in *Balbhaddar Singh Vs. Badri Sah*, have held that one of the points a plaintiff has to prove is that the proceedings terminated in his favour where from their nature they are capable of so terminating. Hence the termination of the proceedings is an essential part of the cause of action. Criminal Proceedings in this country very often take more than six months, and the result would be, if the arguments of the learned advocate were correct, that suits against a Municipality for malicious prosecution would be impossible unless the proceedings terminated within six months of the complaint, which is absurd. It is merely an accident that the proceedings in the present case lasted less than six months. In these circumstances, I hold that the suit is not barred by limitation.

2. On the merits, I do not propose to go into the details, which are set out at length in paragraphs 28 to 42 of the judgment. The essential facts are :-

(1) The plaintiff applied in March, 1922 for permission to rebuild. That is an application u/s 96 of the Bombay District Municipal Act. The Municipality refused permission, and called for details, the city survey sanad, and the plan, as u/s 96 they are entitled to do before granting permission. The plaintiff furnished the details and the city survey sanad, but said no plan was necessary. Now if the Municipality had insisted on the plan, although it is admitted that u/s 96 they could not absolutely refuse permission, they might by calling for further information and pressing for the production of the plan have held up the plaintiff

without going beyond the terms of the section. But this they did not do. On July 17, 1922, they refused permission absolutely on the ground that the house was within the "regular line." Under the Bombay District Municipal Act the expression "regular line" has a special meaning ; and in the case of houses falling within the regular line, the Municipality has special powers, see Sections 91 A and 92, but it is now admitted that the house did not fall within the regular line, there being none fixed at that place. The Subordinate Judge admits this, p, 8, para. 28, last line, of. the judgment. Therefore, the Municipality had no power to prohibit the building on this ground. That is now admitted. To argue that the expression " regular line " was not used in its strict legal sense under the Bombay District Municipal Act merely makes the case of the Municipality worse instead of better. Then the Municipality thought of acquiring the land. But this does not advance matters at all, because it is admitted that (1) the land acquisition proceedings never came to anything, (2) nothing in the Act authorises the Municipality to refuse permission to re-build a house on the ground that they propose to acquire it. Inasmuch as the Municipality never asked for the plan after the plaintiff said it was not necessary, and based their refusal on a ground now admitted to be untenable, they cannot now fall back on the absence of the plan. The action of the Municipality, therefore, based on their two pleas of "regular line " and acquisition cannot be supported, and as a matter of fact the complaint was launched for an offence u/s 96, and the ultimate resort was to the theory that the plaintiff built, not in excess of the permission, because there was no permission, but in excess of the proposals for which, he sought permission in his original application, and this is what the lower Court has relied on. No permission was granted u/s 96, but it is now admitted that under that section the Municipality had no right to refuse permission absolutely, and this was recognised by their legal adviser Mr. Chitre to whom the papers were submitted for opinion, and he advised them accordingly. But no notice was taken of his advice. Mr. Chitre's opinion is at p. 160. The first part refers to the transfer of the house in plaintiff's name, which is a matter I will deal with later on when I come to the question of malice, but in the second part at p. 161 he says :-

As regards the permission to repair asked for by the applicant, I think the Municipality cannot refuse permission in toto. If a portion of the building is beyond the regular line of street already existing or as determined upon for the future, the Municipality can refuse permission regarding that much portion only. It can also give a set back if the conditions of Section 92 are complied with.

7. He goes on to say, "I cannot say whether Section 92 can be made use of." The Municipality were, therefore, advised that u/s 96 they could not absolutely refuse permission, and a perusal of that section will show that there is no reference in it to refusal of permission, All that the Municipality can do is to ask for certain information and impose conditions, and their utmost power is to direct that the work shall not be proceeded with unless and until the question as to the location of the building and " any such street" has been decided to their satisfaction The effect of the section is to hold up the permission until these questions have been

decided to their satisfaction, And when they neither pass orders under Sub-section (2) which refers to the imposition of conditions within a month from receipt of the notice, or issue any provisional order under Sub-section (3) or any demand for further particulars, within a month, or after the particulars have been received issue no further orders within a month, the building may be proceeded with in the manner specified in the notice. But, as I have already said, the Municipality did not act under the provisions of Section 96, and no notice was issued to the plaintiff in accordance with the provisions of the section after the first notice, which it at p. 45, dated March 24, 1922. That is the notice u/s 96, and in reply to that on May 20, 1922, the plaintiff wrote at p. 46 giving the details but saying no plan was sent as it was unnecessary. The proper course for the Municipality to adopt u/s 96, Clause (3), was (a) either to issue a provisional order, or (6) to demand further particulars. But they altogether waived the question of a plan, and took up the indefensible attitude that the house was within the regular line, see their letter, p. 122, of June 17, 1922, Now if the Municipality has certain powers under a certain section of the Bombay District Municipal Act, and instead of exercising those powers which apply to the particular case in question, they choose to base their prohibition on certain other sections which have no application to the particular case in question, I fail to see how their action can be supported. Put briefly, the case is this. The Municipality can act under Clause (x). The proceedings begin under Clause (a:), but instead of the proceedings continuing under the provisions of the law in Clause (x), they suddenly proceed to rely on Clause (y), and Clause (z), (x) representing Section 96, (y) the regular line" Sections 91 A and 92, and (3) the acquisition proceedings. Then they give up the positions (y) and (z) as already explained, and fall back on Clause (x), and they must be taken to rely on Section 96, el. (4), which refers to the building proposed in the notice given under Sub-section (1) being proceeded within such manner as may have been specified in such notice. Now the question of whether the plaintiff built in excess and not in accordance with the manner specified in the notice is a question of fact. And the items in respect of which the plaintiff was alleged to have done so will be found in para. 32 of the judgment at p. 9, and the items on which the Subordinate Judge relies for his finding that the plaintiff had done the works without permission are : (1) Raising the height of the house, (2) building a new gallery, (3) widening the windows, and (4) putting up walls where there were wooden partitions, There seems to be some confusion between what was done before the prosecution and after the prosecution, The Judge has not referred to the removal of a wooden staircase or ladder which apparently does not come u/s 98. Taking these items in order, first as to the raising of the height of the house, the President of the Municipality examined as Exhibit 89 has deposed at p. 81 that the plaintiff had come to him to ask for permission for the roof as the house was getting damaged, " I gave him permission to do that, and told him that I would inform the Sanitary Committee accordingly. That was during the rains of 1923". The work on the roof was, therefore, done with the permission of the President, and some time after June 1923, i.e., three months after the complaint, which

was filed on March 23, 1923. The Sanitary Inspector, who was examined in the criminal proceedings Exhibit 104, p. 209, says :-

Formerly the house had a storey. The work of adding the storey was not done without permission. The roof is proposed to be changed. It is not done without permission. The work of the roof was not being commenced, and only rafters had been put.

8. The date of that deposition is June 13, 1923, This disposes of the question of the roof. Secondly, the new gallery. The Chairman of the Sanitary Committee, Exhibit 91, says at p. 89:-

After the end of the criminal prosecution the plaintiff completed the work after the rainy season of 1923. There was no gallery to the north. It was to the south. This gallery was removed in November 1923. It was a small gallery in front of the staircase. The now gallery was built after the rainy season of 1923.

9. As regards the windows and the walls, in his application at p. 46 dated May 20, 1922, in which the plaintiff was giving the details asked for by the Municipality u/s 96, he says, "The wall is to be repaired." The reconstruction of the wall cannot be said to be in excess of the details given in the application. The Municipal Secretary, when examined in the criminal proceedings, p. 191, completely gives away the position of the Municipality by saying:-

It cannot be said whether the present; walls have been constructed in place of the old ones... The only new work done is as follows:-A staircase which was to the north has been removed to the west and a change has been made in the doors and windows. But I cannot say how many doors and windows there were formerly and also what was their length and breadth. I cannot say positively that there were no old doors and windows in places where new doors and new windows have been put. As regards the upper floor I say that a new wall has been constructed in a place where there was no old wall (formerly). This wall is to the west of the eastern gala (tenement) which is from south to north. I remember that formerly there was no wall at that place. My memory will be of no use if old wall be found (detected) after breaking (the new wall), I cannot say whether the remaining upper walls are in the old places or have been constructed in new places. The northern windows of the house have been newly constructed. Formerly they were not like that. I cannot say whether the remaining windows are in their old places or not and whether they are made smaller or bigger.

10. And the Sanitary Inspector, defendant No. 3, Exhibit 101, in paragraph 10 says that the works stated in his cross-examination were done by the plaintiff before the commencement of the criminal case in which he was the complainant; but he admits that he was not able to show which were old rooms and which were new. It does not appear to be proved that any work was done beyond that mentioned in the application for permission. In these circumstances it appears, first, that the Municipality did not base their refusal of permission on any legal

ground, and when the bases on which they took their stand, viz., the " regular line" and the acquisition proceedings proved broken reeds, they fell back on Section 96, but the evidence does not show that the plaintiff had as a matter of fact gone beyond the details which he gave in his original application, A statutory body like a Municipality acting under a statute must keep strictly within its statutory powers. The point will be found stressed in the leading case of *Young & Co. v. Mayor, &c., of Royal Leamington Spa* (1883) 8 App. Cas. 517 That was a case of a contract not made under seal as required by the Act. At p. 528 Lord Bramwell said :--

The legislature has made provisions for the protection of ratepayers, shareholders, and others, who must act through the agency of a representative body, by requiring the observance of certain solemnities and formalities which involve deliberation and reflection.

11. And obviously it is the duty of a Municipality, which is issuing orders which interfere with the right of an owner to repair or alter his own house on his own property in the manner which is most convenient to himself, to be careful that their orders are based on the provisions of the statute applicable to the particular case in question, which it appears to me the Municipality has failed to do in the present case. It has actually been admitted in the present case by the Secretary that some of the plaintiff's petitions were not laid before the Municipality. That an action for malicious prosecution will lie against a corporation has been held in *Cornford v. Carlton Bank, Limited* [1900] 1 Q.B. 22; see also *Citizens' Life Assurance Company v. Brown* [1904] A.C. 423 in which the Privy Council held that a corporation cannot be held to be incapable of malice so as to be relieved of liability for malicious libel when published by its servant acting in the course of his employment; cf. *Pollock on Torts*, 13th Edition, p. 324, and *Addison on Torts*, 8th Edition, p. 261. In these circumstances, I have no hesitation in holding that there was an absence of reasonable and probable cause, because the evidence of the Municipal servants referred to above in detail shows that the facts on which the prosecution was based did not exist to their knowledge, and that the conduct of the plaintiff would not bring him within any penal clause of the Act. It is surely a reasonable presumption that the Municipality who have to administer the Act, ought to be well-acquainted with its provisions, and it has already been pointed out that they had consulted their legal adviser and did not follow the advice which he gave them at p. 161 of the record.

12. That, however, does not dispose of the case, as under the Privy Council ruling in *Balbhaddar Singh Vs. Badri Sah*, the plaintiff has to prove not only that the prosecution was instituted against him without any reasonable or probable cause, but that it was instituted maliciously. With regard to the question of malice, it has been stated by the defendant that the Secretary was actuated by personal motive against him because he was a neighbour of one Varubai, who was connected with the vendor of the house in dispute and between whom and the plaintiff there has been litigation, and in this connection there has been a

good deal of argument about the refusal of the Municipality to transfer the house to plaintiff's name. Of course the question of the non-transfer of the house to his name was not directly in issue, but it has some bearing on the question of malice. The circumstances point to an absence of reasonable and probable cause for the prosecution, but it must further be proved that the prosecution was malicious, that is, that it was instituted from "an indirect and "improper motive and not in furtherance of justice," per Bowen L.J. in *Abrath v. North Eastern Railway Co.* (1883) 11 Q.B. D. 410 If a person prefers an indictment, or sets the criminal law in motion, knowing at the time he did so that he has no reasonable ground for it, that alone is evidence of malice on his part. By the term "malice" is meant an indirect wrong motive : Addison on Torts, p. 255, based on *Stevens v. Midland Counties Railway Co.* (1854) 10 Ex. 352 Any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice is a malicious motive on the part of the person who acts in that way ; *Stevens v. Midland Counties Railway Co.* (1854) 10 Ex. 352 and *Madhu Lal Ahir Gayawal v. Sahai Pande Dhami* ILR (1900) Cal. 532 Malicious intention is a wish to injure a person rather than to vindicate the law. It was held by the Allahabad High Court in *Bansi and Others Vs. Hukam Singh*, that in cases of malicious prosecution malice does not necessarily mean enmity or hatred but any indirect or improper motive. There are a good many rulings of this Court on this question. The point of malice was not so elaborately treated in the arguments as the other parts of this case, it being assumed that the absence of reasonable and probable cause would be sufficient to render the Municipality apparently liable. I think, on the authorities, we must go a little further than that. The first case to which I refer is *P. M. Mody v Queen Ins. Co.* (1900) 2 Bom. L.R. 938 where it was held that in order to succeed in an action for malicious prosecution, the plaintiff must prove that the defendant acted maliciously, i.e., from some indirect motive, and that there was no reasonable and probable cause for his action, In *Munhordas v. Gokuldas* (1902) 4 Bom. L.R. 560 it was held that in a malicious prosecution the test of reasonable and probable cause is not what impression the circumstances would make on the mind of a lawyer, but whether the circumstances warranted a discreet man in instituting and following up the proceedings. It is not in every case that because there is no reasonable and probable cause a Judge is justified in inferring malice. There must be something more of the nature of an indirect or sinister motive for the prosecution than the mere absence of reasonable and probable cause. In *Ahmedbhai v. Framji* (1903) 6 Bom. L.R. 940 it was held that where a man prefers an indictment; containing several charges, whereof for some there is and for others there is not probable cause, his liability for malicious prosecution is complete. Mere circumstances of suspicion cannot be relied upon as evidence of reasonable and probable cause as a defence to an action for malicious prosecution. In *Surajmal v. Manekchand* (1903) 6 Bom L.R. 704 it was held that where there is no actual malice alleged or proved, and the act done is not otherwise in itself illegal, legal malice must be averred, and it cannot be presumed in any case where the unreasonableness, carelessness or recklessness of the action taken is not such as to leave no room for supposing

that there was any but an improper motive. In *Town Mun. of Jambusar v. Girjashankar* (1905) 7 Bom. L.R. 655 it was held that a prosecution though in the outset not malicious, can, having been undertaken at the dictation of a Judge or Magistrate, or if spontaneous as having been commenced under a bona fide belief in the guilt of the accused, nevertheless become malicious in any of the stages through which it has to pass, if the prosecutor, having acquired positive knowledge of the innocence of the accused, perseveres malo animo in the prosecution with the intention of procuring per nefas a conviction of the accused. The question, therefore, will arise whether in addition to the absence of reasonable and probable cause in the present case, there was indirect motive, because it cannot be suggested that the Municipality as a body were actuated by any feelings against the plaintiff", nor has the plaintiff been able to prove in the present case any personal hostility on the part of the Secretary or other Municipal Officers against him. But the question is one of inference from the manner in which the plaintiff has been treated throughout. I have referred already to the legal aspect of the prosecution, and I have also referred in detail to the statements made by the Municipal Officers as prosecution witnesses in the criminal proceedings as showing that the facts on which the prosecution was based, i.e., the plaintiff having built in excess of or in a manner contrary to the specification which he gave, were not correct, and those facts must be taken to have been within their knowledge, as it was on their reports that the Municipality acted, and their own admissions in cross-examination are sufficient. Then we have a very significant circumstance, viz., that it is admitted by the Secretary at p. 101, para. 23, that certain applications made by the plaintiff to the Municipality were not placed before the Municipality. This is a reference to his deposition in the criminal case, p. 195, where he says that " the application of July 10, 1922, mentions about the repairs of the house. This question was not considered by the General Board, Similarly the other two applications were not placed before the General Board." Although he endeavours to explain this at p. 104, it seems that certain applications made by the plaintiff were kept back by the Secretary. Then we have the fact that the plaintiff s application to have the house transferred to his name was refused, first, on the ground that there were other claimants to the house, there being a dispute between the plaintiff and his vendor and his vendor's relative, and, secondly, on the ground that the house-tax, etc., on the house had not been paid. Unfortunately as happens in nearly every detail of this case, the Municipality failed in this also, because it is in evidence that at the end of 1922 the plaintiff, who had sued his vendor and his vendor's relative, obtained decrees in his favour, and it also appears that house-tax had been paid up to the date of the transfer. The Sanitary Inspector when examined before the criminal Court, at p. 210. says that the applications of the accused, i.e., the present plaintiff, dated July 10, 1922, November 21, 1922, and February 1, 1923, were not placed either before the General Board or the Sanitary Committee, and he could not say what happened to them. With regard to the transfer of the house to the name of the plaintiff, the plaintiff a vendor made an application to the Municipality dated January 12, 1922, at page 156,

which says that the tax had been paid up to the end of March, 1922, and the report of the Inspector of Taxes is that house-tax and privy-tax up to the end of March has been received, and water-tax for two months was due. The Municipality appear to have objected to transfer the house because there was litigation between the plaintiff and his vendor, but admittedly it ended in the plaintiff's favour at the end of 1922, and in December 1922 the Municipality's legal adviser advised that as the applicant is in possession of the whole house at present, there seems to be no objection to the house being transferred to the applicant's name without waiting further. But nothing was done till 1924 when the Municipality (p. 162) informed the applicant that a sum of Rs. 183-3-0 was outstanding in respect of taxes for 1922-23 and 1923-24, and that the house could not be transferred to his name until he paid it. Inasmuch as at the time of the first application only two months water-tax was due for February and March 1922, the bulk of these arrears are not before the plaintiff's application. And the plaintiff says that he has not yet been informed of the transfer to his name. Under the bye-laws when the name of the occupant of a house is changed, arrears must be paid either by the outgoing or the incoming tenant. But these arrears accumulated simply because the Municipality did not transfer the house in 1922 in spite of the advice of their legal adviser to do so: see p. 160. I think these circumstances can only lead to the inference that for some reason, which the plaintiff is unable to prove because he did not know exactly what was working in the mind of somebody connected with the Municipality, the Municipality adopted what appears to me to be a deliberately obstructive attitude towards the plaintiff, and made every effort to thwart him in his re-building his house. The cumulative effect of all these circumstances beginning with the fact that the Municipality, who must be presumed to have special knowledge of the circumstances, based their action on a wrong interpretation of the law and on facts which did not exist, that some of the plaintiff's applications were admittedly kept back, and some of the alterations which he is charged as having done without permission were done after the conclusion of the criminal proceedings, can only lead to the inference that there was some indirect motive other than the desire to vindicate the law in the prosecution of the plaintiff. After an extensive experience of the mofussil for many years, I should be most loath to encourage suits for malicious prosecution against Municipalities who have statutory duties to perform, which necessarily bring them in collision with private parties. And the fact that the prosecution by the Municipality was unsuccessful would be no ground for giving damages against them. I am bound to say the present case goes very much further than that, and the impression left on my mind is that throughout these proceedings the plaintiff has not been fairly dealt with, and it is impossible to avoid the suspicion that he was a persona non-grata with somebody connected with the administration of the Municipality, and that obstacles were deliberately placed in his path. I have referred before, and I must refer again, to the fact that the Municipality have been driven from position to position. Whether the house was within the "regular line", is a matter within the special knowledge of the Municipality and nobody else. They had to give up that

position, The position based on the proposal of acquisition is equally untenable. The position u/s 98 is in the same category. The Municipality appear to have disregarded the advice of their own legal adviser, p. 160. The cumulative effect of all these circumstances is to show that there was some indirect motive behind this prosecution. The Municipality of course acted on the reports of their servants, but that does not affect the question of liability under the authorities already quoted. I am, therefore, of opinion that the prosecution was malicious in the legal sense.

13. The only remaining question is that of damages, on which no evidence has been led. We may accept the finding of the lower Court in the last paragraph that the expenses incurred by the plaintiff in the engagement of his pleader, who has been examined, amounted to Rs. 500. No evidence has been led as to the amount of damages sustained for loss of rent. I do not believe that the plaintiff lost any business in consequence of his being prosecuted, as the offence with which he was charged did not involve any moral turpitude. I, therefore, accept the finding of the lower Court that Rs. 600 is the amount of damages, being Rs. 500 for legal expenses and Rs. 100 as a nominal sum for indirect damages, and this part of the case has not been very seriously contested.

14. The decree of the lower Court will be reversed, and there will be a decree against the Municipality for Rs. 600 together with costs in both Courts. As against defendants Nos. 2 and 3, the appeal is dismissed with costs ; one set of pleaders' fees only to be allowed as they were represented by the same pleader.

Nanavati, J.—I agree. I need not set out the facts as they appear fully in the judgment just delivered.

2. The first point that arises in the case is that of limitation. Issue No. 7 in the lower Court was "Is the suit in time ?" And the learned Subordinate Judge found that it was not. He discusses this issue in paragraph No. 24 of his judgment. He there takes the starting point of the period of limitation as July 17, 1923, when the plaintiff was acquitted in the criminal case. The period of limitation prescribed in Section 167, Bombay District Municipal Act 1906, is six months from the date of the act complained of. As the present suit was filed on February 16, 1924, it was filed just before the completion of seven months from the date of acquittal. The plaintiff's contention was that the period of notice of one month which he was required to give u/s 167 should be excluded in computing the period of limitation as laid down by Section 15 of the Indian Limitation Act. The learned Subordinate Judge, however, accepted the argument for the defendants to the effect that Section 167 lays down a definite period of six months' limitation which excludes the provisions of Section 15, Clause (2), of the Indian Limitation Act. In this connection the provisions of Section 29 of the Indian Limitation Act are material, Clause 2 of that section lays down that where any special or local law prescribes for any suit a period of limitation the provisions contained in 88. 9 to 18 among others shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law. The learned Subordinate

Judge thought that the express object of the legislature was that the six months' period of limitation was not to be affected by the requirements of one month's notice. He considered that it was not the object of Section 167 of the Bombay District Municipal Act to extend the period of six months by the period of notice. But I think that in this reasoning he is clearly in error. Every special or local law is not in itself a complete code of limitation and where it lays down a period of limitation the method of computing that period would naturally be subject to the general rules in that behalf laid down in the Indian Limitation Act. However, there was some conflict of opinions on the point between the different High Courts, and accordingly it was necessary to amend the original Section 29 by an amending Act X of 1922. A reference to the Statement of Objects and Reasons indicates that the purpose of the amendment was to make it clear that the general principles laid down in certain sections of the Indian Limitation Act were to apply unless expressly excluded. Express exclusion is clearly exclusion by specific words in that behalf and not by a process of logical reasoning or implication from the words of the special or local law. Nor is it clear that the fact that Section 167 refers to the period of notice and then lays down a period of six months' limitation necessarily implies that the period of notice is not to be excluded in computing the period of limitation. The correct way of looking at it is that the exclusion of the period of notice is laid down as a method of computing the period of limitation and not as modifying that period : see *Dropadi v. Hira Lal* ILR (1912) All. 496 The point as to what is meant by express exclusion is also covered by authority in *Sati Prasad Garga v. Gobinda Chandra Shee* ILR (1928) Cal. 805 It was considered with reference to the construction of Section 29 of the Indian Limitation Act along with Section 185 of the Bengal Tenancy Act and it was pointed out that by the expression " expressly" it is meant that express reference should be made to the specific section in the Act, and that, unless such reference is made to the sections and by that reference they are expressly excluded, the sections mentioned in Section 29 of the Indian Limitation Act would apply in computing the period of limitation. This view was also adopted by the Court of the Judicial Commissioner of Sind in *Revachand v. Karachi Municipality* AIR [1930] Sind 93 The point was there considered with reference to this very Section 167 of the Bombay District Municipal Act and Barlee A. J. C. observed as follows:-

It is true that Section 167 as it stood originally, was clear; but it has since then, been amended consequentially by Section 29, Lira. Act, and we have to see whether it contains an express reference to Section 15 (2), Lim. Act, and not whether exclusion of that section is a necessary inference from the words used. An express exclusion means an exclusion by express words, that is, by express reference to the section... and not exclusion as a result of a logical process of reasoning.

3. It is clear, therefore, that if the starting point of limitation was the date of acquittal of the plaintiff, the suit was within time.

4. In appeal, however, the learned advocate for the respondents has tried to make out another ground in order to show that the suit is not within time. He contended that the suit is for damages for malicious prosecution and that the prosecution was launched by the complaint dated March 23, 1923, and that therefore the present suit is beyond time whether you take the period of limitation as six months or seven months. The argument is a plausible one, but I do not think it is tenable. It was not advanced in the lower Court, and I think for a very good reason. The mere prosecution of a person is not sufficient to give him a cause of action for malicious prosecution, In order to succeed the plaintiff must show on an action for malicious prosecution not only that he was prosecuted by the defendant but that the proceedings complained of terminated in his favour. His acquittal, therefore, was a necessary ingredient in the cause of action of the plaintiff. As is pointed out in Mulla's Civil Procedure Code, p. 103, "cause of action "means every fact which it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court.

It comprises every fact which is necessary to be proved to entitle the plaintiff to a decree... It is, in other words, a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit.

5. The numerous authorities on which these statements are based are given in the footnotes at the page indicated, and they are too well known to need repetition here. It follows, therefore, that the cause of action did not completely accrue to the plaintiff until his acquittal on July 17, 1923 In this particular case the proceedings against him terminated within four months, but it may often happen that the proceedings may last for more than six or seven months, and if it were true that the cause of action in a suit for malicious prosecution dates from the day of the complaint, it is clear that in many cases the plaintiff would have no remedy at all. This position has only to be stated to show that the argument is not tenable. I, therefore, hold that the question of limitation was wrongly decided in the lower Court and that the suit is within time.

6. I may now refer to the case of respondents Nos. 2 and 3 against whom the suit was dismissed by the lower Court on the ground that no notice was given to them. The point has been discussed by the learned Subordinate Judge in paragraph 23 of his judgment, and as I agree with his reasoning I need not repeat it. u/s 167 notice is clearly necessary for a suit against the Municipality or against any officer or servant of the Municipality, and I do not see how the notice to the Municipality can do away with the necessity for a notice to the officers who are also sought to be made liable. The suit was, therefore, not maintainable against defendants Nos. 2 and 3 (present respondents Nos. 2 and 3) and the dismissal as against them must be upheld.

7. I now come to the main question in the case, viz., whether the prosecution of the plaintiff was without reasonable and probable cause and whether it was malicious in law. This point has been considered by the learned Subordinate Judge in issue No. 2 and his finding is against the plaintiff, In considering the

question it will be necessary to see what the powers of the Municipality were in respect of the plaintiff's applications and how they were used. The plaintiff applied to the Municipality to have the house which he had purchased transferred to his name in January 1922. But for several years no action was taken on it. The plaintiff's vendor at first agreed that the house should be transferred to the plaintiff's name but subsequently withdrew his application. There was also some litigation between a relative of the vendor and the plaintiff with respect to the house, but that litigation terminated in the plaintiff's favour in November 1922. He brought this to the notice of the Municipality in the same month by his letter dated November 21, 1922, p. 128, and yet no effective action was taken to comply with his request for over a year. On May 12, 1924, reply was sent to him to the effect that certain taxes for the years 1922-1923 and 1923-1924 were outstanding against the house in question and that the amount should be paid in the Municipal office, failing which the house will not be transferred to his name. This is a clear indication that the Municipality conducts its affairs to say the least in an unbusinesslike manner. It is not creditable that an application of this nature should remain undisposed of for such a long period. On examining the alleged arrears also it appears that the taxes said to be in arrears were for the period subsequent to his application of January 1922 and that they could not constitute a valid ground for a refusal to "transfer the house to his name. If, however, that matter had stood alone, it might be dismissed as merely unbusinesslike and not malicious.

8. The facts in connection, however, with the main grievance of the plaintiff, viz., the permission to repair the house are still more glaring. The proceedings, so far as the first reply to the plaintiff's request for permission, viz., the reply dated March 23, 1922, is concerned, were quite in order. He was asked to furnish certain information which he proceeded to do according to his lights by his reply dated May 20, 1922. He submitted the City Survey plan which was asked for. He gave a detailed explanation of the repairs which he intended to carry out and contended that as they were mainly internal repairs no plan was necessary. If the Municipality had replied to this by insisting that a plan was required and that no work should be done until the plan was furnished, their action would have been entirely covered by Section 96 of the Act. But instead of that they switched the objection on to an entirely different ground, viz., that the building fell within the regular line of the street. It has now been admitted that there was no regular line fixed for this particular street and that the objection was untenable. The learned advocate for the respondents at one stage of his argument tried to justify this notice of June 17, 1922, on the ground that it was a proper notice u/s 96, Sub-section (2). It is clear that the notice of June 17 did not impose any conditions as to the various matters referred to in that Sub-section. The learned advocate tried to suggest that the notice sought to impose condition with respect to the location of the building in relation to a street existing or projected. But he had to admit that this argument could not stand in view of the fact that no regular line of a street had been laid down with respect to this road u/s 91 A.

With respect to the existing street the location of the building could not be objected to as it was standing in the same place where it had always stood. The question of setting it back on the three sides mentioned in the notice of the Municipality could only be with respect to the location of the house as regards a projected new line of street. But it is admitted that no such line had been projected. It has been more than once held by this Court that an order holding up a person from building on his land when no regular line of street had been fixed was ultra vires of Section 96. In *Bai Fatma Vs. The Rander Municipality*, the Municipality had not prescribed any regular line either for the existing street or for the future when the plaintiff applied for permission to reerect her house. In granting the permission the Municipality laid down a condition that sufficient space should be left in front of the house to make up the street to a width of fourteen feet as against the existing width of eight feet and four inches. It was held that the Municipality had prescribed the location of the building in relation not to the existing street but to a street which might come into existence in the future but was not yet projected. The action of the Municipality was, therefore, held not to be covered by Section 96 and the injunction sought was granted to the plaintiff. The same principle was re-affirmed in another case from the same Municipality ten years later in *Ahmed Suleman v. Rander Municipality* (1924) 27 Bom. L.R. 429 It was observed that the Municipality had no power to direct the plaintiff to set back his building on the north and south so as to prevent him from building in his own land, In *Ahmedabad Municipality v. Ramji Kuber* ILR (1911) Bom. 61 : 13 Bom. L.R. 914 it has been pointed out that an order directing indefinite delay is inconsistent with the Bombay District Municipal Act. This has been observed with express reference to Sub-section (2) of Section 96 which does not definitely lay down a time limit for holding up the building work as is laid down in Sub-section (3). Sub-section (2) is there interpreted in the light of Sub-sections (3) and (5), and it is observed that "reading the section as a whole, we have no doubt that one of the objects of the legislature was to discountenance just the kind of unreasonable dilatoriness which this case illustrates."

9. I have, therefore, no doubt in my mind that the plaintiff was entitled to proceed to carry on the repairs of his house for which he applied for permission in March 1922 and which he explained by his letter of May 1922, After waiting for one month for the necessary permission-he waited for more than one month, in fact he waited for several months-he appears to have commenced the repairs after November 1922. It was not his fault that the Municipality were led away into an entirely erroneous ground for refusing permission. The prosecution was based entirely on the ground that the plaintiff had commenced the repairs without receiving permission. The learned Subordinate Judge, however, considers that the plaintiff, though he might have been entitled to carry out the works for which he had sought permission in his original application, had in fact carried out works not mentioned in that application and that therefore the prosecution was justified. He (sic) these additional items as follows in paragraph (sic) height of

the house was raised; a new gallery was (sic) widened and walls put up where there were wood (sic). But a careful examination of the evidence shows that there is nothing of any substance in this ground. My brother Baker has just examined the evidence on the point in considerable detail, hence I do not refer to it again. It is clear, therefore, that there was absolutely no reasonable cause for the prosecution.

10. The question that now remains to be considered is whether this action of the Municipality can be described as malicious. It is well settled that no actual malice as understood in common parlance is required here, but the existence of any indirect or improper motive will suffice (see *P. M. Mody v. Queen Ins. Co.* (1800) 2 Bom. L.R. 938). As to this point it seems to me that there may "be something in the suggestion of the plaintiff that the Municipal Secretary was not well disposed towards him. Throughout the plaintiff's dealings with the Municipality there appears a lack of consideration and unreasonable delay on the part of the latter which suggests that some adverse influence was at work. I have already pointed out in detail the delay that took place over the question of transferring the house to the plaintiff's name. As regards the question of permission it has been shown that permission was refused on one ground or another and the plaintiff was driven to take the risk of starting building without permission. Even the advice of their own legal adviser on the point which was to the effect that permission could not be refused in toto was disregarded. The objection that the house fell within the regular line of a street was put forward though it must have been known to the Municipal servants at any rate, if not to individual members of the Municipality, that no such regular line had been fixed at all. When the plea was being put forward as a reason for refusing the plaintiff's application for permission to build, it was clearly to be expected that the Municipality would satisfy itself that such a regular line had been fixed before refusing permission. I think it would not be an unjust presumption to hold that the Secretary or other official concerned must have been aware of this fact and that he induced the Sanitary Committee and the General Board to rely on a ground, which he knew was untenable, for the purpose of harassing the plaintiff. It also appears that in October 1922 a false case of encroachment was sought to be made out, but that it was abandoned when the plaintiff explained in detail how the charge was untenable by his letter of December 6, 1922. This constant shifting of ground and delay justify the presumption that some improper motive was at work against the plaintiff, and if such a motive operated on the minds of the responsible officers of the Municipality, I think it follows that the Municipality must be held responsible for the results thereof. It is immaterial that individual members of the Board may not be shown to have any ill-will against the plaintiff. Pollock in his *Law of Torts*, 13th edition, p. 324, considers that an action lies for a wrongful act done by a servant of the corporation in the course of his employment and in the corporation's supposed interest. The principle has the authority of the Privy Council in *Citizens' Life Assurance Company v. Brown* [1904] A.C. 423 where it was held that a corporation cannot be held to be

incapable of malice so as to be relieved of liability for malicious libel when published by its servant acting in the course of his employment. It also seems to me not improbable that the General Board itself was influenced by the desire to get cheaply the plaintiff's land for widening the street. It is stated in the course of the reports made by the Sanitary Committee that if the plaintiff were allowed to build or to repair the house he would have to be paid higher compensation on the acquisition of the land. That a corporation should exceed its powers for such a purpose is to my mind sufficiently improper to support a finding against it in this suit, For these reasons I am satisfied that all the ingredients necessary for the plaintiff to succeed in the suit have been made out. [The remainder of the judgment is not material to this report.]