
(1955) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Second Appeal No. 621 of 1951

Dantuluri Lakshminarasimharaju

APPELLANT

Vs

Emani Satyanarayana and Others

RESPONDENT

Date of Decision : 09-09-1955

Acts Referred:

Citation : (1955) 09 AP CK 0003

Hon'ble Judges : Chandra Reddi, J

Bench : Single Bench

Advocate : E. Venkatesam, for the Appellant; T.S. Narasinga Bao, for the Respondent

Judgement

Chandra Reddi, J.—This appeal raises a question "relating to the interpretation of Section 225 of the Madras Local Boards Act (hereinafter called as the Act). The Appellant is the Defendant to the action brought by one Satyanarayana claiming a sum of Rs. 1,000 as damages for wrongful act said to have been committed by the Defendant. The suit is based on the allegation that the Defendant removed earth from the Plaintiffs; site in order to have a road laid, cover-zed a well within that site with debris and also had some stone; steps thereon removed resulting in damages to the tune of Rs. 1,000. The answer to the suit, inter alia was that the suit is barred under "Section 225 of the Madras Local Boards Act.

2. The several issues raised by the trial Court reflect the respective contentions of the parties and they are:

1. Whether the Defendant is not liable to be sued in his personal capacity and the suit is not maintainable?

Satyanarayana and C. Beddi, JJ. A. I. R.

2. Whether the Defendant removed earth from the Plaintiff's, site?

3. Whether the Defendant covered up Plaintiff's-well with debris?

4. Whether the Defendant removed Plaintiffs-steps?
5. Whether the channel dug caused any damage-to Plaintiff?
6. To what damages, if any, is Plaintiff entitled?
7. To what relief is the Plaintiff entitled?

3. The material facts may be stated in brief-Under the Rural Development Programmed, the Government proposed to give contributions to the Local Boards, inter alia, for laying and maintaining roads. There was a road passing through Arutla village to-which die parties belonged which needed urgent repairs. A part of the road running trough the-village vested in the Panchayat Board of Ural of which the 1st Defendant was the President at the relevant time. The concerned District Collector through, the Firka Development Officers proposed to contribute-a sum of Rs. 500 for effecting repairs to this road provided the Panchayat Board contributed Rs. 300 and also under took to do it itself instead of entrusting it to a contractor.

The Panchayat Board accepted this proposal in. a resolution dated 18th October, 1948. The resolution also directed the President to carry out the work. In pursuance of this, the President engaged-some workmen to do the work." As this needed some earth, permission was .obtained from the Venkataraju who had stacked some earth on a site belonging to the Plaintiff; In removing this mound of earth, the workmen seemed to have dug below ground level. This coupled with the other acts mentioned in the plaint are said to have resulted in damages estimated at Rs. 1,000.

4. The Defendant denied that any damage was-caused to the property of the Plaintiff and that only the loose earth stacked, by Venkataraju in Plaintiff's site was removed.

5. The trial Court found; against the Plaintiff on all issues except No. 2. In its opinion, some earth belonging to the Plaintiff was also dug out and on this account die Plaintiff has sustained at the highest, a loss of Rs. 100, But, it dismissed the suit in toto holding that the suit was not maintainable against the Defendant personally as the. acts complained of were done by him as President of, the Panchayat Board and not in, his individual capacity.

6. On appeal, the District Judge while confirming the decision of the trial Court on issues 2 to 6-took a different view as regards the maintainability of. the suit. In the result the decreed the suit for Rs. 100.

7. In this second appeal, the decision of the learned District Judge is assailed. It is urged by Mr. Venkatesam that the view of the learned Judge that Section 225 of the Act is inapplicable to the case is erroneous and opposed to the terms "of Section 225 while Mr. Narasingarao supports the judgment under appeal arguing that the action falls outside the scope of Section 225.

8. The main point, therefore, for determination is whether the present suit falls

within the meaning of Section 225 of the Act. To appreciate the relative COB tendons it is necessary to extract the relevant clause "of that section:

225 (4): No suit or other legal proceeding shall be brought against the President, the executive I authority or any member, officer or servant of a local board or any person acting under the direction of a local board, or such president, the executive authority, member, officer or servant in respect of any act done in execution or intended execution of this Act, or any rule, by-law, regulation or order, made under it or in respect of any alleged neglect or default on his part in the execution of this Act, or any such rule, by-law, regulation or order, if such act was done or if such neglect or default was made in good faith; but any such proceedings shall, so far as it is maintainable in a Court, be brought an ainst the local board, except in the case of suits brought u/s 227.

The answer to the question arising in this second appeal depends upon the interpretation of the clause "in respect of any act done in execution or intended execution of this Act or any rule, by-law," etc.. The learned Judge thought that the wrongful acts complained of could not come within the operation of the said clause and that he was personally liable for his for pious acts. In support of this conclusion, he relied on a judgment of the Bench of the Madras High Court in Raja Bomma Devara v. Putrnan, 8 Mad LJ 185 (A). There, the Plaintiff entered into a contract with a representative of the railway company in regard to collection and removal of some loose stones belonging to him. The work was entrusted by the railway company to a contractor who "quarried stones from the Plaintiffs land instead of merely removing the stones in terms of the contract. A suit by the Plaintiff against the contractors for the unauthorised quarrying of the stones was resisted on the defence that they were authorised by the railway company and therefore not liable in damages. This objection was overruled by the High Court on the ground that any person who committed a wrong was liable for it himself and the fact that he was acting as an agent "or servant or on behalf of or for die benefit of " another would not furnish an excuse, I fail to see what bearing this ruling has on the issues in the present suit. There, the applicability of Section 225 or any analogous provision was not in consideration. That "Is a case in which the person who committed the " tort was held liable and a plea similar to the one in the present case was not available to them.

9. The passage called in aid by the learned District Judge from "Pollock on Torts" (13th edition, pages 75 and 76) is of the same description:

Whoever commits the wrong is liable for it himself. It is no excuse that he was acting as agent or servant on behalf of or, for the benefit of another. But the other may also well be liable.

Again at page 77 it is stated thus:

It scarce needs authority to show that a man, is liable for wrongful acts which have been done according to his express command or request or which having been done on his. account and for his benefit, he has adopted as his own. A

trespasser may be not only he who does the act but who commands or procures it to be done who aids or assists in-it. The who assents afterwards.

This is also not of any assistance, The first part of it is in consonance with the principle enunciated in the above cited ruling and the. second only lays down that a principal is liable for the, furious acts of his agent, though he. himself is not guilty of any wrongful act. We are unconcerned with the problem of that nature as in. this case protection is sought by the Defendant u/s 225 of the Local Boards Act. (10) There is also another difficulty in accepting the theory of the learned District Judge. It cannot be overlooked in this case that the President of the Panchayat Board was himself acting as the Agent of the Panchayat Board and liability is sought to be fastened on him not for any thing actually done by him but for the wrongful acts of his servants or agents. In my view, in such a case it is only the ultimate employer that could be held liable for the tortuous acts of the servant, in this case the Panchayat Board occupying that position. There is authority for this proposition. Vide "Law of Torts by S. Ramaswamy Iyer" (4th edition, pages 567 and 568).

This is what the learned author says:

A superior servant cannot be sued for the wrong done by an inferior servant without the former's authority. It is their ultimate employer who is liable (*Stone v. Cartwright*, (1795) 6 TR 411 (B)). It is on this principle that officers of the State are held not liable for the faults of their subordinates. The Postmaster-General was held not liable for a theft of parcels by some of his servants, *Lane v. Cotton*, (1701) 1 Ld Raym 646 (C). Similarly, the directors of a company cannot be sued for the acts of their servants; it is the company that is liable. *Weir v. Barnet* (1877) 3 Ex D 32 (D).

11. The learned author has referred to a decided case of an English Court (1877) 3 Ex D 32 (D). There at a general meeting of a limited company, the directors thereof were authorised to issue debentures on such terms and for such amount as they in their discretion might think fit. Under their directions, some brokers were appointed for the purpose and the latter prepared and issued prospectus bearing the names of the directors and containing a statement of the conditions and terms of the company, on the faith of which the Plaintiff and others subscribed and paid for some debentures.

When the debentures became worthless the Plaintiff laid an action for damages against the directors in respect of the statements in the prospectus alleging that some of them were fraudulent. Kelly, Chief Baron, decided that the brokers were not of the directors but of the company, the directors being only intervening agents and if at all it was only the company that could be held responsible for the alleged fraudulent statements in the prospectus.

12. Mr. Narasingarao submitted on the basis of the judgment of Mr. Justice Rajagopalan in *S. Narayanan Vs. The Dist. Board*, , that since the carrying out of the repairs to the road in terms of the contract entered into between the

Panchayat Board & the Collector is not a part of the statutory duties of the President, the immunity provided in Section 225 cannot be taken advantage of by the Defendant. In my view *S. Narayanan Vs. The Dist. Board*, cannot govern the present case for the reason that the cited case arose out of a breach of contract entered into between a doctor and the President of the Panchayat Board. It is now well settled that suits based on a breach of contract fall outside the purview of Section 225 of the Act (13). The proposition that actions based on contracts and claims in the nature of ejectment or for "Specific performance of contract to sell or lease land do not attract the immunity granted to Presidents of Local Boards or executive authority thereof is stated in a number of reported cases. In *The District Local Board of Poona Vs. Vishnu Raghoba Waderkar*, Justice Patkar and Justice (J Mcrphyj) decided that an action based upon a breach of contract would not fall within the ambit of Section 136 of the Local Boards Act, 1923 (which is analogous to Section 225 of the Madras Local Boards Act) and consequently, non-compliance with the provisions of that section was not a bar to the suit and reference was made to a number of earlier decisions of that Court which have expressed the same opinion.

To the same effect is the view of the Madras High Court in *Mayandi v. Mcquhae*, ILR 2 Mad 124 (G); *Trustees of the Harbour v. Best and Co.* ILR 22 Mad 524 (H), and *Muthya Chettiar v. Secretary -of State for India* ILR 31 Mad 522 (I). The dictum laid down in *Padmanabhuni Narasimhadas Vs. Dist. Board of Kistna*, by Beasley, Chief Justice, is to the effect that a suit instituted by a person against a District Board for the recovery of a balance of amount due to him under the contract made with the District Board would not come within the provisions of Section 225 of the Act. "To the same category of cases belongs *S. Narayanan Vs. The Dist. Board*, .

14. the reason of this rule is stated succinctly in Halsbury's Laws of England, Vol. XXIII, page 342, thus:

The performance of a specific contract made in pursuance of a public duty is not the performance, of a public duty, even though the Defendant is a public authority and the making of such contract would have been ultra vires save for statutory powers;

nor is the performance, even by a public authority, "of acts merely incidental to the ownership of property ;the performance of a public duty." But different consideration arises in cases of torts. The tort-feasor could invoke the immunity afforded to him by the section provided the act complained of was done in pursuance of the statute or in the intended or" purported carrying out of his statutory functions.

15. In *Athimannil Muhammad Vs. The Malabar District Board*, , the distinction between actions on contracts and ; actions independent: of contracts was recognised. The position is summed up by the learned Judges in the following words at page 749 (of ILR Mad): (at pp. 213 214 of AIR):

This distinction between actions on contracts and actions independent of contracts may be convenient enough as a working rule, but we do not, think it can be said to represent accurately the basis of the, applicability; of the rule. This was realised the Jenkins, C, JC even in *Ranchordas Morarji v.*

IP Municipal Commissioner for the City of Bombay ILR 25 Bom 387 ;(L), and is emphasised by Lord " Shawrin Bradford. Corporation v. Myers, 1916 1 ACC 1342 (M).",,The .real test is whether what is complained of is some act done in pursuance of the statute. In cases where there is to dispute as to the existence of a contract, all, further, "rights and liabilities between the parties "are governed by the ordinary law relating to contracts, all further rights and liabilities between the parties are governed by the ordinary law relating to contracts and it is true enough, in such a case, to say that the rights and liabilities, of the parties in respect of the contract are matters of ordinary law and not, matters governed by the statute.

In that case the learned Judges held that the action of the President in cancelling a "contract of lease entered into between the Plaintiff and the Vice-President of the Board and leasing it out to another person who happened to be the highest bidder attracted the provisions of Section 225,of the Act, for the reason that the action of the President was the necessary result of what he thought was in accordance with the terms of the contract as he interpreted them and was therefore related to an act done under the statute.

16. It is thus clear that the President of Local Board would be entitled to the protection afforded u/s 225 provided it was done "in execution or intended execution of this Act," etc. The, criterion therefore, for applicability of Sub-section (4) of Section 225 is whether the wrongful act committed was in the course of the discharge or intended discharge of statutory duties.

17. We have now to see whether the effecting of repairs to the road in question would be within the sphere of the statutory functions of the Panchayat Board. It may be recalled that by a resolution dated 18th October, 1948, the President of the Panchayat Board was called upon to carry on the work mentioned above. Mr. Narasingarao, counsel for the Respondent maintained that tender taking a contract for effecting repairs to a road is not one of the duties enjoined by the Local Boards Act on the village panchayat and therefore Section 225 would not apply.

18. This argument overlooks the real situation in this case. u/s 60(1)(b) of the Act, all public roads in any district vest in the panchayat concerned, if they are not classed as district roads. Rule 1-A (1) of the fifth schedule to the Act lays down that "a panchayat shall have power to make such provision as it thinks fit for carrying out the requirements of the village in respect of the following matters, namely, (a) the construction and maintenance of all public roads within the limits of the village other than portions of district ... roads within such limits; and all bridges, culverts, roads, dams and causeways on such roads."" On

a combined reading of the two provisions, it admits of that doubt that the village panchayat has to construct; and maintain roads that vest in it. Undeniably, the road in question vested in the panchayat board at the relevant time and therefore it had to see that it was kept in a state of good repair. All that the Government represented by the District Collector did in this" behalf was to make som contribution under the Rural Development programme, to the panchayat board for. keeping the roads in good condition with a condition annexed that the work should not be entrusted to any contractors. Nonetheless, the .carrying out of repairs, to a road, certainly falls within the legitimate sphere of work of the panchayat board. Even otherwise, the President is bound to carry into effect the resolutions of the Board.

19. u/s 3 (7-C) of the Act "an executive authority means, in the case of a panchayat having an executive officer, the executive officer, and if there is not executive officer, the President of the Panchayat."

The Defendant answers this description as it is not denied that there was no executive officer for" this panchayat: It may also be observed that u/s 65-C ""the Provincial Government may with the consent of Local Board make over to the Local Board, -subject to such conditions as may be agreed upon, -the management of any institution or the execution ?or maintenance of any work or the exercise of any bower the performance of any duty, not provided for in this Act.

Mr. Venkatesam urges that even this section could be invoked for the purpose of showing that the work Of carrying out repairs was undertaken under the - directions, of the Government through the agency of the; District Collector to which the Panchayat Board agreed.

20. On a consideration of the relevant provisions of the Act and giving the plain and natural meaning to Section 225 and the decided cases, I have reached the conclusion that the Defendant can invoke Section 225 and the suit instituted by the Respondent against him individually is not maintainable. The remedy of the Plaintiff is only to bring an action against the Panchayat Board. It follows that the view of the learned District Judge is wrong and his decision has to be reversed, and the judgment of the trial Court restored. The second appeal is allowed with costs throughout.

21. No leave.