
(1919) 11 AHC CK 0049
In the Allahabad High Court

Lola Makhan Lal

APPELLANT

Vs

The Municipal Board of Agra

RESPONDENT

Date of Decision : 24-11-1919

Acts Referred:

United Provinces Municipalities Act, 1916 — Section 326

Citation : 54 Ind. Cas. 459

Hon'ble Judges : Lindsay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Lindsay, J.—This case involves the interpretation of Section 326 of the United Provinces Municipalities Act (United Provinces Act No. II of 1916). The suit out of which this application has arisen was brought by the plaintiff-petitioner, Lala Makhan Lal, against the Municipal Board of Agra. The claim was to recover a sum of Rs. 218-16-6. According to the facts set out in the plaint the plaintiff is a cloth dealer in Agra who at various times had exported from Agra cloth of considerable value. He claimed that he was entitled, by reason of this export, to have from the Municipal Board a refund of octroi duty. He put in a claim to the Board and his case is that the Board refused to pay to him the full amount to which he was entitled. The balance, which, he said, was owing to him from the Municipal Board, came to Rs. 218-10-6. In paragraph 6 of the plaint, it was stated that the cause of action had arisen on the 31st of October 1917 when the Board refused to pay him the balance claimed.

2. One of the pleas which was raised by way of defence was that the suit was barred by limitation. This was founded on the provision of Sections 326 of the United Provinces Municipalities Act, Sub-section (3). The Court below gave effect to the plea and dismissed the plaintiff's suit on the ground that it was time barred. I am concerned here with any other pleas which were raised in the written statement. The argument, before me is that the Court below misinterpreted Section 326 and was wrong in holding that the suit was barred by

limitation.

3. The law relating to the refund of octroi duty is contained in statutory rules which were made under the provisions of the Municipalities Act. On referring to the Municipal Manual, Volume II, page 21, paragraph 73, I find it stated that "a person who exports from a Municipality any goods on which, if they were being imported, octroi would be leviable shall be entitled to receive payment of a sum equivalent to that octroi. This payment (the rule declares) shall be described as refund." It seems dear, therefore, that under the provisions of these rules, which have the force of law, a legal duty is imposed upon a Municipal Board to grant a refund of octroi duty in the cases contemplated by the rules and with the duty a corresponding right arises in favour of the exporter.

4. Turning now to the provisions of Section 326 of the Municipalities Act we find that Sub-section (1) provides for the giving of notice of intention to sue when any person desires to institute a suit against a Board, or against a member, officer or servant of a Board, in respect of an Act done or purporting to have been done in its or his official capacity. The sub section requires that a notice of the claim shall be given in the manner prescribed in the sub section but with these provisions of this Sub-section we are not concerned. Coming then to Sub-section (3) we find it laid down that " no action such as is described in Sub-section (1) shall, unless it is an action for the recovery of Immovable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the cause of action." It is obvious that the actions referred to in Sub-section (3) are the suits which are referred to in sub-section (1), and it was by applying the terms of Sub-section (3) to the facts of this case that : the Court below came to the conclusion that the suit was barred. In order to avoid the application of this special law of limitation it was argued in the Court below that the plaintiff was not seeking damages or compensation and consequently the suit was not a suit of the nature described in Sub-section (1), the result being that the period of limitation laid down in sub- Section 3 could not be applied. The same argument has been repeated here, though in a somewhat different form. It has been contended that Section 326, Sub-section (1), refers only to suits arising out of acts done inadvertently or illegally, for which a suit for damages will lie. It has been said that the Sub-section does not apply to suits for money demandable from the Board or a member, officer or servant of a Board. The argument in another way is, that the suits referred to in Sub-section (1) are suits based upon tort or quasi tort and do not include suits for which the cause of action assigned is a breach of contract or of a legal relation resembling contract.

5. Several cases have been cited before me, to which I need not refer in giving this judgment, None of them lays down any interpretation on this particular section and as I am of opinion that the wording of the section is quite clear, I deem it unnecessary to refer to any of these authorities.

6. In the first place it seems to me that Section 326, Sub-section (1), refers to all suits all which it is intended to bring a suit in respect of an Act done or

purporting to have been done by a Board or by a member, officer, or servant of a Board in its or his official capacity, that is to say, suits in which the cause of action has arisen out of an Act done or purporting to have been done by a Municipal Board or by any of its members or servants. There is no attempt in the sub-section to define suits in accordance with the nature of the relief sought. It is quite true that in prescribing the formalities which must be observed when a notice of an intended suit is being given, it is laid down that the intending plaintiff must specify the nature of the relief sought and also the amount of compensation claimed, that is to say, if the claim is a claim for compensation the amount which the plaintiff desires to recover must be specified. But it is not right to say that there is any justification in the language of the Sub-section for the contention that suits are to be divided into suits in which compensation is being sought and into suits in which no compensation is being sought. If we refer to Sub-section (3), the point becomes perfectly clear. I have already quoted the language of this section and pointed out that it lays down a rule of limitation for all suits referred to in Sub-section (1), "except suits for the recovery of Immovable property or for a declaration of title." I might also refer to the language of Sub-section (4), which shows that in a suit to which Sub-section (1) applies, relief may be sought by way of injunction. The fact appears, therefore, that the intention of the section is that all suits which claim to have their origin in an Act done or purporting to have been done under colour of the Act by a Municipal Board or its members or servants are subject to the special law of limitation laid down in the section.

7. If the argument of the learned Counsel for the petitioner is that this suit is not based on tort, I am unable to agree with him, I have already pointed out that a legal duty is laid upon a Municipal Board in virtue of the rule which has been framed under the Act and which relates to refund of octroi duty. A breach of a legal duty is a tort and gives rise to an action. I do not accept the argument that this action is founded upon a breach of contract or the, breach of some relation resembling a contract. I do not see how it can be argued that there was any contract between the parties in this case by which the defendant Board was legally bound to hand over this money to the plaintiff. The duty is laid upon a Board by a rule carrying the force of law, and, consequently, as the plaintiff alleges a breach of the legal duty, he cannot be heard to say that his action was not founded on tort. I have already pointed out that in paragraph 6 of the plaint the cause of action, which was alleged, was the refusal by the Municipal Board to pay over to the plaintiff the money to which, he said, he was entitled under the rules. Further, I am of opinion that, as framed, the suit is a suit for compensation. The plaintiff is in reality asking for damages by way of reparation for the tortious act committed by the defendant Board, and in that view even according to the argument of the learned Counsel for the petitioner the suit is one of the suits described in Sub-section (1) of Section 326.

8. For these reasons I am satisfied that the judgment of the Court below is correct and should be maintained. The application is dismissed accordingly with

costs to the opposite party, including fees in this Court on the higher scale.