

(1935) 09 MAD CK 0022
In the Madras High Court

Madura Municipality

APPELLANT

Vs

Raman Servai and Others

RESPONDENT

Date of Decision : 17-09-1935

Acts Referred:

Citation : AIR 1936 Mad 98 : (1936) 43 LW 39

Hon'ble Judges : Menon, J

Bench : Division Bench

Judgement

Menon, J.—The Madura Municipality leased certain plots of land to the defendants in the suits, out of which these Civil Revision Petitions

arise. As the leases in question did not comply with the provisions of Section 69, District Municipalities Act, the Municipality had to sue the

defendants for damages for use and occupation instead of for rent. Even that claim was negated by the lower Court on the ground that Section

65, Contract Act was not applicable to a case of this kind following the ruling in Srivilliputtur Municipal Council v. Arunachala Nadar 1933 37 LW

429, hence these petitions. The decision relied on by the lower Court was, however set aside by a bench of this Court and the judgment is

reported in Arunachala Nadar v. Srivilliputtur Municipal Council 1934 58 Mad 65. The question whether Section 65, Contract Act would apply to

a case of this kind was there discussed at length and was answered in the affirmative. In this case the leases, not having been taken in accordance

with Section 69, District Municipalities Act, are not enforceable at law. They would therefore be merely agreements which are void ab initio. And

having regard to the ruling of the Judicial Committee in Harnath Kuar v. Indar Bahadur Singh 1922 45 All 179 it cannot now be disputed that the

words ""discovered to be void"" in Section 65, Contract Act include also cases where agreements are void ab initio. It has therefore, to be held that

agreements of this kind come within the ambit of Section 65 and, as there is no provision in the District Municipalities Act that the general

provisions of Section 65, Contract Act are not applicable to contracts made by the Municipal Council, it is not reasonable to hold that the

provisions of Section 65 are inapplicable to such agreements. If Section 65 applies, the defendants are liable to restore to the Municipality any

advantage which they had under the void agreements. It follows that the defendants are liable to pay damages for use and occupation of the lands.

2. It is, however, argued that as these agreements were made with the free consent of the parties, competent to contract, for lawful consideration,

and for lawful object, and do not come within the category of the agreements which are declared to be void under the Contract Act, they are, in

effect, contracts; and that, as these contracts have not subsequently become void, Section 65 is not applicable. But it would appear that the same

argument was advanced by the respondent in the case in *Arunachala Nadar v. Srivilliputtur Municipal Council* 1934 58 Mad 65 (vide p. 69) and

was considered by this Court and negatived, (vide p. 71). I. therefore, hold applying the provisions of Section 65, Contract Act, that the

defendants are liable to pay damages for use and occupation. But, as there is no finding as to the amount of damages, these suits have to go back

to the lower Court. The petitions are therefore allowed, the decrees of the lower Court are set aside and the suits are remanded to the lower Court

for trial and disposal according to law. Costs incurred in these petitions will follow and abide the result and be provided for in the revised decrees.