
(1936) 12 MAD CK 0035
In the Madras High Court

Padmanabhuni Narasimhadas

APPELLANT

Vs

Dist. Board of Kistna

RESPONDENT

Date of Decision : 10-12-1936

Acts Referred:

Madras Local Boards Act, 1884 — Section 225

Citation : AIR 1938 Mad 239

Hon'ble Judges : Beasley, C.J

Bench : Division Bench

Judgement

Beasley, C.J.—The suit, the subject of this civil revision petition, was instituted by the petitioner against the District Board of Kistna to recover the balance of an amount due to him under a contract made with that District Board. The contract was to construct a culvert on one of the roads within the area of the District Board. Amongst the defences raised in the suit was one of limitation, it being pleaded that, as the suit had not been filed within six months of the accrual of the cause of action, it was barred by reason of Section 225, Madras Local Boards Act. The lower Court, after a careful and elaborate examination of the authorities touching this question, held that the case came within the provisions of that section and the suit not having been filed within six months from the date of the cause of action dismissed it as being barred by limitation. In my view that decision was clearly wrong. Whilst this case does not stand to be determined in the light of a some, what similar provision in the Public Authorities Protection Act in England which no doubt was the parent of the provision not only in the Local Boards Act but also in the District Municipalities Act but is somewhat differently worded being rather more general in its provisions, nevertheless I am of the view that the same principles apply here, although I am not basing my decision upon them. It is conceded here by the learned Counsel for the respondent Board who has argued the case with the greatest ability that although u/s 1, Public Authorities Protection Act in England suits arising out of contracts claiming the balance of money due for work done or goods supplied are not protected, he contends that, by reason of the different wording of the Local Boards Act here, a

suit as this does come within the provisions of Section 225. Contrasting that section with the somewhat similar provision in the District Municipalities Act, it will be seen that in the latter, suits for damages and compensations are referred to while in the former there is no such limitation and instead the words "no suit or legal proceeding" are used. Contrasting that section with Section 1, Public Authorities Protection Act, I am bound to say that it is certainly more similar to the latter than Section 350, District Municipalities Act.

2. I am satisfied that such a suit as this does not come within the provisions of Section 225, Local Boards Act. I was referred to a very early decision of this High Court, viz. *v* There the suit was brought to recover from the Municipal Commissioners of Madura the balance of a sum of money due for timber supplied under a contract duly made with them; and it was held that the plaintiff was entitled to sue on the breach of contract without giving notice, such a suit not falling under the provisions of Section 168, Towns Improvement Act (3 of 1871, Madras). The words of that section as they are set out in the judgment are that such notice must be given when a suit "is brought against the Commissioners or any of their officers or any person acting under their direction for anything done under the Act". It is difficult to imagine any more general words than those. Yet, dealing with that section with those very general words, it was held that such a suit as that was not protected by that section. The words there are even more general than those in Section 225 and I find it very difficult to distinguish between a suit claiming the balance of a sum of money due for goods supplied under a contract made with a local Board and a suit claiming the balance of an amount due for work done under a contract made with a Local Board.

3. In my view, both these suits are indistinguishable in their nature. The learned Subordinate Judge has relied upon amongst other cases *Athlmannil Muhammad v. Malabar District Board* AIR (1935) Mad 213 a Bench decision of this Court. That was a decision of Varadachariar and Burn JJ. There the claim was a different one to that here? There the suit was filed against the District Board more than six months after the accrual of the cause of action claiming damages on the ground that its President improperly cancelled a contract of lease for one year of the tolls in certain places. It was stated to have been entered into by him with the Board through its Vice-President. The President in performance of what he (the President) thought was his duty under the Madras Local Boards Act, as he interpreted the same, accepted a higher offer by another person and the cancellation of the acceptance of the original offer was the necessary result. It was held that Section 225, Sub-sections (1) and (3), Madras Local Boards Act, applied and the suit was out of time and that, though the distinction between actions on contract and actions independent of contract may be convenient enough as a working rule in such cases, the real test to be applied was whether what was complained of was some act done in pursuance of a statute. It was held in that case that the act done was in pursuance of a statute the right to collect tolls being a special privilege conferred by statute upon local bodies under the terms of Section 106(1), Madras Local Boards Act, being authorized either to

manage the collection of the tolls themselves or through their own agency or to lease them out. The facts in that case, in my view, are entirely distinguishable from those here, and in this view I am supported by the recent unreported decision of Venkataramana Rao J. in C.R.P. No. 1913 of 1934. There the plaintiff instituted a suit of an exactly similar nature to this to recover money due to him for work done under a contract with the District Board. The learned Judge says:

The action is thus based upon moneys due and recoverable under a contract. The learned Subordinate Judge non-suited the plaintiff on the ground that the requisite notice u/s 225, Madras Local Boards Act had not been given. In my view, this opinion is unsound. This section was recently interpreted by a Bench of this Court wherein the correct principle of interpretation was laid down thus:

The real test is whether what is complained of is some act done in pursuance of the statute. In cases where there is no 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, and it is true enough in such 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.

4. The learned Judge was there referring to the decision reported in *Athlmannil Muhammad v. Malabar District Board* AIR (1935) Mad 213. He further on states: "We must take the plaint as it stands and the action was perfectly competent." Taking the plaint as it stands, it is a claim for the balance of an amount due under a contract and all defences which are open to a defendant in such a suit are open to the defendants here. But it is quite obvious that Section 225 does not apply to the case and that there is therefore no different period of limitation than there is to ordinary suits under contracts. For these reasons, I am satisfied that the lower Court's judgment was wrong and must be set aside and the suit remanded to the lower Court for disposal according to law. The petitioner will have his costs here and costs in the lower Court will abide the result of the trial.