

(1924) 09 MAD CK 0003
In the Madras High Court

President of the District Board	Vs	APPELLANT
G. Santhappa Naik and Another		RESPONDENT

Date of Decision : 20-09-1924

Acts Referred:

Contract Act, 1872 — Section 56

Citation : AIR 1925 Mad 907

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—In these appeals the District Board of South Kanara is the appellant. The main contention for the appellant is that the

contract entered into with the appellant by the plaintiffs did not become impossible of performance. The plaintiff's purchased the right to collect toll

at two toll gates, Hoshangadi and Kollur during the official year 1918-10. In September of that year the Government pass-ed an ordinance that

food grains etc., should not be transported from the British territory to Mysore; and the Mysore Government also passed a similar ordinance as

regards the transport of food grains, etc., from Mysore to South Kanara. In consequence to these two ordinances, the traffic in food grains, etc.,

was entirely stopped between South Kanara and Mysore. The plaintiffs naturally suffered a loss on account of the stoppage of the traffic in food

grains, etc. They have brought two separate suits for the recovery of the amount collected from them. Both the Courts have given decree in their

favour and the District Board has preferred these two second appeals.

2. The contention on behalf of the appellant that the contracts did not become wholly incapable of performance, I think, is a sound one. When the

plaintiffs purchased the right to collect tolls at these two places they did not rely merely upon the carts containing food grains passing along the roads. They must have expected carts of all kinds to pass through these two toll gates; and from the collections at the two toll gates it appears that a number of carts did pass through these toll gates after 22nd September 1918. For the whole of the year the collections at Hoshangadi toll gate amounted to Rs. 850; the collections upto 22nd September 1918 amounted to Rs. 400. At the Kollur toll gate the total collections for the year amounted to Rs. 419; and the collections up to 22nd September 1918 amounted to Rs. 260. It is quite clear, therefore, that considerable traffic did pass the toll gates between 22nd September 1918 and 31st March 1919. That being so it cannot be said that the contract became wholly incapable of performance by reason of the ordinance passed by the Madras Government. In order to make out a case of impossibility of performance, it has to be shown that the contract could not be performed by reason of anything that the Government did in the matter. u/s 56 of the Indian Contract Act if a contract becomes impossible or by reason of some event which the promisor could not prevent, becomes unlawful then the contract becomes void. Here it cannot be said that the contract to collect tolls at these two toll gates became impossible by reason of the Government passing an ordinance. In order to relieve the plaintiffs of their liability under the contract the performance of it must become impossible as in a case where the right is to collect the tolls for the passage of traffic on a bridge, if the bridge is washed away by a flood, it may be said that the performance of the contract (the collection of the toll) becomes impossible by reason of the bridge being washed away. Here no such thing is alleged or proved. Mr. Sundara Kao for the respondent wanted to contend that the only carts that could have passed these two toll gates were carts containing food grains. There is no evidence for such a contention. Such a case was not put forward by the plaintiffs either in pleadings or in the evidence. It is unnecessary to refer to any decision on the point; for I think the matter is so plain that it hardly requires any authority to make it dear. However I may refer to a case in *Herne Bay Steamboat Co. Ltd. v. Hutton* [1903] 2 K.B. 683 in which it was held that, when a portion of the contract was capable of performance, the contract did not become void or unenforceable. The plaintiff's suits, therefore, must fail.

3. The next point for consideration is whether the District Board of South Kanara should get costs in these cases. In a matter like this, owing to the

Government having passed such an ordinance, the District Board should have considered whether it was proper or not that a portion of the amount

payable by plaintiffs should be remitted. The ordinance was in the interests of the public, and it was as much the duty of the District Board as of the

Government to guard the interests of the public and if in doing so the Government passed an ordinance which was likely to affect the income of the

Board, it should not hesitate to sacrifice a part of the income. In this case the plaintiffs requested the District Board by a number of petitions to

remit the amount due by them. The District Board asked the Collector to make an enquiry into the matter and report and under his orders, the

Tahsildar made an enquiry and submitted a report. That report is withheld by Government as being confidential. It is quite plain from the evidence

that the District Board tried to re-sell the right to collect tolls after September 1918 but it got no bids from any person whatsoever, and it was not

able to get a bid even for Rs. 50. That being the state of things, I think a public body like the District Board should have considered all the

circumstances and should have dealt with the contractors fairly and equitably. It was not right to have insisted upon the pound of flesh and like a

private person to have enforced the terms of the bond to the very letter. I have already observed that in the interests of the public the Government

passed the ordinance, and the District Board would have been well advised in remitting a considerable portion of the amount payable by the

plaintiffs. The conduct of the District Board was not what was naturally expected of a public body like it, and, therefore, I think it is proper to

disallow costs of the defendant. In the result the appeals are allowed and plaintiff's suits are dismissed.

In S.A. No. 1406 of 1922.

4. This is an appeal by the District Board of the South Kanara. No second appeal lies as the amount is below Rs. 500. It is dismissed with costs.