
(1918) 12 MAD CK 0016
In the Madras High Court

S. Krishna Murthi Iyer

APPELLANT

Vs

The Taluq Board of Mayavaram

RESPONDENT

Date of Decision : 12-12-1918

Acts Referred:

Madras Local Boards Act, 1884 — Section 95

Citation : 50 Ind. Cas. 809

Hon'ble Judges : Seshagiri Aiyar, J;Phillips, J

Bench : Division Bench

Judgement

1. This is a suit for an injunction against the Taluk Board of Mayavaram, directing it to lop off all the branches of certain trees which have spread over the land of the plaintiff. Both the Courts below dismissed the suit as not maintainable. Before us it was argued by the learned Vakil for the appellant that the burden of proving due care and caution in the exercise of public duties is on the defendants and that the Board should so exercise its powers as not to interfere with private rights. Section 95 of the Local Boards Act (Act V of 1884) directs the Taluk Board to plant trees on the sides of roads and to preserve them. It is not disputed that the trees complained of were planted on the sides of the road. There is no allegation that there was any negligence in the doing of this act. The main argument for the appellant was that, although the original act was done properly, the Taluk Board is under a liability to see that the results of that act do not injuriously affect private rights. Gaekwar Sarkar of Baroda v. Gandhi Kachrabhai Kasturchand 27 B.P 344 : 5 Bom. L.R. 405 : 7 C.W.N. 393 : 30 I.A. 60 : 8 Sar. P.C.J. 426 which was relied on only lays down that in exercising a duty, a public body should see that as little damage as possible is done to private individuals. In Sankaravadivelu Pillai v. Secretary of State for India in Council 28 M.K 72 : 15 M.L.J. 32 it was held that the duty was not obligatory on the Government to provide a by wash and that, therefore, in performing this self-imposed task the Government was bound to have respected private rights. It is not necessary to say whether this view of the functions of the Government is right or not. In our opinion these decisions are not applicable to the present case, As the learned

Advocate General contended, "before fastening responsibility upon a public body for acts done by it, the first thing is to ascertain whether the act complained of was done in the discharge of a permissive right or of a compulsory duty. If corporations have been authorised to perform certain functions not solely in the interests of the public, their liability may not differ much from the liability of private individuals. But where the Legislature imposes a statutory obligation on a public body, the duty *prima facie* is imposed in the interests of the public and private individuals are expected to submit themselves to some inconvenience in order that the general convenience of the public may be furthered. For these reasons, it has been, held that unless it can be shown that they have discharged their duties negligently and carelessly, Public bodies are not liable in damages to private individuals. In *East Freemantle Corporation v. Annois* (1902) A.C. 213 : 71 L.J.P.C. 39 : 85 L.T. 732 : 67 J.P. 103 : 18 R.P.C. 199 Lord Maonaghteu in delivering the judgment of the Judicial Committee stated: "The law has been settled for the last 100 years. If persons in the position of the appellants, acting in the execution of a public trust and for the public benefit, do an act which they are authorised by law to do, and do it in a proper manner, though the act so done works a special injury to a particular individual, the individual injured cannot maintain an action. He is without remedy, unless a remedy is provided by the Statute." In the present case there is no provision, so far as we are aware, in the Local Boards Act giving a remedy to an injured individual in cases like the present. In an other case, *Canadian Pacific Railway Co. v. Boy* (1902) A.C. 220 : 71 L.J.P.C. 51 : 86 L.T. 127 : 50 W.R. 415 : 118 T.L.R. 200 Page of (1902) A.C.-Ed. of the same Volume the Lord Chancellor stated: "The grind upon which the immunity of a Railway Company for injury caused by the normal use of their line is based is that the Legislature, which is supreme, has authorised the particular thing so done in the place and by the means contemplated by the Legislature and that cannot constitute an actionable wrong in England any more than it can constitute a fault by the Quebec Code." These observations apply with equal force to the acts directed to be done by the Local Boards. In *Geddis v. Proprietors of Bann Reservoir* (1878) 3 A.C. 430 which was quoted for the appellant, Lord Hatherly stated: "if a Company, in the position of the defendants there, has done nothing but that which the Act authorised--may, may in a sense be said to have directed--and if the damage which arises therefrom, is not owing to any negligence on the part of the Company in the mode of executing or carrying into effect the powers given by the Act, then-the person who is injuriously affected by that which has been done, must either find in the Act of Parliament something which gives him compensation, or he must be content to be deprived of that compensation." In *Hammersmith of city By Co. v. Brand* (1869) 4 H.L. 171 : 38 L.J.Q.B. 265 : 18 W.R. 12 : 2 L.T. 238, Lord Cairns stated sated "If would be a repugnant and absurd plect of legislation to authorise by Statute a thing to be done: and at the same time leave it to be restrained by injunction from doing the very thing which the Legislature has expressly permitted, to be done. The principle of these decisions was followed in *Aiyasami Aiyar v. District Board of Tanjore* 31 M.K 117 : 18 M.L.J. 91, where a distinction

between permissive and obligatory duties was pointed out. No doubt, as was said in *Canadian Pacific By. Co. v. Parke* (1899) A.C. 535 : 68 L.J.P.C. 89 : 48 W.R. 118 : 81 L.T. 127 : 15 T.L.R. 427, even in the case of Corporations, if the acts are only permissive, the private rights of parties must be respected. Reference may also be made to *Municipality of Pictou v. Geldert* (1893) A.C. 524 : 63 L.J.P.C. 37 : 1 R.P. 447 : 69 L.T. 510 : 42 W.R. 114 in which all the authorities on the subject are collected. Probably the nearest case in point is that reported as *Tregellas v. London County Council* (1898) 14 T.L.R. 55. That was an action against the London County Council and the complaint was that, by the neglect of the Council to lop off branches of trees, plaintiff suffered injury. In that case there was no duty cast upon the Council to plant and preserve trees. Still Lord Russell of Killowen, C.J., held that because the failure to lop off the branches was only nonfeasance no action lay against the County Council. It must be taken now as well established that for mere non-feasance, no action for damages will lie against a public body. See *Municipal Council of Sydney v. Bourke* (1895) A.C. 433 : 72 L.T. 605 : 59 J.P. 659 and *Earl of Harrington v. Derby Corporation* (1905) 1 Ch. 205 : 69 J.P. 62 : 92 L.T. 153 : 21 T.L.R. 68 : 3 L.G.R. 321. It was argued that, although the planting of the trees was done properly, a misfeasance was committed by the failure to prevent damage to plaintiff. In our opinion it would not be consistent with the duty to preserve trees that the Local Boards should cut off all their branches. The very recent case, a summary of which is reported as *Moul v. Telling Ltd. & Croydon Corporation* (1918) 119 L.T. 318 : 34 T.L.R. 473 : 82 J.P. 283 : 16 L.G.R. 595 gives a complete answer to this contention. In that case, the Corporation was charged with the duty of wood paving roads. After 17 years, the wood blocks swelled and bulged and owing to the obstructions caused by such bulging an accident happened. *Avory and Lush, JJ.*, held that it was not a case of misfeasance but only one of non-feasance, namely, neglect to repair the highway, and held that the Corporation was not liable. The learned Judges are reported to have distinguished *McClelland v. Manchester Corporation* (1912) 1 K.B. 118 : 81 L.J.K.B. 98 : 105 L.T. 707 : 9 L.G.R. 1209 : 76 J.P. 21 : 28 T.L.R. 21 on this ground.

2. In the present case, the Taluk Board, on which an obligatory duty to plant and preserve trees has been imposed, are exempt from liability on both the grounds, namely, (A) that in the discharge of its duties it has not acted carelessly or negligently, (b) and that the omission to remove the branches, even if it ought to have been done, is only non-feasance for which no action at the instance of a private individual lies. We, therefore, agree with the Courts below that the suit was rightly dismissed. The second appeal is dismissed with costs.