
(1892) 08 MAD CK 0017
In the Madras High Court

Syed Ameer Sahib and Others

APPELLANT

Vs

Venkatarama and Others

RESPONDENT

Date of Decision : 31-08-1892

Acts Referred:

Madras Local Boards Act, 1884 — Section 156

Citation : (1893) ILR (Mad) 296

Hon'ble Judges : Wilkinson, J; Muttusami Ayyar, J

Bench : Division Bench

Judgement

1. It is contended in the first place that the lower Courts were in error in holding that the suit was barred by limitation and that the special limitation of six months provided by Section 156, Act V of 1884, is not applicable to the case. The suit was one in ejectment brought on the ground that the land upon which the defendants had entered belonged to the plaintiff's. We do not think that Section 156 of the Local Boards Act applies to such a suit. As observed by Garth, C.J., in the Pull Bench case [Chunder Sikhur Bundopadhy v. Obhoy Churn Bagchi ILR 6 Cal. 8] the section is only applicable to suits for compensation claimed for wrongful acts committed under colour of the Act. The decision in that case had reference to Section 87, Bengal Municipal Act III of 1864, but the language of that section was substantially the same as that of Section 156. The Bombay High Court have decided the question in the same way with reference to Bombay Municipal Act VI of 1873 [Joharmal v. The Municipality of Ahmednagar ILR 6 Bom. 580]. The same view was also taken by the Allahabad Court with reference to a similar provision [Municipal Committee of Moradabad v, Chatri Singh ILR 1 All. 269] in Section 46, Act XV of 1873. The ruling however in Rathnasabapathi v. Vythealinga Pandara Sannadhi (Second Appeal No. 975 of 1889, unreported) is in conflict with the above decisions which, however, are not referred to in the judgment. If it were necessary to decide the question of limitation, we should be disposed to follow the judgments of the other High Courts, as we do not think that it could have been the intention of the Legislature to allow local bodies to appropriate the lands of private individuals otherwise

than under the Land Acquisition Act, or to curtail the rights of such individuals to establish their claims within the time provided by the general law of limitation. But we are of opinion that the suit must fail on the ground that the Taluk Board was not sued as is required by Section 27 of the Act. It was the Board which was liable to be sued in its corporate capacity and not the President of the Board. It is argued that this is a mere error of form, and reference has been made to an Allahabad case, *Manni Kasaundhan v. Crooke* ILR 2 All. 296 in which it was held that where the Secretary of a Municipality had been sued in place of the President, the error was one of form only. But we observe that in this case the fifth defendant called the attention of the plaintiffs to Section 27 at the outset, and that the plaintiffs' pleader was aware of the necessity of amending the plaint at the very first hearing. Not only was no application made to amend, but the error was persisted in even in the Appellate Court, and the grounds of appeal to that Court contained the mis-statement that it was by the order of the Munsif that the fifth defendant had been brought in. We do not, therefore, consider that this was a case of a bond fide mistake.

2. The second appeal fails and is dismissed with costs of fifth defendant.