
(1913) 09 BOM CK 0008
In the Bombay High Court
Case No : Second Appeal No. 455 of 1912

The Dholka Town Municipality	Vs	APPELLANT
Desaibhai Kalidas Patel		RESPONDENT

Date of Decision : 09-09-1913

Acts Referred:

District Municipalities Act — Section 56

Citation : AIR 1914 Bom 198(2) : (1913) 15 BOMLR 1034

Hon'ble Judges : Basil Scott, J; Bachelor, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—Upon the findings of fact of the lower appellate Court we are of opinion that the decision appealed from is right. The drainage water passing along a certain drainage cut owing to some default instead of flowing along the assigned channel flows across the road into the plaintiff's field and causes damage to the plaintiff. The damage is found to be due, not to the authorised drainage work, but to the neglect of the drainage channel, which the Municipality is bound to repair. The Government made the cut under their powers under the Irrigation Act, but it was built merely for the convenience of the Municipality, who took it over, and who are authorised u/s 56 of the District Municipal Act to expend money on works outside the Municipal district. It is contended on behalf of the appellant that the Municipality are under no liability in respect of the damage caused to the plaintiff, because it is a matter arising from non-feasance and not from mis-feasance. But the exemption from liability of local bodies on the ground of non-feasance is confined to neglect of highways, and does not apply to drainage works carried out by the local bodies for their convenience, which they are bound to maintain in a proper state of repairs so that they shall not be a nuisance to the neighbouring owners. This appears from the judgments of the Privy Council in *Borough of Bathurst v. Macpherson* (1879) 4 App. Cas. 256 : and *Municipality of Pictou v. Geldert* [1893] A.C. 524. We, therefore, affirm the decree of the lower appellate Court and dismiss the appeal with costs.