
(1938) 12 MAD CK 0019
In the Madras High Court

The Panchayat Board

APPELLANT

Vs

The Western India Matches Company by Agent Henrik
Hybbidnettee

RESPONDENT

Date of Decision : 15-12-1938

Acts Referred:

Madras Local Boards Act, 1920 — Section 225

Citation : AIR 1939 Mad 421 : (1939) ILR (Mad) 566 : (1939) 49 LW 503 :
(1939) 1 MLJ 588

Hon'ble Judges : Alfred Henry Lionel Leach, C.J.;Wadsworth, J;Krishnaswami
Aiyangar, J

Bench : Full Bench

Judgement

Alfred Henry Lionel Leach, C.J.—In 1931 the village of Ernavur was added to the jurisdiction of the Panchayat Board of Thiruvothiur. The

respondent company has a match factory in Ernavur and when the village came within the jurisdiction of the Panchayat Board the factory buildings

were assessed to house-tax the amount of the tax collected being Rs. 2,588-8-3. The respondent company challenged the validity of the action of

the Panchayat Board and filed a suit in the Court of the District Munsif of Poonamallee to recover what it had been compelled to pay. The District

Munsif held that the tax had been illegally levied and rejected the contention of the Panchayat Board that the suit did not lie because it had not been

filed within the period allowed by Section 225 of the Madras Local Boards Act, 1920, as amended by Act XI of 1930. The District Munsif

considered that the period of limitation imposed by that section only applied to suits for compensation or damages. The Subordinate Judge of

Chingleput upheld the decision of the District Munsif on both points on appeal. The Panchayat Board then filed a second appeal to this Court. The

appeal was heard by Burn and Lakshmana Rao, JJ., who agreed that the levy was illegal, but referred to a Full Bench the question whether

Section 225 of the Madras Local Boards Act, 1920, is confined to suits for compensation or damages. This Bench has been constituted to decide the question.

2. A long series of decisions, with one exception, support the decisions of the lower Courts on the question of the applicability of Section 225. I

shall refer to certain of these decisions presently, but before doing so it is necessary to set out the history of the section and that of the

corresponding section in the Madras District Municipalities Act, 1920. Most of the decisions have been under earlier Acts. The first Act relating to

Local Boards was the Madras Local Boards Act, 1884, in which Section 156 was the corresponding section to Section 225 of the present Act.

Section 156 of the Act of 1884 read as follows:

No action shall be brought against any Local Board, or any of their officers, or any person acting under their direction, for anything done or

purporting to be done under this Act until the expiration of one month next after notice in writing shall have been delivered or left at the office of the

Local Board, or at any place of abode of such person, explicitly stating the cause of action, and the name and place of abode of the intended

plaintiff and unless such notice be proved, the Court shall find for the defendant, and every such action shall be commenced within six months next

after the accrual of the cause of action, and not afterwards; and if any person to whom any such notice of action is given shall, before action

brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred

by the defendant after such tender.

3. The Act of 1884 was amended by Act VI of 1900 and Section 156 was amended to read as follows:

(1) No action shall be brought against any Local Board or Panchayat or against any member or servant of such board or panchayat or against any

person acting under the directions of such local board or panchayat or of a member or servant of such board or panchayat, on account of any act

done, or purporting to be done, in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the

execution of this Act until the expiration of one month next after notice in writing shall have been delivered or left either at the office of the Local

Board or Panchayat or at the place of abode of such member or servant or of such person, explicitly stating the cause of action, the nature of the

relief sought, the amount of compensation claimed and the name and place of abode of the intended plaintiff; and unless such notice be proved to

have been so delivered or left, the Court shall find for the defendant.

(2) If the Local Board or Panchayat member or servant or other person to -whom notice is given as provided in Sub-section (1) shall, before

action is commenced, tender sufficient amends to the plaintiff, such plaintiff shall not recover more than the amount so tendered. The plaintiff shall

also pay all costs incurred by the defendant after such tender.

(3) No action such as is described in Sub-section (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title

thereto, be commenced otherwise than within six months next after the accrual of the cause of action.

(4) No action shall be brought against the President of a Local Board or Chaii man of a Panchayat on account of any act done in pursuance or

execution or intended execution of this Act, or in respect of any alleged default on his part in the execution of this Act, if such act was done or if

such default was made in good faith; but any such action shall, so far as it is maintainable in a Court, be brought against the Local Board except

when brought by the Local Board or the Secretary of State for India in Council u/ s 157 on account of anything done by the President or Chairman

himself.

4. The next Act was the Madras Local. Boards Act, 1920, in which Section 156 of the former Act became Section 225. The new section

followed the lines of Section 156 of the Act of 1900, except that the period of notice was extended from one to two months. There was another

amending Act in 1930, but so far as the present question is concerned it made no substantial alteration to the section as it stood in the Act of 1920.

In all the Acts since the Act of 1884 the section required the statutory notice to state the amount of compensation claimed.

5. In the Madras District Municipalities Act, 1884, the corresponding section to Section 156 of the Madras Local Boards Act of that year was

Section 261 and the wording was identical. The Madras District Municipalities Act of 1884 was amended by the Madras District Municipalities

Amendment Act, 1897 and Section 261 was one of the sections amended. The amendment was to the same effect as the amendment made in the

Madras Local Boards Act, 1884, by the amending Act of 1900. In 1920 District Municipalities became governed by the Madras District

Municipalities Act of that year and Section 350 which replaced Section 261 expressly limited the necessity of notice and the period of limitation to

suits for damages or compensation and this is how the Madras District Municipalities Act now stands.

6. The earliest decisions of this Court relating to the question under discussion were given in 1893. There were three decisions in that year, two

with reference to the Madras Local Boards Act, 1884, and one with regard to the Madras District Municipalities Act of that year. In Syed Ameer

Sahib v. Venkatarama I.L.R.(1892) 16 Mad. 296, Muttuswami Aiyar and Wilkinson, JJ., gave it as their opinion that Section 156 of the Act only

related to suits for compensation for wrongful acts committed under colour of the Act, and in the President of the Taluk Board, Sivaganga v.

Narayana Chetti (1892) 3 M.L.J. 13 : ILR 16 Mad. 317 Collins, C.J. and Parker, J., expressly held that the cases contemplated by the section

were suits for compensation or damages, the principle being to allow public bodies time for tender of amends to the parties so as to avoid litigation.

In Srinivasa Pilial v. Ratnasabapathi Pillai (1892) 3 M.L.J. 124 : ILR 16 Mad. 474 Muttuswami Aiyar and Parker, JJ., held that a suit to recover a

forfeited deposit of a contractor was outside the scope of the section, and concurred in the opinion that the section applied only to suits for

compensation or damages.

7. Under the Madras Local Boards Act of 1900 there was one decision - Govinda Filial v. Taluk Board, Kumbakonam (1908) 19 M.L.J. 333 :

ILR 32 Mad. 371 (F.B.) - and under the District Municipalities Act as amended in 1897 two decisions - Mahamahopadyaya Ranga Chariar Vs.

The Municipal Council, and the Municipal Council of Kumbakonam v. Veeraperumal Padayachi (1914) 28 M.L.J. 147. The judgments in these

cases followed the earlier decisions. It is necessary to refer only to the first of these cases which was decided by a Full Bench consisting of White,

C.J., Sankaran Nair and Pinhey, JJ. White, C.J., observed that the explanation of the words ""unless it is an action for the recovery of immovable

property or for a declaration of title thereto"" in Sub-section (3) of the Act of 1897 would seem to be that when the section was amended the

Legislature was prepared to accept the view taken by the Bombay High Court in Nagusha v. Municipality of Sholapur I.L.R.(1892) 18 Bom. 19

to the effect that a suit in ejectment fell within the provisions of the corresponding enactment of the Bombay Act. The judgment went on to point

out that the decision in the last mentioned case was overruled by a Full Bench of the Bombay High Court in Manohar Ganesh Tambekar v. Dakor

Municipality I.L.R.(1896) Bom. 289 (F.B.) and this Court in Syed Alli Saheb Vs. The Chairman of the Salem Municipality, took the same view. In

my opinion the explanation for the insertion of the words ""unless it is an action for the recovery of immovable property or for a declaration of title

thereto"" is that the Legislature had in mind the decision in President of the Taluk Board, Sivaganga v. Narayana Chetti (1892) 3 M.L.J. 13 : ILR

16 Mad. 317, where it was said that the principle embodied in the section could not apply when the object of the suit was to obtain a declaration

of title to immovable property and for an injunction to restrain interference with immovable property. It was not realised that the wording might be

made the basis of an argument that the statutory notice was necessary for all suits other than those relating to immovable property.

8. In Municipal Council, Dindigul v. Bombay Co. Limited Madras (1928) 56 M.L.J. 525 : ILR 52 Mad. 207 Courts-Trotter, C.J. and Madhavan

Nair, J., gave a decision which is directly in point here. This was a suit filed against the Municipal Council of Dindigul for the recovery of a sum

wrongfully collected by the Municipality as tax. It was held that such an action was essentially an action for ""money had and received"" and the bar

of limitation prescribed by Section 350, Clause (2) of the Madras District Municipalities Act of 1920 would not apply. There are three decisions

relating to suits for recovery of profession tax said to have been wrongfully levied The Krishna Jute and Cotton Mills Co. Ltd. Vs. The Municipal

Council, , Lakshmanan Chetti v. Union Board of Devakottah (1931) 60 M.L.T. 600 and the Taluk Board of Devakottah v. V.S.R.M.

Chockalingam Chettiar (1932) M.W.N. 1089. In all these cases it was held that the suit was outside the section. In Appu L. Rm. Lakshmanan

Chetti (died) and Another Vs. The Union Board of Devakottai, , Madhavan Nair, J., after a careful review of the authorities accepted the opinion

already prevailing and held that Section 225 of the Madras Local Boards Act, 1920, was applicable only to suits for compensation or damages.

9. The only judgment which runs counter to these decisions is that of Krishnan Pandalai, J., in Pothuru Swamy Babu Vs. The Union Board, ,

where it was held that a suit for refund of house-tax collected on the ground that the levy was illegal fell within the scope of Section 225 of the

Local Boards Act as it now stands. The learned Judge considered that observations in the judgment in Govinda Pillai v. Taluk Board

Kumbakonam (1908) 19 M.L.J. 333 : ILR 32 Mad. 371 (F.B.), left him free to decide the question untrammelled by authority and he formed the

opinion that to exclude a suit of this nature from the section would be to defeat the object for which it was framed. I do not consider that the

judgment in Govinda Pillai v. Taluk Board Kumbakonam (1908) 19 M.L.J. 333 : ILR 32 Mad. 371 (F.B.) left it open to the learned Judge to

disregard the other decisions of the Court and I am unable to accept his decision as embodying a correct statement of the law.

10. It is not necessary to examine the decisions given by other Courts. Reference to the principal decisions elsewhere is to be found in the

judgment of Madhavan Nair, J., in Appu L. Rm. Lakshmanan Chetti (died) and Another Vs. The Union Board of Devakottai, and all that need be

said here is that they do not throw doubt on the decisions of this Court.

11. Where the Courts have consistently interpreted the law in a particular way for many years it is for the Legislature and not for the Court to effect

a change, if a change is desirable. As I have indicated Section 225 of the Madras Local Boards Act stands substantially as it was in 1900. Since

1900 there have been two amending Acts and numerous decisions of this Court interpreting the section in the same way; in fact an unbroken line

but for the decision of Pandalai, J. In Barras v. Aberdeen Steam Trawling and Fishing Co. Ltd. (1933) A.C. 402 Viscount Buckmaster said:

It has long been a well-established principle to be applied in the consideration of Acts of Parliament that where a word of doubtful meaning has

received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be

construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it?

12. Viscount Buckmaster went on to quote the words of James, L.J., in *Ex parte Campbell* (1870) 5 Ch. 703 where he observed:

Where once certain words in an Act of Parliament have received a judicial construction in one of the superior Courts, and the Legislature has repeated them without alteration in a subsequent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them.

13. The last amendment having been made before the decision of Krishnan Pandalai, J., and this Court having repeatedly interpreted the section as

applying only to suits for compensation or damages it must be taken that the Legislature intended it to be interpreted in this way. Moreover in the

last amendment of the Madras District Municipalities Act the corresponding section was expressly limited to suits for compensation or damages.

The Legislature could not have intended Local Boards to be in a different position to District Municipalities in this respect. If Section 225 of the

Local Boards Act had been placed on the statute book for the first time in 1930 it might be open to the Court to come to another conclusion, but

in the circumstances it can only be held that Section 225 of the Madras Local Boards Act is limited to suits for compensation or damages, and the

question referred is answered in this sense.

14. The costs of the reference will be made costs in the appeal.

Wadsworth, J.

15. I agree.

Krishnaswami Aiyangar, J.

16. I agree.

JUDGMENT

1. The Full Bench having decided that the suit was not barred by limitation, this appeal must be and is hereby dismissed with costs.