

(1929) 09 MAD CK 0011
In the Madras High Court

The Union Board

APPELLANT

Vs

A.L.A.R.R.M. Arunachalam Chettiar

RESPONDENT

Date of Decision : 19-09-1929

Acts Referred:

Madras Local Boards Act, 1884 — Section 2, 3(v)

Citation : (1930) 31 LW 712 : (1930) 58 MLJ 107

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The question for decision in this second appeal is whether the plaintiff has a right to sue. The plaintiff "s the Union Board of

Devakotta and sties to have it declared that the decision of the Survey Department that a certain plot of ground is the property of the defendant

and is not public-road vested in the plaintiff is a wrong decision, and for consequential reliefs. Both the Lower Courts dismissed the suit on the

ground that the plaintiff has no loans standi to maintain it and the plaintiff appeals.

2. The decision of the Survey Officer was on the 12th May, 1920. The plaint was presented on the 6th June, 1921 and is in time, but the ground

for the Lower Courts" decision is that on the date of the plaint there was no Union Board validly constituted in which the right of action vested, and

therefore no Union Board which could validly maintain the suit. The party who represented before the Survey Officer the claim of the public to the

plot was the Taluq Board. The question for decision is whether between the date of his decision and the date of the plaint the right of action which

was vested in the Taluq Board on the date of the decision had validly passed to the present plaintiff.

3. The old Local Boards Act (V of 1884) set up two classes of Local Boards, the District and the Taluq Board. See definition of "Local Board" in

Section 3 (v.). These u/s 2,7 were corporate bodies in whom public property could be vested. They could make contracts and sue and be sued.

The Act also set out rules for the appointment of Panchayats, that is, bodies of persons constituted for a Union [see Section 3 (vi)] in areas

declared by the Act to be Unions, but these Panchayats were not incorporated Local Boards, nor was public landed property vested in them. The

new Act XIV of 1920 sets up three classes of incorporated Local. Boards, District Boards, Taluq Boards and Union Boards (see Section 6).

Section 60 thereof vests in the Union Board all public roads in its area. The Union Board of Devakotta, the present plaintiff, was constituted under

this Act on the 1st April, 1922 (see Ex. CCC). Consequently it was not so constituted on the date of the plaint.

4. The appellant contends that the situation is saved by the transitory provisions attached to Act XIV of 1920, particularly Sections 235, 237, 238

and Schedule X, rules 4 and 13. Section 235 says that "all property, all rights of whatever kind, used, enjoyed, or possessed by ... a Local Board

as constituted under the Madras Local Boards Act, 1884". . . shall pass to the same Local Board as constituted under this Act." Under that

section, the right to sue which belonged to the Taluq Board under the old Act will pass to "the same Local Board as constituted under this Act.

What is "the same Local Board"? It may be the Local Board which has the same designation of the Local Board which has the same jurisdiction.

There is no indication which it means. But the use of the phrase "same Local Board" to my mind implies that there must have been a Local Board

of that nature under the old Act. Under the old Act there was no Union Board, so that the section in my view cannot apply to Union Boards. There

is nothing improbable in this. It is just as likely that the Legislature intended during the transitory period to continue the machinery of the old Act in

working as that it intended to introduce the machinery of the new Act before the new Union Boards were actually constituted and set up.

5. It is argued that Rule 13 of Schedule X itself contemplates that the old Union Panchayats should be erected into new Union Boards during the

transitory period, but I do not so read the section. Whatever it may have been intended to mean, it does not speak of the powers of the Union

Board as such. It is only dealing with the powers and duties ""of the President and members respectively"" of such a Union Board. Now the powers

of the President or members respectively do not include the power of suit by the incorporated Union Board. Hence Rule 13 will not avail the

appellant.

6. Rule 4 of Schedule X is called in aid but I do not think that helps either. It says that

Notwithstanding anything contained in Section 4, the Local Government may, before the commencement of this Act, declare that any Union

constituted under the old Act shall, before the commencement of this Act, be deemed to be a Union under this Act.

7. Now a Union under the old Act was an area and not an incorporated body and all that the rule means to my mind is that such areas as were

Union areas under the old Act were continued to be Union areas under the new. Nothing is said in Rule 4 (1) about the new Unions having powers

which the old ones did not have; rather the contrary in fact. If the rule was intended to mean what the appellant argues, it would have said ""any

panchayat constituted in respect of any Union shall be deemed to be a Union Board.

8. No notification has been brought to my notice which takes away, during the transitory period, the vesting tinder the old Act of the Union roads

in the old Taluq Boards. This also is significant.

9. The phrase ""before the commencement of this Act"" in Rule 4 and in other rules is a very ambiguous one, not easy to understand or to apply.

Section 237 apparently enables Government to bring the Act into operation piecemeal. By notifications Exhibits ZZ and YY the Government

brought Rule 4(1) into force on the 25th and 26th January, 1921, and by Exhibit WW it brought the rest of the Act into force on the 1st April,

1921, although, as pointed out, the present Union was not constituted until the 1st April, 1922 under Exhibit CCC. However as Rule 4 in any case

has not been shown to assist the appellant, he cannot derive any support for his case from Exhibit YY.

10. Section 60 of the new Act has been mentioned, but even if that section, the moment the Act came into force and before the Union "Board of

Devakotta was constituted under Ex. CCC, availed to divest the old Taluq Board

of the roads within the jurisdiction of the Union Board, that will not avail the plaintiff -Board unless it was at the same time in being and able to take over the roads of which the Taluq Board had been divested. I have held that: during the transitory period the plaintiff-Board was not constituted a Union Board with the legal powers conferred on such a Board by the new Act.

11. It appears to me therefore that the plaintiff had on the date of the plaint no locus standi to sue. The Lower Courts have therefore in my opinion committed no error of law. I dismiss this appeal with costs.