

**(1929) 09 MAD CK 0002**  
**In the Madras High Court**

The Union Board

APPELLANT

Vs

A.L.A.R.R.M. Arunachellam Chettiar

RESPONDENT

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**Date of Decision :** 19-09-1929

**Acts Referred:**

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

**Citation :** AIR 1930 Mad 302 : 123 Ind. Cas. 40

**Hon'ble Judges :** Wallace, J

**Bench :** Single Bench

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**Judgement**

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

Devakotah and sues 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 locus 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 Court's 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 Taluk 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 Taluk 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 27 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) (vii) 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 Devacottah, 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 285, 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 of 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 or 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, from the commencement of

this Act. be deemed to be a Union under this Act."" 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.

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

in the old Taluq Boards. This also is significant.

8. The phrase ""before the commencement to 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 Exs. ZZ and YY the Government brought

Rule 4 (1) into force on the 25th and, 28th January, 1941, and by Ex. 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 Ex. 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 Ex. YY. "

9. 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 Taluk 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 Taluk 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.

10. 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.