

APPELLATE CIVIL.

Before Mukerji and Guha J.J.

AJITKUMAR BASU THAKUR

v.

CHAIRMAN OF THE COMMISSIONERS OF
DACCA MUNICIPALITY.*

1930

Nov. 19, 20, 26.

*Lease—Agricultural purpose—Expiry—Damages, suit for—Limitation—
Indian Limitation Act (IX of 1908), Sch. I, Arts. 36, 39, 115, 116—
Bengal Municipal Act (Beng. III of 1884), ss. 34, 37, 69 (cvi), 363.*

Where a lessee, whose lease for agricultural purposes had expired on the 31st March, 1922, instituted, on the 30th April, 1925, a suit for damages for the years 1920 to 1922 against his lessor, the Dacca Municipality, which had leased to him in 1917 for six years 300 *bighás* of trenching ground by a registered *kabuliyat* which did not satisfy the requirements of section 37 of the Bengal Municipal Act, and there was no registered contract apart from that *kabuliyat*,

held that the suit was barred by limitation, and Article 116, Schedule I of the Limitation Act applied, as there was no "contract in writing registered" within the meaning of that Article.

The granting by a Municipality of the land not required for the purposes of the Bengal Municipal Act, under section 34, is clearly an act done for the purposes of the Act itself, and the funds realised by such a lease are clearly again funds to be utilised for carrying out the purposes of the Act as authorised by section 69, clause xvii.

Leases come within the purview of section 37, which must be read along with section 34.

Chairman, South Barrackpore Municipality v. Amulya Nath Chatterjee (1) referred to.

The provisions of section 37 are mandatory and non-compliance therewith would render the agreement unenforceable.

FIRST APPEAL by the plaintiff.

The facts of the case, out of which this appeal arose, appear fully in the judgment under report herein.

Gunadacharan Sen and *Bipinchandra Basu* for the appellant.

Saratchandra Basak (Senior Government Pleader) and *Prakashchandra Pakrasi* for the respondent.

Cur. adv. vult.

MUKERJI AND GUHA J.J. This is an appeal by a plaintiff from a decree dismissing his suit.

*Appeal from Original Decree, No. 36 of 1928, against the decree of Saradaprasad Datta, Subordinate Judge of Dacca, dated July 20, 1927.

(1) (1907) I. L. R. 34 Cal. 1030.

The plaintiff alleged that he had taken, for agricultural purposes, a lease from the Dacca Municipality, of 300 *bighās* of trenching ground lands since 1916-17, on executing a lease on the 10th April, 1917; that there was a condition in the lease that whenever the Municipality would require any portions out of the aforesaid leased lands for the purpose of throwing night-soil, the Municipality should demarcate those portions and give notice thereof to the plaintiff in the month of April every year, so that agriculture might not subsequently be interfered with; and that since 1919 he incurred expenditure for procuring sugarcane plants for planting them, but that the Municipality did not comply with the condition and on the other hand put obstacles in his way. His case was that he had suffered considerable loss, as he was unable to do the cultivation. He claimed damages for the years 1919-20, 1920-21 and 1922. The terms of the *kabuliyat* expired on the 31st March, 1922. The suit was instituted on the 30th April, 1925, that is to say, beyond three, but within six years of the expiry of the lease.

The Subordinate Judge has dismissed the suit as barred by limitation. The plaintiff relied upon Article 116, Schedule I of the Limitation Act. The Subordinate Judge held that that Article did not apply as there was no "contract in writing registered" within the meaning of that Article, apart from the registered *kabuliyat*, which the plaintiff had executed, but which was not in conformity with section 37 of the Bengal Municipal Act and so not binding on the commissioners. He held that Article 36 or 39 was the Article to apply; and in view of these Articles, the suit was out of time. He further held that the special limitation provided for in section 363 of the Bengal Municipal Act was applicable.

It has been conceded, on behalf of the respondents, the Municipality, that section 363 of the Bengal Municipal Act has no application to the claim. It is obvious also that Article 36 is irrelevant because

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the acts complained of are not independent of the contract: if any malfeasance, misfeasance or nonfeasance independent of contract was intended to be relied on, the suit should have been instituted within 2 years of the cause of action. As for Article 39, it has no relevancy to the present case, the action not being founded on trespass. It is either Article 115 or Article 116 that, in our opinion, applies to the case, accordingly as the contract, the breach of which is the foundation of the claim, is unregistered or registered. Now, for a contract to be binding on the commissioners it must comply with section 37 of the Bengal Municipal Act. If the registered *kabuliyat* executed by the plaintiff together with its acceptance by the Chairman in pursuance of the resolution of the Municipality be taken as sufficient to constitute the contract, for the breach of which the suit was laid, such contract cannot be relied upon, having regard to the provisions of the said section 37. To get over the section it has been urged that section 34 of the Bengal Municipal Act authorizes the commissioners to grant leases of such lands only as are not required for the purpose of the Act, and that the granting of this lease in favour of the plaintiff was in the nature of a contract *not* "necessary for the "purposes of the Act" and so not within the purview of section 37. Section 69, clause xvii of the Act, was also referred to in this connection. This argument, in our opinion, has no substance: the granting of a lease of land not required for the purposes of the Act under section 34 is clearly an act done for the purposes of the Act itself, and the funds realized by such a lease are clearly again funds to be utilized for carrying out the purposes of the Act as authorized by section 69, clause xvii. That leases come within the purview of section 37, which must be read along with section 34, has been held by this Court [*Chairman, South Barrackpore Municipality v. Amulya Nath Chatterjee* (1)]. It is also not disputed that the value of the contract is over Rs. 500. The

provisions of section 37 are mandatory and non-compliance therewith would, in our opinion, render the agreement unenforceable. The condition contained in the registered *kabuliyat*, even if it be regarded as a contract by the Municipality, by reason of its acceptance by the latter, cannot be pleaded against the commissioners. There is undoubtedly a body of evidence, which shows that this lease—though there may have been some variation between its terms and those approved by the commissioners in their resolution, in pursuance of which it was granted—was accepted and acted upon on behalf of the Municipality. An implied contract to afford the plaintiff all facilities for cultivation on the trenching ground may not unreasonably be inferred, but such contract again would be hit by section 37 of the Bengal Municipal Act and also by Article 115 of Schedule I to the Limitation Act.

Judged by whatever test, the claim in our judgment, appears to have been time-barred and the court below, in our opinion, was right in dismissing it.

The appeal is dismissed with costs.

Appeal dismissed.

G. S.

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