

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Spencer.

THE MUNICIPAL COUNCIL, KUMBAKONAM (PLAINTIFF),
PETITIONER, .

1911.
July 19,
20 and 26.

v.

ABBAHS SAHIB (DEFENDANT), RESPONDENT.*

Madras District Municipalities Act (IV of 1884), sec. 191—No right to farm slaughtering fees—Contract of farming such fees, void and unenforceable—Contract Act, ss. 11 and 23—Powers of Corporations to contract.

Farming out, by a municipality, of its right to collect fees on the slaughter of animals, which the municipality is entitled to levy under section 191 of Madras District Municipalities Act (IV of 1884), is unauthorized and *ultra vires*. A contract of lease which has the effect of farming out such a right is void and unenforceable under Sections 11 and 23 of the Contract Act (IX of 1872) as being beyond the competency of the Municipal Corporation to enter into, and therefore prohibited.

Held that any amount due to the municipality under such a contract cannot be recovered.

Decision of WALLIS, J., in *The Corporation of Madras v. Musthan Sait* [C.S. No. 244 of 1907; (S.C.) (1909) 21 M.L.J., 788] and *Marudamuthu Pillai v. Rangasami Mooppan*, [(1901) I.L.R., 24 Mad., 401], applied. Halsbury's Laws of England, Vol. VIII, Art. 805, Corporation's Title referred to.

Abdulla v. Mammed, [(1903) I.L.R., 26 Mad., 156], distinguished.

Per curiam.—The right of farming out is not necessary to the exercise of the right of levying; as such fees may be naturally and easily collected by municipal subordinates.

The fact that there is an express power to farm out tolls negatives an implied power to farm out other kinds of fees.

The fact that the Municipal Account Code contains provisions for the farming out of slaughtering fees and other taxes besides tolls is no guide to the interpretation of the Act in this respect.

Quere.—Whether section 11 of the Contract Act is not exhaustive and does not deal with the competency of a Corporation to contract?

PETITION under section 25 of Provincial Small Cause Courts Act (IX of 1887), praying the High Court to revise the decree of T. SAMI AYYAR, the Subordinate Judge of Kumbakonam, dated the 5th November 1909, in Small Cause Suit No. 932 of 1906.

The facts of the case are set out in the judgment.

K. Ramachandrier for the petitioner.

S. Varadachari for T. R. Venkatarāma Sastri for respondent.

AYLING
AND
SPENCER, JJ. JUDGMENT.—The petitioners, the Kumbakōnam Municipal Council, sued the respondent on the Small Cause side to recover the balance due by him under a lease which he had taken of the right to collect fees on the slaughter of animals, which the Council are entitled to levy under section 191 of the District Municipalities Act, Madras Act IV of 1884. The Subordinate Judge dismissed the suit on the ground that the Council was not empowered to lease the right in question and that the contract sued on was illegal and could not be enforced. This is the decree which we are now asked to set aside on revision.

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A case of a precisely similar character, though arising in the City of Madras turning on the legality of a Municipal Council leasing out the right of collecting slaughtering fees has been decided by WALLIS, J. (C.S. No. 244 of 1907); and although it was decided with reference to the provisions of the Madras City Municipal Act III of 1904 and not of the District Municipalities Act, yet the provisions in the two Acts in this respect run on so nearly identical lines that the reasoning of the learned Judge applies with equal force to the present case. Admittedly the District Municipalities Act does not expressly authorize the leasing or farming out of the right to collect slaughtering fees. Of the several taxes leviable under the Act the only one in respect to which such a provision is to be found is the case of municipal tolls (section 92). It is urged that such a power is granted by implication as a necessary incident to the right of levying. But in the first place it cannot be said that the right of farming out is in any way necessary to the exercise of the right of levying; such fees may be naturally and easily collected by municipal subordinates as has been done for a certain period in this very case. Secondly, the fact that there is an express grant of the power to farm out tolls, is difficult to reconcile with the idea that the authorisation to levy carries with it an implied power to farm out. The mere fact that the Municipal Account Code contains provisions for the farming out of slaughtering fees and other taxes besides tolls does not, in our opinion, throw any light on the interpretation of the Act in this respect. We must therefore hold that the farming out of the right to collect slaughtering fees is unauthorised by law, and is *ultra vires*.

Is the suit contract therefore void and unenforceable? We are forced to the conclusion that it is so, as infringing the

provisions of both section 11 and section 23 of the Indian Contract Act, IX of 1872. The powers of a corporation must be strictly construed and it is hardly too much to say that what is not permitted to such a body is forbidden. To quote from Halsbury's Laws of England, Vol. 8, Art. 805 :

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“ Where a Corporation is created, by statute, its powers are limited and circumscribed by the statute creating it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation. What the statute does not expressly or impliedly authorise is to be taken to be prohibited. If, for instance, the subject-matter of a contract is beyond the scope of the constitution of the corporation, it is *ultra vires*, that is, it is beyond the powers of the corporation to make the contract, which is therefore void *ab initio* and cannot be ratified.”

The above reasoning exactly covers the present case. It has been suggested that the provisions of the Indian Contract Act are not exhaustive and that section 11 which deals with competency to contract does not contemplate the case of a corporation. But even if this be so, the matter must be decided in the light of general principles of law as expounded in the passage quoted above, and the result is the same.

It is argued for the petitioners on the authority of *Abdulla v. Mammod*(1) that nevertheless the contract can be enforced against the defendant. In that case, BHASHYAM AYYANGAR, J., held that a sub-lease by a ferry renter, though prohibited by the terms of his lease and invalid against Government, might be valid as against the sub-lessee. The case is easily distinguishable on the ground that the sub-lessor in that case was a private person, and no question arose of the peculiarly fettered position of a statutory corporation. A contract which, like the suit contract, is void *ab initio* cannot be enforced. [Compare *Marudamuthu Pillai v. Rangasami Mooppan*(2).]

We must therefore hold that the suit contract was void and unenforceable and that the Subordinate Judge was right in dismissing the suit.

The petition is dismissed with costs.

(1) (1903) I.L.R., 26 Mad., 156.

(2) (1901) I.L.R., 24 Mad., 401.