

APPELLATE CIVIL.

*Before Sir Ralph Sillery Benson, Officiating Chief Justice,
and Mr. Justice Sankaran Nair.*

VALLI AMMAL (PLAINTIFF), APPELLANT,

v.

THE CORPORATION OF MADRAS (DEFENDANT), RESPONDENT.*

1912.
October
1 and 8.

*Madras City Municipal Act (III of 1904) —“ Final,” meaning of in section 287 (3)
— Standing Committee, whether special tribunal, or independent body—New
additions to building—Whether mandamus or injunction, appropriate remedy
to remove them.*

The plaintiff, as the owner of house and premises No. 36 in Singana Chetty street in the City of Madras, obtained permission from the Municipality of Madras City to execute certain repairs therein. The President being of opinion that under cover of the permission granted, she had made considerable additions and alterations, made a provisional order under section 287, clause (1) of the Madras City Municipal Act (III of 1904), directing their removal and subsequently confirmed that order under clause (2) of section 287. An appeal by the plaintiff to the Standing Committee having proved ineffectual, she filed a suit in the City Civil Court for the issue of a perpetual injunction restraining the Corporation from demolishing the alleged additions.

Held, that when a right and an infringement thereof are alleged, a cause of action is disclosed, and unless there is a bar to the entertainment of a suit, the ordinary Civil Courts are bound to entertain the claim; and that a suit for injunction will therefore lie.

Held, further that the Standing Committee cannot be held to be an independent body or a special tribunal authorised to settle finally disputes as between the tax-payers or house-owners and the Corporation of which they are the members.

Instance of “special tribunal,” pointed out.

Bhai shankar v. The Municipal Corporation of Bombay (1907) I.L.R., 31 Bom., 604, referred to.

Held also, that the word “final” in section 287 refers to proceedings before the Corporation and is intended to bar an appeal from the Standing Committee to the general body of Commissioners, but not to shut out the jurisdiction of the Courts. The suit was properly brought against the President as he was acting on behalf of the Corporation.

Bholoram Chowdhry v. Corporation of Calcutta (1909) I.L.R., 36 Calo., 671 distinguished.

* City Civil Court Appeal No. 5 of 1911.

VALI AMMAL
v.
THE CORPO-
RATION OF
MADRAS.

APPEAL against the decree of C. V. KUMARASWAMI SASTRIYAR, the City Civil Judge, Madras, in Original Suit No. 553 of 1910—
Suit for an injunction.

The facts are fully set out in the judgment.

V. Ramesam for *T. R. Venkatarama Sastriyar* and *K. Narasimha Ayyar* for the appellants.

T. V. Seshagiri Ayyar for *K. Srinivasa Ayyangar* and *P. Duraiswami Ayyangar* for the respondent.

BENSON,
OFFG. C.J.,
AND
SANKARAN
NAIR, J.

JUDGMENT.—The plaintiff is the owner of house and premises No. 36, Singana Chetty street, within the Municipality of Madras. She applied for and obtained permission from the officer competent to grant the same, to carry out certain repairs to her house in April 1909. The President of the Corporation was of opinion that, taking advantage of this permission granted to her, she had made other considerable alterations and additions to her house and ground without his sanction, and he accordingly made a provisional order under section 287, clause (1) of the Madras City Municipal Act III of 1904, requiring her to remove those alleged additions. That provisional order was afterwards confirmed by him under section 287, clause (2) of the Act. The plaintiff appealed against it to the Standing Committee who declined to interfere. Her case is that there were no additions or alterations as stated by the President but that the four rooms which have been ordered to be demolished had been in existence for more than 20 years, and that, therefore, neither the President nor the Corporation was entitled to ask her to demolish the same on the ground alleged. She, therefore, prays for an injunction to restrain the defendant, the Corporation of Madras, from demolishing these four rooms.

It is necessary at this stage to notice only the following plea advanced in paragraph (3) of the written statement:—“The order of the Standing Committee referred to in paragraph (4) of the plaint filed herein having become final under section 287 (3) of the Act, the suit is not maintainable against the defendant Corporation at all; and the plaintiff has misconceived her remedy if any.”

The City Court Judge held that the plaintiff was not barred from bringing the suit on the ground that the Standing Committee had confirmed the order of the President, but he held that the suit for an injunction in his Court is not the proper remedy

and that the plaintiff should apply to the High Court by way of *Writ* *mandamus*, and for this position he relied upon the decision in *Eholoram Chowdhry v. Corporation of Calcutta*(1). This is an appeal from his judgment.

The case referred to does not support the proposition that the proper remedy is by way of *Mandamus*. The question for decision in that case was not whether an injunction or a *Mandamus* was the proper remedy nor did the judge decide that a suit for an injunction will not lie to restrain the Corporation from committing an act which is improper or illegal.

Mr. Seshagiri Ayyar, however, has argued two other questions in support of the decree of the Lower Court. His first contention is that, the Standing Committee having confirmed the order of the President that these buildings ought to be demolished, no suit will lie at all as section 287, clause (3), says that such order is final. It is rightly conceded that if the President of the Municipal Corporation issues an order to demolish a building on the ground that it is a new building constructed against the provisions of the Act but as a matter of fact the building is not one so constructed but is an old building, then the plaintiff has a grievance for which there should be a remedy. When a right and an infringement thereof are alleged, a cause of action is disclosed and unless there is a bar to the entertainment of such a suit, the ordinary Civil Courts are bound to entertain that claim. In this case it is not alleged that there is any express provision of law to the effect that no such suit shall lie. What is contended is that there is a bar by implication, because section 287 says that the decision of the Standing Committee shall be final.

It is no doubt true that, where a special tribunal has been created or empowered to afford redress, it has been held that there is an implied prohibition against a suit being filed in the ordinary Courts. This Act itself furnishes an instance of such a tribunal. All complaints, for instance, in respect of any tax or toll are first to be heard and decided by the President and two Commissioners, and against an order so passed by them there is an appeal to the Magistrates, who may refer the matter to the High Court for their decision and are bound to do so whenever

VALLI AMMAL
v.
THE CORPORATION
OF
MADRAS.
—
BENSON,
OFFG. C.J.,
AND
SANKARAN
NAIR, J.

(1) (1909) I.L.B. 36 Calc., 671.

VALLIAMMAL
v.
THE CORPO-
RATION OF
MADRAS.

BENSON,
OFFG. C.J.,
AND
SANKARAN
NAIR, J.

a question of law is involved; and the Magistrates are required to dispose of the case in conformity with the terms of the order of the High Court. This is a special tribunal empowered to deal with these questions and its decisions on such questions have been held to be final by this Court. See also *Bhaishankar v. The Municipal Corporation of Bombay*(1). The question then for decision is whether the Standing Committee is a special tribunal empowered to deal with this question finally. The Standing Committee is composed of the President and eight members. These eight members are all Commissioners of the Corporation. Their powers are defined by certain sections of the Act. [See sections 17, 20 and 286.] They form in fact a part of the Corporation and they carry out the duties of the Corporation in accordance with the provisions laid down by the Act. They cannot be held to be an independent body authorised to settle finally disputes between the tax-payers or house-owners and the Corporation whose members they are and of which they form part. We are therefore of opinion that they cannot be treated as a tribunal to decide such claims.

We take it that the word "final" in section 287 refers to proceedings before the Corporation, and is intended to bar an appeal from the Standing Committee to the general body of the Commissioners, not to shut out the jurisdiction of the Courts. It was also argued before us that the plaintiff was wrong in bringing this suit against the Corporation, that her remedy, if any, is against the Standing Committee and for this contention the decision in *Bholoram Chowdhry v. Corporation of Calcutta*(2), was relied upon; but that was a suit brought for the purpose of compelling the Corporation to do an act which, according to the Act, it was the duty of the Standing Committee to perform and therefore it was held that the suit should have been brought against the Standing Committee. It has no application to the present case. In this case the President was acting on behalf of the Corporation. We disallow this contention. We set aside the decree of the lower Court and direct the judge to restore the suit to his file and proceed to dispose of it in accordance with law. The appellant is entitled to the costs of this appeal. The costs hitherto incurred in the lower Court will be provided for in the final decree.

(1) (1907) I.L.R., 31 Bom., 604.

(2) (1909) I.L.R., 38 Calc., 671.