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given in the appeal memorandum, should he elect to do so, and pay court fee thereon within one week after reopening of the High Court in July 1929.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Anantakrishna Ayyar.

1929, Aug. 15.

ONTHATH SABJU SAHIB (DEFENDANT), APPELLANT,

v.

THE MALABAR DISTRICT BOARD (PLAINTIFF), RESPONDENT.*

Malabar Compensation for Tenants' Improvements Act (I of 1900) —Lease by President of District Board of roadside poramboke lands—Lease providing that lessee should vacate land, when required, without claiming any compensation for any improvements—Notice to quit—Construction of substantial building on land by lessee—Claim by lessee for compensation for building, whether can be made under the Act—Roadside poramboke lands, whether included under the Act for purposes of compensation.

Where the District Board of Malabar leased certain lands forming roadside poramboke to a lessee under an express condition that he should quit the lands, when required, without claiming any compensation for improvements of any sort made by him thereon, and the lessee, on being required to quit, claimed compensation for a substantial building erected thereon by him, under the Malabar Compensation for Tenants' Improvements Act;

Held, that the Act applied only to leases of agricultural holdings or building sites, and not to leases of roadside poramboke lands; and that, consequently, the lessee could not claim any compensation under the Act.

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* Second Appeal No. 614 of 1928.

Chathukutty v. *Kunhappu*, (1927) I.L.R., 50 Mad., 813, followed; and Second Appeal No. 1445 of 1889 (unreported), referred to.

APPEAL against the decree of the District Court of North Malabar in A.S. No. 88 of 1927 preferred against the decree of the Court of the District Munsif of Badagara in O.S. No. 565 of 1925.

The material facts appear from the judgment.

M. C. Sridharan for appellant.

V. P. Karunakaran Nambiyar for the respondents.

JUDGMENT.

On the 12th March 1923, the District Board of Malabar passed proceedings permitting the President of the District Board to lease a particular roadside poramboke vested in the District Board, for occupation by the present defendant. The proceedings made it a condition for allowing such temporary occupation that the applicant should pay a sum of Rs. 6 a year and that he should deliver back possession of the plot without claiming any compensation for improvements of any sort that he might make on the property. On such conditions, the President, District Board, Malabar, leased to the defendant the roadside poramboke on the 4th April 1923, as per Exhibit A. Subsequently, as it was resolved to take possession of the property, a notice to quit, Exhibit B, was served upon the defendant on the 7th May 1925, requiring him to quit the premises and deliver possession to the District Board. The defendant not having done so, the President, District Board, Malabar, has instituted the suit which has given rise to this second appeal to recover possession of the property. The main plea of the defendant was that he was entitled to be paid the value of the improvements effected by him on the property before surrendering possession, and he relied on the provisions of the Malabar Compensation

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for Tenants' Improvements Act. The District Munsif of Badagara who tried the suit was of opinion that the provisions of the Crown Grants Act, XV of 1895, applied to the case and accordingly came to the conclusion that the rights of the parties should be adjudicated according to the tenor of the document. The document being specific on the point that the defendant should not claim the value of any improvements that he might make on the property, the District Munsif came to the conclusion that the plaintiff was not bound to pay anything in respect of the improvements. The defendant preferred an appeal to the lower appellate Court and the learned District Judge of North Malabar differed from the District Munsif as regards the applicability of the Crown Grants Act to the case in question. He, however, was of opinion that Malabar Act, I of 1900, did not apply to the present case, because the present case related to a road margin in the heart of Badagara bazaar, by the side of the principal public offices and at the junction of three roads, and he was accordingly of opinion that the land in question could not be said to be an *agricultural holding* within the meaning of the Malabar Act. The learned District Judge also relied on a decision of this Court reported in *Chathukutty* v. *Kunhappu*(1), where the learned Judge, JACKSON, J., held that Malabar Act, I of 1900, applies only to improvements effected to agricultural holdings and vacant kudiyiruppu (building-sites). The learned District Judge was of opinion that the roadside poramboke in question which was leased to the appellant could not be said to be an *agricultural holding* or a building-site (kudiyiruppu) available for purposes of being built upon. It was roadside poramboke proper, and as the same was not required immediately for any purpose by the District Board, it was thought that

(1) (1927) I.L.R., 50 Mad., 813.

it may be leased to the defendant temporarily but on the specific terms and conditions mentioned in the lease. The learned District Judge (Mr. A. V. GOVINDA MENON) observed as follows in paragraph 2 of his judgment:—

"It would be a perversion of common sense to hold that when, as here, in an urban area like Badagara, a tenant agrees to occupy a road margin for a short term and agrees with the District Board (in which the road is vested) to go away whenever called upon, without claiming anything for any fixture he might erect upon the site, such a contract comes within the mischief attempted to be struck at by the Improvements Act."

The defendant has preferred this second appeal, and on his behalf it was argued by his learned Advocate that the decision of this Court referred to by me, above, viz., *Chathukutty* v. *Kunhappu*(1), requires reconsideration. The learned Advocate submitted that the policy of the Malabar Compensation for Tenants' Improvements Act was to encourage the making of improvements in respect of all kinds of properties in Malabar, and that there was nothing in any of the provisions of the Act which restricted the scope of the Act to agricultural lands or vacant kudiyiruppu (building-sites), as mentioned in that decision. The learned Advocate accordingly submitted that that decision should be reconsidered as the question related to a matter of great importance in Malabar. On the other side, the learned Advocate who appeared for the District Board, drew my attention to the definition of tenant in section 3 of the Act, where reference is made to "cultivation" and "to cultivate." But I am inclined to think on a reading of sub-clause (1) of section 3 as a whole, that the natural construction is to limit those words to the case of "waste lands" mentioned in the last portion of the sub-section.

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Then it was argued that there were decisions under the prior Act of 1887 to the effect that the Act did not apply to the case of buildings in towns. It was pointed out that, in the judgment of MUTTUSWAMI AYYAR and WEIR, JJ., in Second Appeal No. 1445 of 1889, a case from Calicut, their Lordships observed:

"The dwelling houses described in section 3, clause 2, of the Act are grouped together with farm buildings, and the term 'improvement' itself is defined in the Act as 'a work which adds to the value of a holding.' In their ordinary sense, the words appear to us to refer to dwelling houses appurtenant to a holding for agricultural purposes, and not to dwelling houses let within the limits of a town for purposes of residence only."

Again they say,

"The dwelling house for which compensation is claimed in this suit forms admittedly no part of an agricultural holding. The house, it is stated, is situated in a favourite suburb of the town of Calicut. We are, therefore, of opinion that the Act does not apply, and section 7 of the Act does not render inoperative the restrictive covenant set out in Exhibit 'A.'"

Their Lordships accordingly held that the Malabar Act, I of 1887, did not apply to such a case, and they disallowed compensation in respect of the said building. The present Act, I of 1900, has not by any express provision made the point in any way clearer, but the object of the present Act would seem to be to secure to the tenants better (higher rate of) compensation for improvements in respect of which they would be entitled to compensation under the prior Act or by custom. At page 345 of *Malabar Law and Aliyasanthana Law* by the late Mr. Justice SUNDARA AYYAR, edited by Mr. Sitarama Rao, the following passage occurs:—

"It appears, however, that the customary rule as to payment of compensation applied only to agricultural tenancies—vide Logan's Manual, Vol. II, Appendix III (cxc)."

Though the question was discussed before me, no new and further materials have been placed before me to

induce me to say that the decision in 50 Mad. requires reconsideration. On the other hand, though it was observed at page 814 of 50 Madras, that "curiously enough, the question appears to be *res integra*," it now appears that a bench of this Court in effect decided a similar point in 1890 in S.A. No. 1445 of 1889 from South Malabar. It also appears from the speech of the Hon'ble S. Subrahmanya Ayyar in his final observations on this Bill, that the question was raised when the Bill was being considered. He said

"The Palghat Sarvajana Sabha entertains a doubt as to whether the definition of the word 'tenant' would not include lessees of warehouses and mercantile shops. It may be pointed out that the scope of the Bill does not admit of such an interpretation, and that the Transfer of Property Act provides for leases other than leases for agricultural purposes"—(*Fort St. George Gazette* Supplement, dated 2nd November 1886).

I therefore think that absolutely no grounds have been made out why I should not follow the decision of this Court in *Chathukutty* v. *Kunhappu*(1). As I said, the finding in this case is that the suit land is a roadside poramboke and as it was not thought necessary to keep it as such by the District Board at that time, it was suggested that the same may be handed over to the defendant on the particular terms and conditions mentioned in Exhibit A, for temporary occupation. Further, the erection of substantial buildings would, I think, in the present case, be inconsistent with the purpose for which the land was let; see definition of "improvement" in section 3 (3) of the Act. Nor could there be any custom applicable to lease of porambokes like the one before me.

In this view it is not necessary for me to express an opinion on the question whether the Crown Grants Act

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would apply to such a case. *Prima facie*, there are serious obstacles in the way of accepting the contention which found favour with the first Court on this point. Though it is true that the Government may have some rights in the underground soil of public roads, which according to the Act vest in the Local Boards for certain purposes, it does not, in my opinion, follow that the Local Board or the President is thereby an agent of the Government when it or he deals with such properties. On the other hand, a reading of sections 160 and 199 of the Madras Local Boards Act leads to the conclusion that such roads, as roads and for communication purposes, vest in the Local Boards which are entitled to deal with the same in the way authorized by law under section 160 (3). The President of the Local Board may, with the permission of the Board, grant leases of roadside poramboke according to the rules framed by the Government, under section 199 (*d*). Local Boards may acquire property and lease the same, subject to rules made by Government. Though the Local Boards are bound by rules so framed by Government, they are so bound not because the Government happen to be the owner of the subsoil but because the rules when framed become part and parcel of the Local Boards Act. I therefore think, as at present advised, that this case cannot be brought under the Crown Grants Act. But, as I said, having come to the conclusion that the Malabar Compensation Act does not apply, it does not matter for the purpose of this case whether the Crown Grants Act applies or not.

I think the District Judge was right, and the Second Appeal is dismissed with costs. I allow the appellant three months' time for removal of the buildings.

K.R.