

LAKSHMIKANTA RAO  
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RAMAYYA.  
BEASLEY C.J. arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place and the strict grammatical meaning of the words is, their Lordships think, the only safe guide."

This decision of the Privy Council is not quoted by MADHAVAN NAIR J. in *Ahammad Kutty v. Kottekkat Kuttu*(1), who in consequence does not rely on the express language of the article and does not apply the principle there laid down. In our opinion, applying that principle, this appeal must be dismissed with costs.

A.S.V.

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## APPELLATE CIVIL.

*Before Mr. Justice Varadachariar and Mr. Justice Burn.*

ATHIMANNIL MUHAMMAD (PLAINTIFF), APPELLANT,

v.

THE MALABAR DISTRICT BOARD (DEFENDANT),  
RESPONDENT.\*

*Madras Local Boards Act (XIV of 1920), sec. 225, sub-ss. (1) and (3)—Contract entered into with Vice-President of Local Board—President cancelling same acting under section 106 (1) of the Act—Suit for damages filed after six months—Limitation—Test, whether the action is one on contract or independent of contract, only a working rule—Real test, whether the act complained of was done in pursuance of a statute.*

M filed a suit against a District Board, more than six months after the date of the accrual of the cause of action, claiming damages on the ground that its President improperly cancelled a contract of lease, for one year, of the tolls in

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(1) (1932) I.L.R. 56 Mad 458.

\* Appeal No. 94 of 1930.

certain places, which was stated to have been entered into by him with the Board through its Vice-President. The President in performance of what he (the President) thought was his duty under the Madras Local Boards Act, as he interpreted the same, accepted a higher offer by another person, and the cancellation of the acceptance of M's offer was the necessary result.

*Held* (i) that section 225, sub-sections (1) and (3) of the Madras Local Boards Act applied and the suit was out of time;

(ii) that, though the distinction between actions on contract and actions independent of contract may be convenient enough as a working rule in such cases, the real test to be applied was whether what was complained of was some act done in pursuance of a statute.

APPEAL against the decree of the Court of the Subordinate Judge of South Malabar at Calicut, dated the 30th March 1929, and passed in Original Suit No. 3 of 1928.

*P. S. Narayanaswami Ayyar* for appellant.

*P. Govinda Menon* for respondent.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—We have heard arguments on this appeal only on the question raised by the second issue, namely, whether the suit is barred under section 225 (3) of the Madras Local Boards Act, as it has admittedly been instituted more than six months after the accrual of the alleged cause of action. As we agree with the lower Court in its conclusion on this point, it is unnecessary to deal with the other issues arising in this case.

The plaintiff filed this suit, claiming damages from the District Board of South Malabar, on the ground that by the order dated 31st March 1925 the President improperly cancelled a contract with the plaintiff whereby the plaintiff had been given the lease, for one year of the tolls in certain

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places in the Malabar District. The material facts are, that, pursuant to an invitation of tenders, the plaintiff made a tender on the 23rd March 1925 which was accepted by the Vice-President, during the President's absence, on the 24th March. The President seems to have left directions that the papers relating to the lease of tolls should be placed before him and he was, therefore, apparently of opinion that the acceptance by the Vice-President was not authorized. He also seems to have found that there was another contractor who offered a much larger amount in respect of the same toll-gates. He naturally accepted the tender of the other man and, as a necessary result, cancelled the acceptance of the plaintiff's tender. Both these subjects are embodied in one order of the President (see Exhibits III and V). The question for consideration under the second issue is whether or not the action is in respect of "any act done or purporting to be done in pursuance or execution or intended execution of the Act".

On behalf of the appellant, Mr. Narayana-swami Ayyar has contended that several cases have held that this provision does not apply to cases arising out of breach of contract but is limited to liabilities arising out of the execution of, or the omission to execute, statutory duties of such bodies. Reference may, in this connection, be made to *Mayandi v. McQuhae*(1), *The President, District Board, Malabar v. Kenti Kanaran*(2), *Ranchordas Moorarji v. The Municipal Commissioner for the City of Bombay*(3), *Municipal*

(1) (1878) I.L.R. 2 Mad. 124.

(2) (1906) 17 M.L.J. 390.

(3) (1901) I.L.R. 25 Bom. 387.

*Council of Kumbakonam v. Veeraperumal Pada-yachi*(1) and *Bradford Corporation v. Myers*(2). This distinction between actions on contracts and actions independent of contracts may be convenient enough as a working rule, but we do not think it can be said to represent accurately the basis of the applicability of the rule. This was realised by JENKINS C.J. even in *Ranchordas Moorarji v. The Municipal Commissioner for the City of Bombay*(3) and is emphasised by Lord SHAW in *Bradford Corporation v. Myers*(2). The real test is whether what is complained of is some act done in pursuance of the statute. In cases where there is no dispute as to the existence of a contract, all further rights and liabilities between the parties are governed by the ordinary law relating to contracts ; and it is true enough, in such a case, to say that the rights and liabilities of the parties in respect of the contract are matters of ordinary law and not matters governed by the statute. But where, as in the present case, we find that the cancellation of the acceptance of the plaintiff's offer is the necessary result of what the President thought, in accordance with the terms of the Act as he interpreted them, his duty to accept, viz., the highest tender—and he did this on the footing that the Vice-President's acceptance of the plaintiff's tender is not a compliance with the Act—we cannot say that the question does not relate to an act done under the statute. The right to levy tolls is a special privilege conferred by the statute upon local bodies and, under the

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(1) (1914) 28 M.L.J. 147.

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(3) (1901) I.L.R. 25 Bom. 387.

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terms of section 106 (1), Local Boards are authorized either to manage the collection of the tolls themselves or through their own agency or to lease them out. In either case what the President as representing the Board does in connection with the leasing out of the right to levy tolls is undoubtedly an act done in execution of his powers or duties under the Act.

The discussion in *Bradford Corporation v. Myers*(1) is itself sufficient to show the difficulties in the way of attempting anything like an exhaustive definition or clear-cut differentiation of the cases falling under the section and of cases not falling under the section. Lord BUCKMASTER L.C., for instance, emphasises the distinction between an incidental power to trade and a direct duty to trade, even in cases where a statutory body is authorized to trade and the LORD CHANCELLOR was of opinion that anything falling under the second head will be governed by the provisions of the Act. Both Lord HALDANE and Lord SHAW emphasise the impossibility of framing anything like a general test. The question must depend upon the circumstances of each case, and, for the reasons already given, we hold that the present case is within the terms of section 225 (1) of the Local Boards Act. In *Municipal Council of Kumbakonam v. Veeraperumal Padayachi*(2) NAPIER J. takes care to point out that, in the case then before the Court, the contract was not of such a character as must necessarily arise out of statutory powers given to the local body. The same cannot be said of

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(1) [1916] 1 A.C. 242.

(2) (1914) 28 M.L.J. 147.

the contract here. In *Bhagchand Dagadusa v. Secretary of State for India*(1) the Privy Council, in dealing with a similar provision, namely, section 80 of the Code of Civil Procedure, pointed out that, if a particular action falls within the language of the statute, it is not for the Court to canvass the policy or even the expediency of interfering with a person's right of action by such a restrictive provision. In the view that the present action is clearly within the terms of section 225, sub-sections 1 and 3 of the Local Boards Act, the suit must fail on the ground that it has been instituted more than six months after the accrual of the alleged cause of action. The appeal is, therefore, dismissed with costs.

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(1) (1927) I.L.R. 51 Bom. 725 (P.C).

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