APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Butler.

K. C. A. ARUNACHALA NADAR AND FOUR OTHERS (FIRST PLAINTIFF AND LEGAL REPRESENTATIVES OF SECOND PLAINTIFF), APPELLANTS,

1934, February 20.

v.

SRIVILLIPUTTUR MUNICIPAL COUNCIL THROUGH ITS CHAIRMAN (DEFENDANT), RESPONDENT.*

Indian Contract Act (IX of 1872), sec. 65—Municipality—Agreement by, discovered to be void because not under signature of two councillors as provided by sec. 45 of Madras District Municipalities Act (IV of 1884)—Right to recover upon, under sec. 65 of Contract Act—Sec. 113 (v) of Madras District Municipalities Act (IV of 1884)—Distribution of rice in times of scarcity—Undertaking by Municipality of—Ultra vires *of Municipality if.*

During the period of scarcity after the war of 1914—1918 the plaintiff agreed to supply rice bags to a Municipality, which a committee duly appointed by the Municipality was to retail to private persons. The suit was for the recovery of a sum of money as the value as upon the date of delivery of certain bags of rice supplied by the plaintiffs to the Municipality pursuant to the said agreement. The plaintiffs could not sue upon contract because they had no written contract signed by two councillors as provided by section 45 of the then Madras District Municipalities Act IV of 1884.

Held that the plaintiffs were entitled to recover under section 65 of the Indian Contract Act.

A Municipality is a person who can make agreements. Sections 45 and 46 of the Madras District Municipalities Act IV of 1884 are only concerned with contracts, and that Act, while making special provision in terms as regards contracts, left agreements to be governed by the general law. If, therefore, a Municipality made an agreement which was discovered to be void because it was not under the signature of two

* Letters Patent Appeal No. 29 of 1933.

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councillors as provided by section 45 of that Act, it could not be said to go behind the statute or to render its provisions nugatory, if such an agreement was brought within the ambit of section 65 of the Indian Contract Act.

Held further that in undertaking the business of distributing rice the Municipality did not act *ultra vires*.

The safety, health, comfort and convenience of the people were all furthered by the arrangement in question within the meaning of section 113 (v) of the Madras District Municipalities Act of 1884.

APPEAL under Clause 15 of the Letters Patent against the judgment and decree of PAKENHAM WALSH J. dated the 15th day of November 1932 and passed in Second Appeal No. 1098 of 1928, preferred to the High Court against the decree of the Court of the Subordinate Judge of Ramnad at Madura in Appeal Suit No. 99 of 1926 (Appeal Suit No. 558 of 1925, District Court, Ramnad, Appeal Suit No. 96 of 1925, late Additional Sub-Court, Ramnad) preferred against the decree of the Court of the District Munsif of Sattur in Original Suit No. 46 of 1924.

K. Rajah Ayyar (with him, V. *Ramaswami Ayyar* and *K. S. Rajagopalachari*) for appellants.—Assuming that in this case there was an agreement it directly comes within the principle of section 65 of the Indian Contract Act.

[Section 65 refers only to an agreement, while section 45 of the Madras District Municipalities Act refers to a contract which is an agreement enforceable at law. Where there is no contract and there is only an agreement, section 65 would *prima facie* seem to be directly applicable while section 45 of the Municipalities Act would have no application at all—JACKSON J.]

That is so; but the other side has successfully urged the contrary on the strength of *The Municipal Council, Tiruvarur* v. *Kannuswami Pillai* (1). An agreement which is void in its inception is as much within the principle of section 65 as a

(1) (1929) I.L.R. 53 Mad. 352.

contract which becomes void; *Harnath Kunwar* v. *Indar Bahadur Singh*(1). It is not correct to say that the Privy Council laid down in *Annada Mohan Roy* v. *Gour Mohan Mullick*(2) that section 65 would not apply to the contract in that case. All that their Lordships say is that that was not a contract which could be enforced. The time at which an agreement is discovered to be void within the meaning of section 65 is the date of the agreement; *Hansraj Gupta* v. *Official Liquidators of Dehra Dun, etc., Company*(3). [*Thangammal Ayiyar* v. *Krishnan*(4) and *Palaniswami Goundar* v. *English and Scottish Co-operative Wholesale Societies, Ltd.*(5) referred to.] Section 65 was applied to the case of a sale by a minor in *Appaswami Ayyangar* v. *Narayanaswami Ayyar*(6). *Gulabchand* v. *Fulbai*(7) points out the scope of that section; pages 416–7. It lays down that section 65 applies to all cases in which an agreement is discovered to be void. *Radha Krishna Das* v. *The Municipal Board of Benares*(8) lays down the older rule; page 601. The principle of section 65 is stated in *Mathura Mohan Saha* v. *Ram Kumar Saha* and *Chittagong District Board*(9); page 827. "Person" in that section will include also a corporation or a natural person; see *Pharmaceutical Society* v. *London and Provincial Supply Association*(10), page 861. If the case can be brought within the terms of section 65, reference to English cases will be irrelevant. The case is not one to which the provisions of sections 44 and 45 of the District Municipalities Act apply. *Douglass* v. *Rhyl Urban Council*(11) shows that the provisions of sections 44 and 45 of the District Municipalities Act as to writing, etc., apply only to cases that strictly come within those sections; page 413. In the present case the municipality acted not under the District Municipalities Act but under the Ordinance.

S. Srinivasa Ayyangar (with him, *S. Narayana Ayyangar*) for respondent.—If there is no contract there can be no privity and the provisions of the Ordinance and the Circulars will not entitle the appellants to sue. The contract is not taken out of the Municipalities Act. The respondent municipality is the

(1) (1922) I.L.R. 45 All. 179, 184 (P.C.).
(2) (1923) I.L.R. 50 Calc. 929, 934 (P.C.).
(3) (1932) I.L.R. 54 All. 1067, 1080 (P.C.).
(4) (1929) I.L.R. 53 Mad. 309.
(5) A.I.R. 1933 Mad. 145.
(6) (1930) I.L.R. 54 Mad. 112.
(7) (1909) I.L.R. 33 Bom. 411.
(8) (1905) I.L.R. 27 All. 592.
(9) (1915) I.L.R. 43 Calc. 790.
(10) (1880) 5 App. Cas. 857.
(11) [1913] 2 Ch. 407.

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creature of a statute and its capacity to contract depends upon its fulfilling the conditions imposed by that statute. In England a distinction is made between common law corporations and corporations created by statute and it has been held in the case of the former that they are liable on the principle of *quantum meruit*. Not so in the case of statutory corporations, for to allow a *quantum meruit* claim in their case would be to ignore statutory restrictions. In India there has been a conflict between the decisions. Section 65 applies to agreements void in their inception and to that extent *Harnath Kunwar* v. *Indar Bahadur Singh*(1) supports the appellants. That section would apply also in the case of common law corporations. But it would apply only to agreements which are within the competency of the parties. The suit in the present case is one to enforce a contract and section 44 of the District Municipalities Act is a bar to the suit. Sections 44 and 45, clause 2, referred to. "Contract" in these sections is used in the wider sense of agreement. Section 46 referred to. Unless a contract is made in the manner provided by the provisions of that Act, the funds in the hands of the municipality cannot be made liable even if there was an agreement. [*Mohamed Ebrahim Molla* v. *Commissioners for the Port of Chittagong*(2), *Annada Mohan Roy* v. *Gour Mohan Mullick*(3) and *Ramaswami Chetty* v. *The Municipal Council, Tanjore*(4) referred to.] In *The Municipal Council, Tiruvarur* v. *Kannuswami Pillai*(5) the point was conceded; see page 362 and Pollock and Mulla, Commentary on the Indian Contract Act, sixth edition, page 378. *Young & Co.* v. *Mayor & Corporation of Royal Leamington Spa*(6) is the case upon which the decisions of the Indian Courts are based. *Young* v. *Corporation of Leamington*(7) is the decision of the Court below in that case. Section 65 of the Contract Act is a general provision intended to apply to all agreements void on any account whatsoever. That section cannot be held to override sections 44 to 46 of the District Municipalities Act which lay down a special rule regarding contracts by statutory bodies like municipalities. Section 46 of the Municipalities Act gives the answer to section 65 of the Contract Act because the former section says that funds in the

(1) (1922) I.L.R. 45 All. 179 (P.C.).
(2) (1926) I.L.R. 54 Calc. 189.
(3) (1923) I.L.R. 50 Calc. 929, 931.
(4) (1906) I.L.R. 29 Mad. 360.
(5) (1929) I.L.R. 53 Mad. 352.
(6) (1883) 8 App. Cas. 517.
(7) (1882) 8 Q.B.D. 579.

hands of a municipality are liable only for contracts duly made. It would be *ultra vires* of the municipality to enter into such a contract as that in the present case. The fiction of an implied contract will not be made where an express contract would be *ultra vires*; *Sinclair* v. *Brougham*(1). Section 65 of the Contract Act does not deal with transactions of parties which are *ultra vires*. The agreement in the present case is *ultra vires* of the municipality and section 65 is inapplicable to such a case. The section has been held to be inapplicable to the case of a mortgage by a minor; *Mohoru Bibi* v. *Dharmodas Ghose*(2). The incapacity to contract in the case of a minor is absolute, while in the case of a municipality it is partial, that is, it is subject to restrictions imposed by statute. In *Punjabhai* v. *Bhagwandas*(3) section 65 was held to be inapplicable to the case of a lunatic. *Thangammal Ayiyar* v. *Krishnan*(4) is distinguishable because the case was not one of incapacity to contract and the invalidity of the agreement existed apart from statute. The contract need not be *ultra vires* for all purposes; it is enough if it is *ultra vires* in the case in question. "Person" in section 65 does not include a minor; *Mohoru Bibi* v. *Dharmodas Ghose*(2). A corporation, which is a creature of a statute and which can speak and act only in a particular way, does not also come within that expression. Section 65 of the Contract Act must be read so as to be consistent with sections 44 to 46 of the District Municipalities Act.

V. Ramaswami Ayyar in reply.

Cur. adv. vult.

JACKSON J.

The JUDGMENT of the Court was delivered by JACKSON J.—The plaintiffs are wholesale rice merchants of Sattur who agreed during the period of scarcity after the war of 1914-1918 to supply rice bags to the Srivilliputtur Municipality, which a committee duly appointed by the Municipality was to retail to private persons. After a consignment of bags had been made in February 1920 the price fell and the Municipality

(1) [1914] A.C. 398, 417.
(2) (1903) I.L.R. 30 Calc. 539, 548 (P.C.).
(3) (1928) I.L.R. 53 Bom. 309. (4) (1929) I.L.R. 53 Mad. 309.

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disposed of them at a loss and refused to pay the plaintiffs more than what it got by the sale. The plaintiffs claim Rs. 3,000 as the value of the bags as upon the date of delivery. The District Munsif and Sub-Judge decreed the suit except for a reduction made on account of gunny bags. This Court dismissed the suit on second appeal. Hence this Letters Patent Appeal.

The plaintiffs cannot sue upon contract because they have no written contract signed by the councillors as provided by section 45 of the then Act, Madras Act IV of 1884. They claim however under section 65 of the Indian Contract Act that the agreement having been discovered to be unenforceable in law on this account, they are still entitled to compensation in proportion to the advantage received by the Municipality.

This claim was originally met by citing *Radhakrishna Das* v. *The Municipal Board of Benares*(1) which has been followed in *Ramaswami Chetty* v. *The Municipal Council, Tanjore*(2) and evidently influenced PAKENHAM WALSH J. in our present case. It was held in Allahabad that section 65 cannot apply to a contract void *ab initio*, and it was also suggested hypothetically that if a Court were to hold otherwise "it would render nugatory the salutary provision of the Municipalities Act which provides that a contract executed otherwise than in conformity with it shall not be binding on the Board". In *Gulabchand* v. *Fulbai*(3) it was suggested that the scope of section 65 may be extended to contracts void *ab initio*, and now in the light of *Harnath Kunwar* v. *Indar*

(1) (1905) I.L.R. 27 All. 592. (2) (1906) I.L.R. 29 Mad. 360.
(3) (1909) I.L.R. 33 Bom. 411.

Bahadur Singh(1) that suggestion must be accepted as correct.

Now if a Municipality make an agreement which is discovered to be void because it is not under the signature of two councillors as provided by section 45, Madras Act IV of 1884, can it be said to go behind the statute or to render its provisions nugatory, if such an agreement is brought within the ambit of section 65, Indian Contract Act? The short answer to this question would seem to be that the Municipalities Act is silent about and therefore not concerned with such an agreement. The distinction between agreements and contracts is well-known, and it would have been quite easy to provide that every agreement made on behalf of a Municipal Council shall be immune from the provision of section 65, Indian Contract Act, but there is nothing of the kind in the Act. The Act only states that in certain circumstances contracts shall be not binding on the council. Sections 45 and 46 are only concerned with contracts. If a Council makes a promise it is an agreement, if that agreement is not enforceable by law it is said to be void, and when an agreement is discovered to be void any person who has received any advantage under such agreement is bound to restore it. If it is held that a Municipality is a person who can make agreements, then, if such person is treated under the general law can it be said that a salutary provision has been defeated? There is nothing salutary in allowing ratepayers to escape their statutory obligation more easily than other persons. The Legislature is considering the welfare of the

(1) (1922) I.L.R. 45 All. 179 (P.C.).

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community as a whole, and there is no cause for surprise that while making special provision in terms as regards contracts, it left agreements to be governed by the general law. Mr. Srinivasa Ayyangar argues that the special overrides the general; a maxim of universal acceptance, but before its application one must first find that there is a special law. If agreements are not specially mentioned they are under the general law. Probably the idea that to apply section 65 would go behind the statute is derived from the English leading case in this matter, *Young & Co.* v. *Mayor & Corporation of Royal Leamington Spa*(1) arising out of *Young* v. *Corporation of Leamington*(2). In that case an engineering firm had spent between £6,000 & 7,000 upon improvements in Leamington, and the Court held that inasmuch as the contract was not sealed as required by the statute the suit did not lie. On the facts of this particular case LINDLEY L.J. finds that to allow the claim would in effect be repealing the Act of Parliament and depriving the ratepayers of that protection which Parliament intended to secure for them. But this language need not necessarily be imported to India. We can hardly say that if this claim is allowed we shall in effect be repealing the Municipalities Act or depriving the ratepayers of that protection which the Legislature intended to secure for them. Because obviously by its language which is the best guide to a Legislature's intentions it has not made this provision in regard to agreements, and on general principles it is hard to see why it should make such a provision. In the same English case, *Young*

(1) (1883) 8 App. Cas. 517. (2) (1882) 8 Q.B.D. 579.

v. *Corporation of Leamington*(1), BRETT L.J. evidently considers that the decision to which he is constrained to come, causes injustice, and LINDLEY L.J. describes it as "hard and narrow". On appeal LORD BLACKBURN in *Young & Co.*. v. *Mayor & Corporation of Royal Leamington Spa*(2) observed "it is true this works great hardship".

On the other hand the law in its present state in this Presidency works no hardship. If under an agreement such as that entered into by Young & Co. with Leamington or that between these plaintiffs and Srivilliputtur advantage has accrued to the Municipality, the Municipality makes good that amount to its promisees. If the agreement however does not redound to the advantage of the Municipality it is in no way bound, and the interests of the ratepayers are fully secured.

This argument has proceeded on the assumption that a Municipality is a person who can make agreements. The Act itself seems to assume as much, for even under section 45 a contract below Rs. 100 is left to its unhampered discretion. The Act does not specially empower Municipalities to make agreements, and then prescribe the form for agreements involving more than Rs. 100. It assumes the power and only prescribes a form for the larger amount. We see no force therefore in Mr. Srinivasa Ayyangar's suggestion that a Municipality is more like a lunatic or a minor than a juristic person.

Nor can it be said that in undertaking this business of distributing rice the Municipality acted *ultra vires*. The safety, health, comfort and convenience of the people were all furthered by

(1) (1882) 8 Q.B.D. 579. (2) (1883) 8 App. Cas. 517.

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this arrangement at the end of the war. *Cf.* Section 113 (v) of Madras Act IV of 1884.

In *Mohamed Ebrahim Molla* v. *Commissioners for the Port of Chittagong*(1) it is held that the contract is void, but Mr. Mitter argued that even so section 65 of the Contract Act would apply (page 194) and the Court did not see why plaintiffs should not recover *quantum meruit* (page 217). This case is followed by PAKENHAM WALSH J. sitting with KUMARASWAMI SASTRI J. in *The Municipal Council, Tiruvarur* v. *Kannuswami Pillai*(2). In that case the parties "agreed" to a decree on a *quantum meruit* basis, presumably because they did not think it worth disputing. Sir Frederick Pollock has questioned the wisdom of Counsel's conceding the point in *Mohamed Ebrahim Molla* v. *Commissioners for the Port of Chittagong*(1) (see page 378 of his Commentary on the Contract Act, sixth edition) but he only follows the English decisions. It would be dangerous to ignore the plain statutory provision of section 65 and argue as though the matters were entirely dependent upon English rules of Equity as laid down in the English cases. On this general proposition the learned judgment of our late Chief Justice in *Municipal Council, Dindigul* v. *Bombay Co., Ltd.*(3) repays perusal.

It has been found that the quantum of the claim is just and we restore the decree of the Subordinate Judge with costs throughout to the appellants.

A.S.V.

(1) (1926) I.L.R. 54 Calc. 189. (2) (1929) I.L.R. 53 Mad. 352.
(3) (1928) I.L.R. 52 Mad. 207.