1934

JAGANNATH v. KING-EMPEROR THROUGH BANDHU

been compelled to answer that question and was, therefore, entitled to the benefit of section 132 of the Indian Evidence Act apart from any question as to whether the witness was absolutely privileged under the English common law or whether he only had a qualified privilege to the extent conferred upon him by the exceptions to section 499 of the Indian Penal Code.

Nanavutty and Thomas, JJ.

For the reasons given above we allow this application for revision, set aside the conviction and sentence passed upon the applicant Jagannath, acquit him of the offence charged and direct that the fine if paid be refunded to him.

Application allowed.

FULL BENCH

Before Mr. Justice Bisheshwar Nath Srivastava, Acting Chief Judge, Mr. Justice Ziaul Hasan and Mr. Justice H. G. Smith

1934 *August*, 22

MOHAMMAD RAMZAN (DEFENDANT-APPELLANT) *v.* MUNICIPAL BOARD, TANDA (PLAINTIFF-RESPONDENT)*

United Provinces Municipalities Act (II of 1916), *section* 96(1)—*Contract of night-soil by Municipal Board—Municipal Board sanctioning contract but entering the name of applicant's nephew—Contract, whether* benami *and valid*—Benami *transaction, whether forbidden in the case of public corporation.*

(*Per* SRIVASTAVA, A.C.J. and ZIAUL HASAN, J.—SMITH J. dissenting.) For the validity of a contract by a Municipal Board it is necessary that there should be a resolution of the Board sanctioning it.

Where a Municipal Board passed a resolution sanctioning a contract for night-soil, and the name of the nephew of the applicant was entered as a benamidar in the resolution, the contract cannot be held as invalid on account of not having been sanctioned in the name of the applicant by the Board as required by section 96(1) of the United Provinces Municipalities Act.

*Second Civil Appeal No. 258 of 1932, against the decree of M. Zia-uddin Ahmad, Subordinate Judge of Fyzabad, dated the 17th of August, 1932, reversing the decree of S. Hasan Irshad, Munsif of Akbarpur, Fyzabad, dated the 30th of January, 1932.

There is no provision of law forbidding the application of the principle of *benami* in the case of transactions to which a public corporation is a party.

(*Per* SMITH, J.)—It cannot be held that the contract with the uncle was sanctioned by the Board within the meaning of section 96(1). The Board far from sanctioning the contract in favour of the uncle carefully abstained from doing so. The contract by reason of want of sanction by the Board was not binding on the Board and it was, therefore, not binding on the uncle either.

The case was originally heard by a Bench consisting of Raza and Smith, JJ. who referred certain important questions involved in it to a Full Bench for decision. The referring order of the Bench is as follows:

1934 *January*, 11.

RAZA and SMITH, JJ.:—This is a second appeal from a decree, dated the 17th of August, 1932, of the learned Subordinate Judge of the Fyzabad District, by which he allowed an appeal from a decree, dated the 30th of January, 1932, of the learned Munsif of Akbarpur in the Fyzabad District.

The suit was by the Municipal Board of Tanda against one Mohammad Ramzan for the recovery of Rs.700 with interest. The sum of Rs.700 was said to be due from the defendant as the balance of a sum of Rs.2,300 agreed to be paid by him for night-soil for the year 1st April, 1929, to 31st March, 1930. The learned Munsif found that the contract was for Rs.2,200, and not for Rs.2,300. He further found that the contract was subject to an agreement that the defendant should have a credit for a quantity of "manure" already appropriated by the plaintiff Board or its employees, and that night-soil to the value of at least Rs.700 had already been disposed of by the plaintiff Board before defendant got possession of the night-soil trenches. He found further that the deed of agreement, dated the 29th of November, 1929, set up by the plaintiff Board, was not duly executed by the defendant, and that in any case, having regard to the provisions of the United Provinces Munici-

1934

MOHAMMAD RAMZAN v. MUNICIPAL BOARD, TANDA

palities Act, (II of 1916), the alleged contract was never sanctioned by the plaintiff Board in the manner required by section 96 of the Act, and that therefore the plaintiff Board could not get a decree on the basis of the agreement alleged to have been entered into by the defendant. In the result, the learned Munsif dismissed the plaintiff's suit with costs.

Raza and Smith, JJ.

The plaintiff appealed against the decision of the learned Munsif, and the learned Subordinate Judge took the view that the agreement was executed by the defendant, and that the sum due from him under it was Rs.2,300. As to the contentions based on sections 96 and 97 of the United Provinces Municipalities Act that were raised on behalf of the defendant, the learned Subordinate Judge took the view that the agreement was in effect sanctioned, and was subsequently ratified by later proceedings of the plaintiff Board. As regards the defendant's claim for a reduction in the amount set forth in the agreement, the learned Subordinate Judge took the view that the defendant knew that some manure must have been disposed of before he entered into the agreement, and that, as the Board by a resolution of the 30th of March, 1930, declined to allow him any reduction in the amount specified in the agreement, the defendant was liable for the full amount. The defendant admittedly paid in all Rs.1,600, so that there was a balance of Rs.700. The learned Subordinate Judge accordingly allowed the appeal, and decreed the claim of the plaintiff Board. Against that decision the defendant has preferred this second appeal.

The findings of the learned Subordinate Judge that the defendant executed the agreement, dated the 29th of November, 1929, and that it was for a sum of Rs.2,300, are findings of fact which cannot be attacked in second appeal. The points taken on behalf of the appellant at the hearing of the appeal were that the contract, involving, as it did, an amount exceeding Rs.250, required the sanction of the Board by a resolu-

tion as laid down in section 96(1) of the United Provinces Municipalities Act; that no such sanction was given; that in these circumstances the contract, having regard to the provisions of section 97(3) of the Act, was not binding on the Board; and that as the contract was not binding on the Board, it was not binding on the defendant either.

Raza and Smith, JJ.

The defendant admittedly got possession of the night-soil trenches on the 15th of October, 1929. He executed the agreement, as has already been mentioned, on the 29th of November, 1929. On the 26th of November, the Board passed a resolution in the following terms:

> *"Manzuri theka maila Tanda naliyan aur bara jiski qimat Nur Muhammad sakin Tanda Rs.2,300 deta hai aur ek hazar rupiya peshgi jama kar diya hai, chunki imsal is se ziadha amdani aneki bilkul ummed nahin hai aur guzishta sal qarib qarib yehi amdani Tanda men maile ki bikri se hui thi, lihaza Secretary sifarish karte hain ki manzur kiya jawe."* *"Pas kiya jata hai."*

It will be seen that the resolution purported to be in favour of one Nur Mohammad, who, it appears, is the nephew of the defendant-appellant, Mohammad Ramzan, and is described in the resolution as having paid an advance of Rs.1,000. There is no doubt that it was the defendant who made the first deposit of Rs.1,000, and it appears from the judgment of the learned Subordinate Judge that there is nothing to show that Nur Mohammad himself either wanted a theka or made a deposit. According to M. Abdul Qayum, who was D W. 2 in the case, and who was a member of the Municipal Board of Tanda at the time of the contract, the resolution was in favour of Nur Mohammad because Mohammad Ramzan himself had no property. The learned Subordinate Judge thought that that might be the explanation of the appearance of the name of Nur Mohammad in the proceedings. Alternatively, he

1934

MOHAMMAD RAMZAN v. MUNICIPAL BOARD, TANDA

Raza and Smith, JJ.

thought that Nur Mohammad's name was entered by a mere mistake for that of Mohammad Ramzan.

It is argued for the defendant-appellant that whatever the reason may have been for the appearance of the name of Nur Mohammad in the proceedings, the resolution was, in fact, in his favour, and the Board did not modify or cancel it in the manner prescribed by section 94(6) of the Act. In these circumstances, it is contended that it cannot be said that there was a contract with Mohammad Ramzan sanctioned in the manner required by section 96(1) of the Act, and that the contract entered into by Mohammad Ramzan was therefore not binding on the Board. It is further contended that as the contract was not binding on the Board, it was not binding on Mohammad Ramzan either. In support of this last contention, reliance was placed on rulings reported in *Mohammad Ebrahim Molla* v. *Commissioners for the Port of Chittagong* (1); *The Ahmedabad Municipality* v. *Sulemanji Ismalji* (2) and *Raman Chetti* v. *The Municipal Council of Kumbakonam* (3). In the Bombay case, Jenkins, C.J. observed, speaking of a suit brought by the Municipality for breach of an executory contract:

> "It is open to the defendant to show that it is not binding on him inasmuch as it is not binding on the plaintiff."

That decision was followed in the Madras and the Calcutta rulings that have been referred to.

It was replied on behalf of the plaintiff-respondent that the Board's resolution of the 26th of November, 1929, must be regarded as being substantially in favour of Mohammad Ramzan, since it was he who had made the deposit of money, and the name of Nur Mohammad can only have been mentioned in the proceedings by a misapprehension. It was further contended that even if there was any substantial defect as regards Mohammad

(1) (1926) I.L.R., 54 Cal., 189 (215-216).

(2) (1903) I.L.R., 27 Bom., 618.

(3) (1907) I.L.R., 30 Mad., 290.

1934

MOHAMMAD RAMZAN v. MUNICIPAL BOARD, TANDA

Raza and Smith, JJ.

Ramzan in the Board's sanction embodied in the resolution of the 26th of November, 1929, that defect was removed by the following circumstances:

(1) payments to a total amount of Rs.1,600 were accepted by the Board from Mohammad Ramzan;

(2) on the 30th of March, 1930, the Board had before it an application by the defendant, who is described in the record of the proceedings as "Ramzan thekadar", in which he asked for the remission of the balance of the money due from him. The Board by its resolution of the above date declined to allow him any reduction;

(3) by a resolution of the 30th of April, 1930, the Board directed that the balance of the money should be realized from the defendant "through Court" (*zaria adalat*).

The learned Subordinate Judge took the view that the acceptance by the Board of Rs.1,600 from the defendant was "a sort of ratification of the contract", and that the resolutions of the 30th of March, and the 30th of April, 1930, were also ratifications of it, and that any defect in the agreement with the defendant was thereby removed.

The questions involved appear to us to be not free from difficulty, and we have decided to refer the following questions to a Full Bench of this Court, as allowed by section 14(1) of the Oudh Courts Act:

(1) Having regard to all the circumstances above stated, can it be held that the contract with the defendant, Mohammad Ramzan, was sanctioned by the Municipal Board of Tanda within the meaning of section 96(1) of the United Provinces Municipalities Act?

(2) If there was any want of sanction, or defect in the sanction, was such want of sanction, or defect in the sanction, made good by, or removed by, the acceptance by the Board of payments by the defendant, and by the Board's resolutions of the 30th of March and the 30th of April, 1930?

1934

MOHAMMAD RAMZAN v. MUNICIPAL BOARD, TANDA

(3) If by reason of want of sanction by the Board to the contract, or of any defect in the sanction, the contract was not binding on the Board, was it also not binding on the defendant?

Messrs. *Ali Zaheer* and *Ghulam Hasan,* for the appellant.

Mr. *Ali Hasan,* for the respondent.

1934 *August,* 11

SRIVASTAVA, A.C.J.:—The questions referred to the Full Bench are as follows:

(1) Having regard to all the circumstances above stated, can it be held that the contract with the defendant Mohammad Ramzan was sanctioned by the Municipal Board, Tanda, within the meaning of section 96(1) of the United Provinces Municipalities Act?

(2) If there was any want of sanction, or defect in the sanction, was such want of sanction, or defect in the sanction, made good by, or removed by, the acceptance by the Board of payments by the defendant, and by the Board's resolutions of the 30th of March and 30th April, 1930?

(3) If by reason of want of sanction by the Board to the contract or of any defect in the sanction, the contract was not binding on the Board was it also not binding on the defendant?

The terms in which the first two questions have been framed make it necessary for me to state briefly the facts and circumstances of the case. I propose to confine the statement only to such facts as are material for the purpose of the reference and have either been proved or are admitted before us.

In September, 1929, the defendant Mohammad Ramzan made an application to the Municipal Board, Tanda, for being granted a contract for the night-soil on payment of Rs.2,200. He subsequently raised the offer to Rs.2,300. On 15th October, 1929, he deposited a sum of Rs.1,000 as advance money towards the contract and was put in possession of the night-soil trenches by the Municipal

Board on the same date. On 26th November, 1929, the Municipal Board passed a resolution sanctioning the contract for night-soil in favour of Nur Mohammad for Rs.2,300. The resolution further stated that Nur Mohammad had deposited a sum of Rs.1,000 in advance and that the Secretary had recommended the contract being sanctioned. Three days later, on 29th November, 1929, a deed of contract was executed in terms of the above mentioned resolution, the only variation being that it was drawn up in the name of Mohammad Ramzan instead of Nur Mohammad. This deed was signed by Mohammad Ramzan as well as by the Chairman and Secretary of the Municipal Board. Mohammad Ramzan continued in possession during the term of the contract and paid Rs.1,600 in all to the Municipal Board. In 1930 Ramzan describing himself as thekadar made an application to the Board asking for remission of the balance of the money due from him. This application was rejected by the Board on 30th March, 1930. The Board having failed to realize the balance of Rs.700, by their resolution, dated the 30th of April, 1930, ordered that it should be realized from Ramzan through Court. In pursuance of this resolution, the present suit was instituted by the Municipal Board for recovery of the balance of Rs.700. One of the defences raised on behalf of Ramzan defendant was that the contract which formed the basis of the suit was invalid inasmuch as it had not been sanctioned by the Municipal Board as required by section 96(1) of the United Provinces Municipalities Act. It should be mentioned that Nur Mohammad is the nephew of Mohammad Ramzan defendant and that admittedly he never applied for any theka of the night-soil and never paid the Municipal Board anything in respect of it.

Question No. 1—

The question is one more of fact than of law. At best it might be treated as a mixed one of law and fact. As regards the law the provisions of section 96 are perfectly

1934

MOHAMMAD RAMZAN v. MUNICIPAL BOARD, TANDA

Srivastava, A.C.J.

clear. For the validity of a contract like the one in question it is necessary that there should be a resolution of the Board sanctioning it. It is equally clear that on 26th November, the Board did pass a resolution sanctioning the contract. The only contention urged before us in this connexion is that the contract which was sanctioned by the Board by its resolution, dated the 26th of November, was a contract in favour of Nur Mohammad and not the contract in favour of Mohammad Ramzan which forms the basis of the claim. In my opinion the contention has no merit and is without substance. The finding of the lower appellate Court is that the name of Nur Mohammad was entered in the resolution either by mistake or as a *benamidar* for his uncle Mohammad Ramzan. The learned Counsel for the defendant appellant has laid great stress on the evidence of a Municipal Commissioner (D. W. 2). This witness was present at the meeting of the Board held on 26th November, 1929, as well as at the meetings held on 30th March and 30th April, 1930. He stated that as Mohammad Ramzan had no property he had suggested that if the defendant was anxious to take a contract the contract should be entered into with Nur Mohammad. The lower appellate court has read his evidence as meaning that the name of Nur Mohammad was entered in the resolution as a *benamidar* for Mohammad Ramzan. I must accept the view of the lower appellate court on this point. It is the only view consistent with the conduct both of Nur Mohammad and of the witness. Nur Mohammad never wanted to have a *theka* for himself. He never made any deposit or paid anything towards the contract and never got possession. When the matter about the *theka* came before the Board in March and April, 1930, the witness never raised any objection against Ramzan treating himself and being treated by the Board as the *thekadar*. In this view of the case the name of Nur Mohammad in the resolution of the 26th November must be deemed to stand merely as an *alias*

1934

MOHAMMAD RAMZAN v. MUNICIPAL BOARD, TANDA

for Mohammad Ramzan. If this was so, I have no hesitation in holding that the sanction given by the Municipal Board on the 26th November must be deemed to be a sanction in respect of the contract in question. The circumstances which preceded the resolution of the Board passed on the 26th November, as well as the circumstances following it, all point to the same conclusion.

Srivastava, A.C.J.

It was argued on behalf of the appellant that in the case of a public corporation like the Municipal Board there is no room for holding that the sanction was given by it in the name of one person as a *benamidar* for another. He has not cited any authority in support of his argument. We are not aware of any provision of law forbidding the application of the principle of *benami* in the case of transactions to which a public corporation is a party. The circumstances of the case, as we have stated above, leave no doubt that the entry of Nur Mohammad's name in the Board's resolution was merely *benami*. In the absence of any authority compelling us to exclude the application of the rule of *benami* in the case of transactions to which a public corporation is a party we must hold that the contract which was sanctioned by the Municipal Board on the 26th November was really the contract in suit and no other. I would accordingly answer the first question in the affirmative.

In view of the answer given to the first question the two other questions do not arise.

ZIAUL HASAN, J.:—I agree.

1934
August, 14

SMITH, J.:—I regret that I do not find myself in agreement with my learned brothers. The facts of this matter have been sufficiently stated in the order of reference made by the Bench, of which I was a member, and they have been re-stated as far as is necessary in the reply given by the Hon'ble the Chief Judge to the first of the three questions referred to the Full Bench.

In my opinion the name of Nur Mohammad was entered designedly in the Municipal Board's resolution

1934

MOHAMMAD RAMZAN v. MUNICIPAL BOARD, TANDA

Smith, J.

of the 26th November. The learned Subordinate Judge did not come to any definite finding as to the reason for the appearance of the name of Nur Mohammad in the resolution instead of that of the defendant-appellant, Mohammad Ramzan. He thought that Nur Mohammad's name may have been entered for the reason stated by M. Abdul Qayum, namely that Mohammad Ramzan himself had no property. Alternatively he thought that the name of Nur Mohammad may have been entered by mistake. I do not think it likely that the entry of the name of Nur Mohammad was a mere mistake I think it was designedly entered for the reasons stated by M. Abdul Qayum. I do not think, however, that in these circumstances Nur Mohammad can be regarded as a mere *benamidar* for his uncle, Mohammad Ramzan. In my opinion the Board intended to leave it open to itself to proceed against Nur Mohammad in the event of the *theka* money not being paid. Such a notion, of course, was quite without any legal foundation in view of the fact that there is nothing to show that Nur Mohammad himself had any desire to take the contract. I think, however, that the Board entertained that notion, devoid of foundation though it was. The view I take, therefore, is that the Board, far from sanctioning the contract in favour of Mohammad Ramzan, carefully abstained from so doing, and I have little doubt that had the defendant-appellant sued the Board on the basis of the contract instead of the Board's suing him, he would have been met with the defence that no contract in his favour had been sanctioned. I, therefore, unlike my learned brothers, would answer the first question in the negative. I would also answer the second question in the negative.

As to the third question, my view is that the contract by reason of want of sanction by the Board was not binding on the Board, and that it was therefore not binding on the defendant either. It is not necessary for me to go into any elaborate discussion of my reasons for

1934

MUHAMMAD RAMZAN v. MUNICIPAL BOARD, TANDA

1934 *August*, 17

answering the second and third questions in the way I do, since, of course, the opinion of my learned brothers will prevail.

BY THE COURT (SRIVASTAVA, A.C.J., ZIAUL HASAN, J. and SMITH, J. dissenting):—The first question is answered in the affirmative; hence the other questions do not arise.

1934 *August*, 22

SRIVASTAVA, A.C.J. and SMITH, J.:—The facts of this case have been fully stated in the order of reference to a Full Bench, dated the 11th of January, 1934. They need not therefore be repeated. The answer given by the majority of the Full Bench to the first question referred to them is in the affirmative. This answer seems to us to be decisive of the appeal. The only argument urged on behalf of the appellant is that the question of *benami* was never specifically raised in the pleadings and that the answer given by the Full Bench being based on the view that Nur Mohammad was the *benamidar* for Mohammad Ramzan, an issue should be remitted to the lower court for a finding on this point. If there is any force in the appellant's contention he ought to have urged it before the Full Bench. We feel ourselves bound by the decision of the Full Bench in this matter, and are clearly of opinion that in view of the decision of the Full Bench it is not open to us to go into the question now raised on behalf of the appellant. No other point being urged, we dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL

Before Mr. Justice E. M. Nanavutty

KALLU (ACCUSED-APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY)*

1934 *May*, 1

Criminal Procedure Code (Act V of 1898), sections 253(2), 350, 435 and 437—Accused charged with offence not exclu-

*Criminal Revision No. 37 of 1934, against the order of A. Monro, I.C.S., District Magistrate of Lucknow, dated the 21st of December, 1933.