

(1943) 07 MAD CK 0007
In the Madras High Court

Al. Sp. Pl. Subramanian Chettiar and Another	APPELLANT
Vs	
Rajah of Ramnad	RESPONDENT

Date of Decision : 15-07-1943

Acts Referred:

Madras Local Boards Act, 1884 — Section 88
Tamil Nadu Elementary Education (Amendment) Act, 1931 — Section 6

Citation : AIR 1943 Mad 660 : (1944) ILR (Mad) 332 : (1943) 56 LW 511 :
(1943) 2 MLJ 315

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellants are cowledars of the Rajah of Ramnad. The appeal arises out of a suit filed by the Rajah

in the Court of the District Munsiff of Paramakudi to recover monies claimed to be due to him by the appellants in respect of land cess. The

question here is whether u/s 88 of the Local Boards Act the sum of money found to be due to him in respect of land cess for faslis 1342 to 1347 is

repayable with interest. It is common ground that the amounts due for land cess became payable after the amendment in 1932 of the Madras

Elementary Education Act, 1920. Section 88 of the Local Boards Act provides that in case of lands occupied by tenants it is lawful for the

landholder to recover from his tenant one-half of the amount payable by him in respect of the lands occupied.

2. The claim for interest is based on an agreement entered into between the parties and embodied in a decree passed by consent in O.S. No. 21 of

1917. The relevant portion of the decree reads as follows:

From 1325 fasli onwards I shall pay the Poruppu, Dharma Mahamai and Jari

Mahamai as per terms of the cowle deed and in addition pay road

cess, railway cess, which may be fixed as per law...for each fasli by the end of that fasli and in default, to pay interest thereon at Re. 1 per cent, per mensem.

3. Throughout the present litigation, it has been common ground that the term "road cess" now means "land cess." The District Munsiff held that

the plaintiff was entitled to recover the contribution with interest, but. this decision was reversed by the Subordinate Judge on appeal. The plaintiff

then appealed to this Court, and Happell, J., who heard the appeal agreed with the District Munsiff. The present appeal is from the judgment of the

learned Judge under clause 15 of the Letters Patent.

4. Section 34(2) of the Madras Elementary Education Act, as now amended, provides that a District Board may, with the previous sanction of the

Provincial Government, and shall, if so directed by them, levy within its area or any part thereof taxes at such percentages as may be considered

suitable of the taxation levied in such area or part under the law for the time being in force governing District Boards, under all or any of the

following heads, namely, land cess, profession tax and house tax. Sub-section (1) of Section 36 contains this provision:

Every tax levied in any area under any head of taxation mentioned in Section 34 shall be deemed to be an addition to a tax levied under the same

head in such area under the law for the time being in force governing municipalities or Local Boards, as the case may be, and all the provisions of

such law relating to the incidence, assessment or realisation of such tax or in any manner connected therewith shall be applicable accordingly.

5. This provision was inserted by Section 6 of the Madras Elementary Education Act, 1931. As the result of the amendment of the Elementary

Education Act, there can now be no doubt that the amount levied as road cess u/s 34(2) is to be regarded in law as road cess notwithstanding that

it is to be applied to elementary education. The contract between the parties provides in unambiguous terms for the payment to the plaintiff of

interest in the event of non-payment by the end of the fasli of the amount due from the cowledars under the law. The payments made by the plaintiff

were payments of land cess within the meaning of the law and u/s 88 of the Madras Local Boards Act he was certainly entitled to recover half the

principal amount from his cowledars. Interest is recoverable by reason of the contract unless this is prohibited by some statutory provision. There is

nothing in the Local Boards Act, the Elementary Education Act or in any other enactment which prohibits a landholder and his tenant entering into

such a contract, and therefore the plaintiff cannot be deprived of his rights under the general law.

6. The agreement between the parties is embodied in a consent decree and as it is a lawful agreement the plaintiff is entitled to enforce it. It follows

that in our opinion the question was rightly decided by Happell, J. and the appeal must be dismissed with costs.