
(1924) 12 MAD CK 0059
In the Madras High Court

A.L.V.R.P. Veerappa Chettiar represented by his authorised
agent M.V. Somanatha Aiyar

APPELLANT

Vs

Municipal Council

RESPONDENT

Date of Decision : 05-12-1924

Acts Referred:

Citation : AIR 1925 Mad 607 : (1925) ILR (Mad) 476 : (1925) 21 LW 457 :
(1925) 48 MLJ 428

Judgement

1. The petitioner seeks for the revision of the decree of the Lower Court in a Small Cause suit instituted by the plaintiff to recover from the defendant, the Municipal Council of Palni, the amount of profession tax levied on him by the Council for the half-year ending 31st March 1922. The facts appear to be as follows : The plaintiff is a Nattukottai Chetti, whose profession is money lending and he exercises that profession at Devakottah. He has purchased the Zamindari of Rattiam padi in the Palni Taluq. This Zamin is situated wholly outside the limits of the Palni Municipality. The plaintiff maintains in the Palni town a resident collection agent who collects his Zamin's rent for him. In these circumstances the Lower Court has held that the plaintiff has through his agent been in receipt of income within the Municipality and is therefore liable to be taxed for profession tax.

2. The legal correctness of this decision depends, on the interpretation of Sections 93 and 95 of the Madras District Municipalities Act. It is contended for the petitioner that he or his agent is not a person in receipt of income from "any source other than houses or lands inside the Municipal limits, "and it is sought to make the words" inside the Municipal limits "qualify" source " and not "houses and. lands." This view is untenable. There is no reason whatever why a person residing within the Municipality and drawing income from rent of houses outside it should not pay profession tax as he obtains the benefit of Municipal activities in the same manner as any other resident. The phrase is clearly used in order to exempt a person from paying profession tax on rent from property inside the Municipality, since he is already taxed on that u/s 81.

3. We cannot say that the petitioner is not in receipt of this income. He admits that his agent collects it and remits it to him. He is therefore prima facie liable u/s 93 if he has been in receipt of that income within the Municipality for the period laid down in Section 95. Section 95 lays down that, though a person may be liable for the tax u/s 93 it is not payable unless he resides in the Municipality for sixty days in the half-year in question. This proposition is not affected by the principle laid down in illustration (3) of Section 93, because Section 93 is only laying down the qualification for liability to tax and has nothing to do with the conditions under which the tax becomes payable. That is dealt with u/s 95. This point has been overlooked by the Lower Court and it has thus fallen into an error.

4. Now, the plaintiff in his plaint clearly stated that he never resided in Palni for sixty days in the half-year. In the written statement the Council did not controvert that statement. Had the plaintiff resided for 60 days in the half-year it would have been the most obvious answer to the plaintiff's suit. We must take it then that the plaintiff did not reside within the Municipality for sixty days in the half-year in question.

5. The respondent has tried to argue that "residence " will include " the maintenance of an office " although the principal never appears there. No doubt the word "residence" has been interpreted in various ways when it has been necessary to interpret its meaning in Income Tax and other statutes, but we think that its meaning in this Act may be decided by a consideration of the reported rulings under the old District Municipalities Act of 1884, and the consequent alteration of the provisions in the new Act. Under the old Act, Section 55, a person exercising a profession, etc., or holding an office was liable u/s 53 to the tax, and had to pay it, if he exercised the profession or held the office for sixty days in the half year. In the two rulings in *Chairman, Ongole Municipality v. Mounsey* ILR (1894) Mad. 453 and *Hammick v. President, Madras Municipal Commission* ILR (1898) Mad. 145 : 8 MLJ 164 this Court held that a Government servant, whose Plead Office was in the Municipality, was not, while he was himself outside the Municipality, holding his office within the Municipality. So that, unless he himself was for 60 days within the Municipality, he was not liable to the tax. To meet that difficulty, we presume, the Legislature provided in Schedule IV, Rule 18 of the new Act that a person must be deemed to have exercised a profession or held an appointment for the period specified in Section 95 "if his principal office is within the Municipality and his connection therewith has lasted for the specified number of days." Under the old Act the test for liability in the case of a person holding an appointment was personal presence within the Municipality. Under the new Act, in such a case personal presence is not necessary. Had the Legislature meant that, in the case of persons in receipt of pension or income, personal presence in the Municipality was equally not necessary, we think they would have made it equally clear. We think, therefore, that the test in such a case is personal presence within the Municipality, and that " residence " in Section 95 has to be interpreted in the sense of personal residence and that one who neither himself personally resides nor maintains a

residence for himself or his family within the Municipality but merely maintains an office for the collection of his rent cannot be said to reside within the Municipality. The petitioner, on this ground, therefore will not be liable to pay the profession tax.

6. The petitioner raised a further ground of objection, namely, that since all his Zamin land rents are already taxed to a fixed peishkush, this peishkush cannot be increased by any further tax by Government, either directly by Government itself or indirectly by Government authorising a Municipality to tax such rent without a direct statutory declaration of its interference with his permanent Sanad rights. He quoted Chief Commissioner of Income Tax v. Zamindar of Singampatti ILR (1922) Mad. 518 in aid of his contention that the State cannot authorise a Municipality to levy a tax which it cannot itself levy. This question is not free from difficulty but need not be decided in this case.

7. On the ground that the petitioner has not resided for sixty days within the Municipality, the levy of a profession-tax on him was contrary to law. We must hold that he was not liable for this tax and that the Lower Court has made a mistake in law in dismissing this suit. We think this is a case in which we must interfere in revision. We reverse the decree of the Lower Court and give the plaintiff a decree for the amount sued for with costs in both Courts.