

(1938) 01 MAD CK 0019
In the Madras High Court

B. Venkatachala Mudaliar

APPELLANT

Vs

The Coimbatore Municipality

RESPONDENT

Date of Decision : 07-01-1938

Acts Referred:

Citation : AIR 1938 Mad 880 : (1938) 48 LW 329 : (1938) 2 MLJ 353

Hon'ble Judges : Stodart, J

Bench : Division Bench

Judgement

Stodart, J.—Without seeing the order of the Council (assuming that there was such an order) it is impossible to say on what ground the

Council justified the levy of profession tax on the petitioner, and without knowing that, it is impossible to say that the provisions of the Act have not

been complied with. If they have been complied with the decision of the Council is final and no suit lies. See Section 354 of the Act. The lower

Court should have 1 think satisfied itself on this point.

2. However that may be, I agree with the lower court's finding on the merits.

3. Petitioner has a house in Coimbatore where he ordinarily lives and he actually lived in the Municipality from 1st to 7th April and from 9th to 30th

September. Between 7th April and 9th September he was absent at Coonoor. That has been so found by the learned District Munsiff. Before

going to Coonoor he informed the Municipal Commissioner that he intended to be absent from the 7th April till about the end of August. u/s 93(1)

(6) a person who in any half year resides in the Municipality for not less than sixty days shall pay a half yearly profession tax on income from

pension or investments. Petitioner did not reside in the Municipality for 60 days in the ordinary sense of the term. Did he reside in the sense defined

in Section 3, Sub-section 25?

4. Sub-section 25 is

A person is deemed to reside in any house if he sometimes uses any portion of it as a sleeping apartment.

and

Is not deemed to cease to reside in any such house merely because he is absent from it if he is at liberty to return at any time and has not

abandoned his intention of returning.

5. It is the last clause which has to be construed. Had the petitioner ceased to reside in his house within the meaning of this clause during the whole of the period 7th April to 9th September.

6. There can be no doubt that he was at liberty to return at any time as he had not let the house to any one else; so the only question is whether the

second part of the clause applies. Leaving out the words about liberty to return, the clause reads a person is not deemed to cease to reside in any

such house merely because he is absent from it if he has not abandoned his intention of returning. Can a man be said to have abandoned his

intention of returning when he merely signifies his intention of being absent at a hill station for a certain period? I do not think so. All that the

petitioner said here was that he might reoccupy the house about the end of August.

7. I dismiss the petition with costs.