

(1956) 07 MAD CK 0023
In the Madras High Court

Commissioner, Coimbatore Municipality	APPELLANT
Vs	
Chettimar Vinayagar Temple Committee by Secretary, C. Nangappa Chettiar	RESPONDENT

Date of Decision : 12-07-1956

Acts Referred:

Citation : (1956) 2 MLJ 563

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Judgement

Krishnaswami Nayudu, J.—In this appeal the correctness of the judgment of the lower appellate Court in so far as it excluded a portion of

the premises belonging to the plaintiff from the scope of a market liable to be licensed under the Madras District Municipalities Act is questioned.

The Plaintiff which is a temple represented by its secretary trustee owned the suit property and utilised a portion of it, viz., the land in front of the

temple, according to the appellant municipality, as a private market. The temple and the private market are situated in Rengai Goundan Sereet. The

entrance both to the market and the temple is from the street as could be seen from the plan prepared by the Commissioner, Exhibit A-10. There

are a row of stalls on either side, namely on the northern and southern side, the market and the temple facing east. The entrance on the eastern side

is marked BG in the plan. The open space in front of the temple has been enclosed and it is common ground that the entire place has been used as

public place for selling different kinds of articles including articles of food. Stalls on either side have been let out from time to time. At the entrance

of the market and the temple on either side, there are some pucca superstructures which have been let out to tenants who were having certain

shops. They are marked as ABON and GHML. The learned Subordinate Judge considered that the portions marked ABON and GHML could

not be considered to form part of the private market and therefore not liable to be licensed under the Act. The learned Subordinate Judge found

that the defendant Council was not competent to levy a license fee for the portion of the property occupied by the shop-keepers, belonging to the

temple and which are at the entrance. The question, therefore, is whether they could be considered to be independent of the market and not

forming part of the market. The reasoning of the learned Subordinate Judge is that they are not within any square or space restricted by bounds

and their opening or shutting or their vending cannot be restricted by the owner of the market as they are pucca buildings, though the learned

Subordinate Judge considered that pucca buildings from which rents are collected monthly and situated within square or space would, however, be

liable to be licensed notwithstanding they are such pucca buildings. These shops are contiguous and attached to the main structures excepting that

they have access from the road-side. They belong to the common owner, the plaintiff and rents are also collected from them. Could the

circumstance that the opening or shutting of the shops can be done without any reference to the closing or opening of the main gate of the market

be sufficient to take it away from the scope of market while the entire property belongs to the same owner and which has been used for purposes

of purchase and sale of articles to the public?

2. Market is not defined in the present District Municipalities Act but the definition of it is found in Act II of 1884. "Market" is defined as:

any place ordinarily used for the sale of meat, fish, fruits, vegetables or other perishable articles of food for human consumption which is at the

passing of this Act a licensed market or which may hereafter be declared by the Municipal Council to be a market.

3. No such definition is found in the present Act, and even taking the definition of the earlier Act of 1884, it will be seen that the entire property

which was sought to be charged for license fee would come within the definition as it is a place used for the sale not of meat or fish but of fruits,

vegetables and other perishable articles of food for human consumption.

4. In the absence of a definition in the Act we may take the ordinary meaning of

a market and a "market" is referred to in Wharton's "Law Lexicon" as "a public time and place of buying and selling, also purchase and sale." It connotes a place where the public would go at a particular time for the purchase or sale of articles and a place where articles are sold and made available to the public. The property therefore belongs to a temple, as any other private party and on that ground it could not be considered to be anything else than a market. In Ramanatha Iyer's "Law Lexicon", "market" is defined as a public place for buying and selling. Portions marked ABON and GHML being admittedly part of the main structure and which have been found to be a market cannot cease to be portion of it and it cannot be said that they are places in which there is no purchase and sale accessible to the public. There was no warrant for making a distinction between the portion of the premises from the rest so as to hold that the portion occupied by the shops ceases to be a market simply for the reason that the shop-keepers could have exit or entrance without the necessity of entering through the main gate of the market. Mr. Ramachandra Iyer for the respondent contends that unless meat and fish are sold, it cannot be a market relying on the definition of market in Act II of 1884. Even the definition of market in Act II of 1884 includes vegetables and other perishable articles" and applying the general meaning of the word "market" as a public place for selling and purchasing, there is no doubt that the portion excluded, also forms part of the market and liable to be licensed. The further contention that there must have been a declaration that the place is a private market will not arise as it is not denied that for the rest of the portion the respondent has been paying license fees. The interference by the learned Subordinate Judge of the learned District Munsif's judgment by excluding the portion ABON and GHML from being charged with license fee cannot be supported. The appeal is allowed with costs.

5. The memorandum of objections is dismissed. No costs. No leave.