(1925) 08 MAD CK 0040

In the Madras High Court

Dewan Bahadur G. Krishnamachariar APPELLANT

Vs

The Municipal Council RESPONDENT

Date of Decision : 19-08-1925

Acts Referred:

Citation : AIR 1926 Mad 448 : (1926) 50 MLJ 77

Hon'ble Judges : Viswanatha Sastri, J

Bench : Division Bench

Judgement

Viswanatha Sastri, J.—Petition by the plaintiff in S.C.S. No. 5450 of 1922 on the file of the Court of Small Causes, Trichinopoly, to revise

the decree, dated 16th April, 1923.

2. The suit was to recover back professional tax collected from the plaintiff. The plaintiff is a resident of Hyderabad and has a house within the

municipal limits of Srirangam where he comes and spends a portion of his vacation. He was called upon to pay professional tax for carrying on

money-lending business at Srirangam and paid a sum of Rs. 50 under protest. It was urged before me that as he did not reside within the municipal

limits of Srirangam for 60 days in the halfyear for which the tax was collected, he was not liable to be assessed. It was conceded that during the

half-year for which the tax was levied the plaintiff did come and reside at his house at Srirangam for some days. Such being the case he was a

person liable to be assessed, in case he came u/s 95 of the District Municipalities Act. The term ""residence "" is defined in Section 3, Clause 25 of

the Act, and the plaintiff must therefore be deemed to reside within the limits of the Srirangam Municipality. Now assuming for a moment that he

ought to have resided for 60 days in the half-year for which he was assessed;

Section 354(2) of the Act read with Clause 28 of Schedule IV, bars

the suit. The case appears to me to be on all fours with the case of Municipal Council of Nellore v. Rangayya ILR (1895) Mad 10 which was

followed in Municipal Chairman, Virudupatti v. Saravana Pillai (1919) 10 L.W. 592. There a house which was completed only on 15th August,

1893, was assessed on 11th September, 1893, and tax collected for the half-year ending 30th September, 1893. It was held that although the

building was not in a habitable state for 60 days in the half-year, it should not be said that there was any illegal levy, and that the remedy lay only by

way of appeal to the Municipal Council. I dismiss the petition with costs.

