

(1944) 03 MAD CK 0017
In the Madras High Court

G. Srinivasa Ayyar and Others

APPELLANT

Vs

T.S. Swaminatha Odayar and Another

RESPONDENT

Date of Decision : 14-03-1944

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 3(ii)(c)

Citation : AIR 1944 Mad 359 : (1944) ILR (Mad) 768 : (1944) 57 LW 328

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal raises a question regarding the effect of Proviso C to S. (3) (ii) of Madras Act, 4 of 1938. The parties to this

appeal and the facts affecting the decision of the question under Proviso C are precisely the same as those dealt with by a Bench composed of

Burn and Stodart JJ. in Swaminatha Odayar v. Srinivasa Aiyer AIR 1939 Mad. 942, though that decision arising out of an application u/s 20 of the

Act will not operate as res judicata. Briefly the facts are these. The respondent was assessed to property tax in respect of properties at

Mannargudi, the rental value of which is Rs. 495 per year. He was also the owner of properties in Tiruvarur, the rental value of which was Rs.

210. The municipal assessment register regarding the Tiruvarur properties retained during the relevant period the name of a former owner who had

been dead for many years, Balasubramania Odayar. The respondent was a minor adopted by his grand-uncle and his guardian was his natural

mother Meenakshi. In respect of the property tax on the Tiruvarur properties for the first half year of 1935-36 a notice, Ex. R-11, was sent with a

covering letter to Meenakshi, without any description of her as the guardian of the minor owner, and the owner of the property at the head of the

notice was stated to be Balasubramania Odayar. Exhibit R-12 is a receipt for the tax in the second half year of 1935-36 paid by the tenant Mr.

Sambasiva Ayyar on 7th September 1935, who states that he paid it on behalf of Meenakshi Ammal and her name is written at the head of the

receipt. This receipt is, however, before the relevant period under Proviso C. During the relevant period we have the following documents. Exhibit

R-13 relates to the second half year of 1935-36. The notice of demand goes in the name of the deceased owner Balasubramania Odayar. It bears

a receipt showing that the tax was paid by Mr. Sambasiva Ayyar who produced the document. It does not appear that the notice was otherwise

served on anybody. Exhibit R-14 is a notice for the first half year of 1936-37. It purports to have been issued to the occupier as such. The English

portion of the notice recites, "that the tax remains unpaid by the owner, although the time allowed after the service of the notice on him has

expired," but in the tamil translation which forms part of the notice this passage is. scored out. Exhibit R-15 shows that the tax was paid by Mr.

Sambasiva Ayyar on 28th January 1937. Exhibit R-17 is the notice regarding the second half year of 1936-37. The notice runs in the name of the

deceased Balasubramania, Odayar. At the foot it is noted that "occupier notice was served" and there is a receipt in the name of Balasubramania

Odayar. Exhibit R-19 is a notice for the tax for the first half year of 1937-38 served on the occupier, Mr. Sambasiva Aiyer on 19th February

1938. It thus appears that the name of the owner Swaminatha Odayar who was a minor is not found in any of the records, though his guardian was

served before the relevant period with a notice demanding the tax. During the relevant period the tax was paid by the tenant and he has given

evidence that he was paying it under the instructions of the guardian of the owner.

2. The Bench which decided the case already referred to held that this was a case in which the owner had escaped assessment, not a case in which

he had been assessed to property tax. Since that decision was pronounced there have been numerous other decisions which have thrown light on

the effect of provision to Section 3 (ii) in cases in which tax was demanded and paid from persons standing in a representative capacity and there

has been a good deal of light thrown on the question whether the term "assessment" denotes merely the writing of the name in the assessment

register or whether it denotes primarily the demand and payment of tax. For convenience of reference the following cases may be quoted:

Sarveswara v. Umamaheshwara Rao AIR 1941 Mad. 152, Swarnam Iswariah v. Kanappa Chetty AIR 1941 Mad. 704, Tirugnanavalli Ammal v.

Venugopala Pillai AIR 1941 Mad. 831, Venkatappayya v. Mallayya AIR 1942 Mad. 410, Namberumal Chetti v. Ramayya Naidu AIR 1942

Mad. 602, Muthiah Chettiar v. Rayalu Aiyer, Nagaswami Iyer & Co. AIR 1944 Mad. 98, A. S. NO. 328 of 1941, A. S. NO. 35 of 1941 and S.

A. NO. 1595 of 1942. It seems to us that the decision in Swaminatha Odayar v. Srinivasa Aiyer AIR 1939 Mad. 942 may require reconsideration

in the light of subsequent decisions. As the amount at stake in the present case is very large and the matter is one of considerable general

importance we refer the following question to a Full Bench : ""Whether the decision in Swaminatha Odayar v. Srinivasa Aiyer AIR 1939 Mad. 942

is correct in that it holds that a person cannot be assessed unless the assessment is made in his name in the municipal assessment register."" The

papers will be placed before the Honourable the Chief Justice.

Opinion of the Full Bench

3. Proviso C to Section 3(ii), Madras Agriculturists' Relief Act, 1938, states that a person shall not be deemed to be an agriculturist if he has,

within the two years immediately preceding 1st October 1937, been assessed to property or house tax in respect of buildings or lands, other than

agricultural lands, under the Madras District Municipalities Act, 1920, or under any of the other Acts specified, if the aggregate annual rental value

of the lands and buildings, whether let out or in the occupation of the owner, is not less than Rs. 600. In Swaminatha Odayar v. Srinivasa Aiyer

AIR 1939 Mad. 942 a Bench of this Court (Burn and Stodart JJ.) held that a person cannot be deemed to be lawfully assessed within the meaning

of this proviso unless his name has been inserted in the assessment register as the owner of the property. The correctness of this decision has been

doubted and the doubt has led to this reference. The parties in Swaminatha Odayar v. Srinivasa Aiyer AIR 1939 Mad. 942 were the same as the

parties in the present case and the facts were the same. The respondent owns immovable properties at Mannargudi and Tiruvarur which are

assessed, and for many years have been assessed, to property tax. The

respondent is a minor represented by his mother Minakshi. The former owner of the Tiruvarur properties was one Balasubramania Odayar, who died over 40 years ago. As the result of obvious negligence in the office of the municipality his name remained in the assessment register as the owner of the Tiruvarur properties. The evidence in the case however leaves no room for doubt that the municipal officials knew who was the actual owner of the properties at all times material. In respect of the tax payable for the first half of the year 1935-36 a notice was sent to Minakshi and since then the tax has been paid by the tenant of the properties under her instructions.

4. The learned Judges who decided *Swaminatha Odayar v. Srinivasa Aiyer* AIR 1939 Mad. 942 were not content with holding that the essential

factor was the entry in the municipal register of the name of the owner of the property. They went so far as to describe as perverse the opinion of

the Subordinate Judge that the words "assessed to" meant only "taxed in respect of" and not that the person's name should actually* be found in

the assessment register. In our judgment there was no justification for the statement that the Subordinate Judge's opinion was perverse. In fact we

consider that the Subordinate Judge was right and the learned Judges were wrong in holding that there could be no assessment under proviso C

unless the name of the owner of the property were actually inserted in the assessment register. Under the District Municipalities Act the assessment

is imposed not on the individual but on the property, as was pointed out in *Swarnam Iswariah v. Kanappa Chetty* AIR 1941 Mad. 704. The

provisions of Sections 82,83 and 84 and the taxation rules set out in Schedule 4 of the Act leave no room for doubt that this is so. In *Swarnam*

Iswariah v. Kanappa Chetty AIR 1941 Mad. 704, it was also pointed out that the word "assess" is one which is susceptible of several different

meanings and that according to the dictionary it may mean "to fix the amount of the tax" or "to determine the amount and impose the tax upon an

individual" or merely "to impose a tax upon an individual" or "to estimate officially the value for purposes of taxation." In (1938) 6 ITR 414 (Privy

Council) the Privy Council had occasion to draw attention to the fact that the word "assessment" was used in different senses in various parts of the

Income Tax Act. Therefore no precise definition can be given to the word

""assessed"" in proviso C in Sub-section (ii) of Section 3, Madras

Agriculturists" Relief Act, and to discover what is meant by the proviso the Court must have regard to the wording as a whole and to the scheme

of the Act. When this is done we consider that it is manifest that the proviso was inserted to prevent a person claiming relief under the Act as an

agriculturist when he owns property of an annual rental value of not less than Rs. 600 and that property has within two years preceding 1st

October 1937 been assessed to property or house tax.

5. If the argument accepted by Burn and Stodart JJ. were to be carried to its logical conclusion, it would mean that an error on the part of a clerk

in entering in the assessment register the name of the owner of a property liable to the tax would render the proviso entirely nugatory. This is a

position which we are certainly not prepared to accept. Moreover, Rule 10 of the Rules framed under the Act states that where a person in whose

name an assessment to property or house tax has been made in terms of the proviso proves that he was not the owner of the property or house

assessed at any time during the period mentioned in the proviso, the assessment shall not by itself have the effect of excluding him from the

category of ""agriculturist"" as defined in the section. This rule in itself is enough to indicate that the insertion in the assessment register of the name of

true owner of the property is not the deciding factor.

6. We hold that a case comes within the proviso when these factors are present: (1) There is property which has an annual rental value of not less

than Rs. 600; (2) the property has been assessed to house or property tax for two years immediately preceding 1st October 1937; and (3) the

municipality demands or recovers the tax from the owner or otherwise treats him as liable to pay the tax. Accordingly we answer the question

referred by saying that the decision in Swaminatha Odayar v. Srinivasa Aiyer AIR 1939 Mad. 942 is erroneous in that it holds that a person

cannot be assessed within the meaning of the proviso unless the assessment is made in his name in the municipal assessment register. The costs of

this reference will be made costs in the appeal.