

(1927) 12 MAD CK 0030
In the Madras High Court

Gamini Rangayya

APPELLANT

Vs

Rajahmundry Municipal Council

RESPONDENT

Date of Decision : 19-12-1927

Acts Referred:

Citation : (1928) 54 MLJ 581

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—The contention raised by the appellant is that u/s 182 of the District Municipalities Act V of 1920 a municipal council is not

empowered to remove an encroachment, the title to which became ""perfected before the commencement of the Act. There is nothing in Section

182 to suppose that any distinction is drawn between a title perfected before the coming into force of the Act and a title perfected after its coming

into force. Clause (1) states in very general terms that any projection, encroachment or obstruction may be removed or altered. If the legislature

had intended to except any class of encroachments from this rule, one would naturally expect a special clause to that effect. Instead of inserting

such a clause, the legislature has enacted Clause (2) which says that when the projection, etc., has existed for a period sufficient under the law of

limitation to give a prescriptive title, then it shall be liable to removal, but the council shall pay reasonable compensation. Therefore only two points

are dealt within that section : (1) removal of lawful projections and (2) removal of unlawful projections, and no distinction is drawn between

projections which became lawful before the commencement of the Act and projections which became lawful after its commencement-. The

Subordinate Judge was therefore right in holding that the council were entitled to remove the plaintiff's encroachment and that therefore his suit for injunction must fail. The second appeal is dismissed with costs.