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**(1934) 04 MAD CK 0020**  
**In the Madras High Court**

Ghulam Mohideen Sahib

APPELLANT

Vs

Dist. Magistrate and Others

RESPONDENT

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**Date of Decision :** 30-04-1934

**Acts Referred:**

Madras Local Boards Act, 1884 — Section 198  
Public Resort Act — Section 12

**Citation :** AIR 1934 Mad 545 : 153 Ind. Cas. 4 : (1934) 40 LW 332

**Hon'ble Judges :** Varadachariar, J

**Bench :** Division Bench

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## Judgement

Varadachariar, J.—This application asks for the issue of a writ of prohibition to the District Magistrate of Chingleput, to prohibit him from further proceeding in the matter of an application u/s 12, Place of Public Resort Act (1888) made to him by one Chunnilal Sowcar. It is not necessary to set out the history of the matter in much detail. It is enough to say that an application for license was in the first instance made to the Local Panchayat as required by Section 198, Local Boards Act, and in accordance with the provisions of that section it was first dealt with by the President of the Panchayat and afterwards by the Panchayat body itself. On the assumption that notwithstanding the enactment of Section 198, Local Boards Act, the power u/s 12, Madras Act 2 of 1888 still subsists, the applicant moved the District Magistrate. The present application has been made to stop further proceedings, as the petitioner contends that the District Magistrate has no jurisdiction to do anything in the matter.

2. On behalf of the respondents, a point was raised, whether a writ of prohibition could be asked for at all in a case like this. Reference was made to the decisions of the House of Lords in *Boulter v. Justice of Kent* (1897) A.C. 556 and in *Clifford O'Sullivan in re* (1921) 2 A.C. 570 and it was contended that it is only to a "Court" that a writ of prohibition" could be directed. On behalf of the applicant, Mr. Bhashyam Ayyangar relied upon the judgment of the Court of Appeal in *Rex v. Electricity Commissioners* (1924) 1 K.B. 171, where the decision in *Clifford O'Sullivan in re* (1921) 2 A.C. 570 is referred to and explained, and contended

that a writ of prohibition could" be availed of in all cases in which at a later stage a writ of certiorari would be available. He maintained that for the purpose of these writs, the term "Courts" used in the earlier authorities has been very liberally interpreted in later pronouncements and all that was necessary was that the officer concerned should not be merely exercising ministerial functions. This contention is in a large measure well founded : see the cases collected in *Venkataratham v. Secy. of State* 1930 Mad. 896 and *Zamindarini of Mandasa v. Ryot of Mandasa Zamindari* 1934 Mad. 231, though it is neither practicable nor desirable to attempt a positive definition of the cases where the writs will be available. It is much easier to deal with the nature of the function exercised by the officer in question in each particular case and decide upon the maintainability of the application.

3. In the case on hand, the authorities; are no doubt acting in the exercise of a statutory power, but looking at the terms of the Place of Public Resort Act and the powers exercised by the several authorities to whom applications for license under that Act have to be made, it is not easy to say that their functions are such as can be controlled by a writ of prohibition or a writ of certiorari. For instance, in municipal areas the application has to be made to the Chairman and appeals from his orders lie to the Municipal Council. Let us look at the way that the authorities are expected to exercise their power, under Sections 6 and 7 of the Act. Though Sub-clause (b), Section 7 directs them to consider whether any objection to the grant of the license arises from the situation or ownership, of the place or building or the purpose proposed, the main consideration with reference to which the power is to be exercised is that of public safety; and for this purpose Section 6 empowers the licensing authority to inspect the locality, call upon the applicant to make additions or alterations in the material or arrangement of the building or in the precautions to be taken for the safety of the public to be assembled therein. Similarly Section 9, Clause (c) provides that the authority granting a license may revoke or suspend the same when it has reason to believe that the place or building can no longer be safely used for the purpose for which the license was granted. I find it difficult to accept the suggestion that considerations like these approach anything like a "judicial" consideration of the matter, based on "rights of parties." Again, seeing that Section 12 gives power to the District Magistrate to revise the orders not merely of officers ordinarily subordinate to him but also of the Chairman of the Municipal Council or of the Municipal Council as the case may be, it will not be right to say that when acting u/s 12, the District Magistrate is acting in his usual "judicial" capacity. No doubt he is referred to as District Magistrate in that connection apparently because, as already explained, the main scheme of the Act is to secure public safety and under the Indian administration the District Magistrate is of course very much concerned with questions of public safety. But that is different from saying that in exercising this power, he is acting judicially or as a Court. It is however not necessary for me to come to a final conclusion on the general question, because, even supposing that the officer concerned is one to

whom a writ of prohibition can be issued, the question still remains whether there is any question of usurpation or excess of jurisdiction.

4. On the point as to the District Magistrate's jurisdiction, Mr. Bhashyam Ayyangar's main contention was that after the enactment of Section 198, Local Boards Act of 1920, it must be taken that so far as non municipal areas are concerned, it was the intention of the Legislature that the powers given to the District Magistrate u/s 12 of Madras Act 2 of 1888 were to be taken away. I am not satisfied that there is sufficient basis to justify this argument which is practically one of implied repeal. It seems to me that the purpose of Section 198 Local Boards Act is rather to prescribe the authorities to whom applications under Act 2 of 1888 should be made and appeals in such matters would lie, in non-municipal areas. Act 2 of 1888 was in the first instance confined to municipal areas, but power was given to the Government to extend it outside the limits of such areas. According to the original scheme of the Act, application had to be made in such areas to the Sub-Divisional Magistrate and from their orders appeal lay to the Magistrate of the District. The Local Boards Act of 1920 merely changed this procedure and provided that application in non-municipal areas might be made to the President of the Panchayat and the appeal would lie to the Panchayat Board. This practically put the President of the Panchayat and the Panchayat Board in non-municipal areas on the same footing as the Chairman of a Municipal Council and the Municipal Council itself in municipal areas. There is nothing in this scheme to suggest that so far as non-municipal areas are concerned, it must have been intended to take away the power of the District Magistrate u/s 12.

5. Mr. Bhashyam Ayyangar laid some stress upon the fact that while in Act 2 of 1888 it was provided by Section 7 that the license shall be in such form and subject to such fee and conditions as the Governor-in-Council may from time to time direct; it is now provided by Section 198, Local Boards Act, that the fee to be levied on, and the conditions to be inserted in licenses issued by the Local Boards shall be determined by the Panchayat. Whatever the reason for the change may be, it does not seem to involve as a necessary consequence anything like a change in the revisional powers of the District Magistrates. It is further contended that the powers; u/s 12 could be invoked only in cases in which an application for license has been disposed of by the authority to which the application had been made but not in cases in which there has been an appeal. I do not see any basis for this argument in the language of Section 12. The words which authorise the District Magistrate to pass any order which "the authority holding the proceeding" might have passed, will equally apply to the appellate authority, because under Sub-clause (4), Section 10 the appellate authority is given the same power in the matter as in the first authority.

6. It was lastly contended that the application was in terms one for a period of one year from 1st May 1931 to the end of April 1932, that this application must be taken to have long ago lapsed and that the District Magistrate has no power

to deal with an application for a period which had long ago expired. There is no provision in the Act indicating that an application lapses merely by reason of the lapse of any particular period. Taking it that under the rules, or as a matter of practice, licenses are issued only for periods of one year at a time, I do not see sufficient reason to hold that if for any reason final orders are not passed on a license application either within the official year or before the lapse of one year from the date when it was made, the proceeding ipso facto terminates. Whether the lapse of time will by itself or as suggesting a possible change of circumstances, influence the District Magistrate in the exercise of his discretion in any particular case, is a matter with which I have no concern. I am not able to say that that takes away his jurisdiction to deal with the matter. For these reasons, I see no reason to issue the writ asked for and I accordingly dismiss the petition with costs.