

**(1940) 04 MAD CK 0033**  
**In the Madras High Court**

J. Austen Byers, Esq

APPELLANT

Vs

The Municipal Council

RESPONDENT

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**Date of Decision :** 19-04-1940

**Acts Referred:**

Tamil Nadu District Municipalities Act, 1920 — Section 93

**Citation :** AIR 1941 Mad 636 : (1941) 53 LW 533 : (1941) 1 MLJ 620

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

**Bench :** Division Bench

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**Judgement**

Wadsworth, J.—This petition raises a question of liability to profession tax u/s 93 of the Madras District Municipalities Act. The petitioner

was the defendant in the lower Court and there is no dispute about the facts.

2. From 1st April, 1935, to 14th April, 1935, petitioner held the appointment of District and Sessions Judge, Trichinopoly. On 15th April, 19 : 35,

he ceased to hold that appointment having been granted leave with permission to be absent from duty during the ensuing summer vacation. He

spent this period of leave and vacation outside India. On 22nd June, 1935, he was re-appointed District and Sessions Judge, Trichinopoly, and

held that appointment up to 9th September, 1935, when he again took leave and his connection with Trichinopoly ceased. The total period of his

duty as District and Sessions Judge, Trichinopoly, during the half-year with which we are concerned was thus 3 months and 2 days and it is

common ground that during this period, though he worked inside the Municipality, he resided outside the Municipality. The petitioner has paid the

profession tax which would be due from him on the income earned by the exercise of his profession during this period of 3 months and 2 days. The

Municipality however filed a small cause suit claiming that he was taxable not only on the pay of his appointment during the period for which he

held an appointment within the Municipality but also on his professional income for rest of the half-year, that is, the periods of his absence from

Trichinopoly.

3. Section 93 of the Madras District Municipalities Act makes a person liable for profession tax if:

(a) he exercises a profession, art or calling or transacts business or holds any appointment, public or private;

(i) within the Municipality for not less than 60 days in the aggregate

(ii) without the Municipality but who resides in the Municipality for not less than sixty days in the aggregate;

(b) resides in the Municipality for not less than sixty days in the aggregate and is in receipt of any pension or income from investments.

4. Such a person is required to pay a half-yearly tax assessed in accordance with the rules in Schedule IV. Rule 16, of Schedule IV divides taxable

persons into twelve classes according to the amount of their half-yearly income and prescribes the appropriate taxes. Sub-section (2) of Section

93 prescribes that a person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in Sub-section

(1) as being liable to the tax. Now it is possible to read this clause in several different ways. It could be given a very wide interpretation and made

to mean that any one who became taxable under any of the qualifications in Sub-clauses (1) (a) and (b) would be chargeable in respect of any

income derived from any of the sources therein set forth. Under this interpretation a man who qualified for the tax merely by holding an

appointment for sixty days within the Municipality where he did not reside could be made to pay tax on the income which is expressly made

taxable only on the basis of residence. That is to say, he could be made to pay tax on his income from investments or his pension or on the income

from an appointment held outside the Municipality. I do not think that this is the correct interpretation of this clause and it has not been seriously

contended before me that such a wide meaning should be given to it. Another possible interpretation is that when a person is taxable under either

the first or second parts of Sub-clause (a) he becomes chargeable in respect of

income during the half-year from any profession or appointment wherever exercised. This is the interpretation for which the learned Government Pleader has contended. It involves the reading of the first part of Sub-clause (a) as dealing only with the sources of income and treating the qualifying words in parts (i) and (ii) as having relation only to the conditions giving rise to taxability. It seems to me that this method of construction involves a strain on the language of the section. The first part of Sub-section (a) is really one single sentence--a person exercising a profession or holding an appointment within the Municipality for not less than sixty days in the aggregate. The second part is really another sentence dealing with those who exercise a profession or hold an appointment without the Municipality but reside in the Municipality for not less than sixty days. With reference to the first class of persons the source of income is surely not the appointment whatever and wherever it may be but the appointment within the Municipality. With reference to the second class of persons the source of income is clearly the appointment or profession outside the Municipality which is made taxable by the qualification of residence within the Municipality. It seems to me that the intention of Sub-clause (2) of Section 93 is to make a person chargeable to profession tax under a class appropriate to his aggregate income from any source of income with reference to which he can be deemed to be taxable having regard to the terms of Sub-clauses (a) and (b) of Clause (1). That is to say, if a person is taxable by reason of his residence, then he comes both under Sub-clause (a) (ii) and under Sub-clause (b) and he would be taxable both in respect of any profession or appointment exercised outside the Municipality and also on any pension or income from investments. If on the other hand a man becomes taxable only by reason of the practice of a profession or the holding of an appointment within the Municipality, then the only source in respect of which his income can logically be calculated is the profession or appointment within the Municipality which brings him under the Act.

5. Not being a resident within the Municipality, he cannot be taxable on income from sources which are only taxed on the basis of residence. There is no precise authority on the subject. My attention has, however, been drawn to the decision in *In Re: Hilton Brown*, , which on the facts bears a superficial resemblance to the present case. That was a case of a Government

servant who spent a portion of the half-year at Vellore where he was the Collector. For rest of the half-year he was on leave outside India. The report does not precisely state that he resided in Vellore where he held his appointment. But there is nothing stated to the contrary and one may infer that he lived, as most people do, in the town where he worked. On these facts it was held that he was taxable on the total income from his appointment during the half-year. Assuming that he lived within the Municipality it seems to me that this decision is in accordance with the view which I have suggested; for he would be taxable under Sub-clause (a) (ii) of Clause (1) as a person residing in the Municipality who is taxable in respect of extra Municipal income and he would also be taxable as a person holding an appointment within the Municipality for a portion of the half-year. These two categories of liability together cover the whole of the half-year for which the tax was claimed.

6. The present case however presents different facts. The petitioner is taxable to my mind only under Sub-clause (a) (i) by virtue of having held an appointment within the Municipality; that appointment within the Municipality is the sole source of income in respect of which tax is leviable and in calculating his income for the half-year, I am of opinion that only the income from the taxable source should be taken into consideration.

7. In this view I allow the petition and dismiss the suit with costs throughout.