**(1963) 11 MAD CK 0066**

**In the Madras High Court**

**Case No :** C.R.P. No. 513 of 1961

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| K. Manohara Gramani | APPELLANT |
| Vs | |
| Thiruvothiyur Municipality in Saidapet Taluk | RESPONDENT |

**Date of Decision :** 21-11-1963

**Acts Referred:**
Madras Village Panchayats Act, 1950 — Section 82(1)

**Citation :** (1963) 11 MAD CK 0066

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

**Bench :** Single Bench

**Advocate :** I.A. Salam, for the Appellant; J.R. Alwar Naidu and Smt. B. Krishnaveni, for the Respondent

**Final Decision :** Dismissed

## Judgement

Venkatadri, J.—This revision petition arises out of a suit filed by the Thiruvottiyur Municipality for the recovery of arrears of licence fee from the petitioner herein who is admittedly running a private market at Kaladipet within the limits of the Thiruvottiyur Panchayat Board, which has now become a Municipality. The defence to the suit is that it is not maintainable because the licence fee is payable if at all only to the Panchayat Board and there is nothing to show that the right to collect the licence fee due to the Panchayat Board has become vested in the plaintiff Municipality. The defendant also contended that in any event the suit is barred by limitation as the claim to recover the licence fee relates to a period more than 3 years prior to the date of suit that is for 1956-57. He also urged that the Panchayat cannot claim the licence fee as he himself never filed any application for renewal of licence and even assuming that he ran the market for the year in question, the erstwhile Panchayat could only take the relevant proceedings under the Act and not file a suit against him. Further, the suit itself would not lie as it was filed without the sanction of the Municipal Council. It is on these pleadings the parties want to trial. The learned District Munsif negatived all the contentions of the defendant and decreed the suit. Now it is against this decree that the defendant has preferred the present revision petition.

2. It is an admitted fact that the defendant is running a private market. Under the provisions of the Madras Village Panchayats Act, he has to take out a licence under S. 82 (1) for keeping open a private market and the Panchayat has got a right to levy a fee under S. 82 (4) for granting a licence. The petitioner is not disputing the right of the Panchayat either to insist upon him to take out a licence for running the market or to levy a fee on the gross annual income from the market. But the learned Counsel for the petitioner seriously contends before me that his client did not apply for a renewal of a licence and in the absence of an application for renewal of a licence, the Panchayat cannot file a suit for recovery of the licence fee. I am not able to agree with his contention. Under the Panchayat Act, there is no particular form prescribed either for the application for a licence or for renewal of a licence. All that is contemplated under the Act is that the owner of a private market has to file an application for licence or for renewal of a licence. On a reference made by the Panchayat, the petitioner wrote to the Panchayat on 20th March 1957, enclosing a statement of account with regard to the net income from the market. In that letter the petitioner stated that the net income for the year in question was Rs. 1316 and requested the Panchayat Board to assess his licence fee according to the net income. He further stated in that letter that in the previous year, the fee was fixed under the discretion of the Panchayat, as he did not submit his accounts and requested that since he had submitted his accounts for the year in question, the licence fee might be assessed according to the net income shown in the statement of accounts. The Panchayat replied to this letter on 17th May 1957 under Ex. A. 6 informing the petitioner that after examining the accounts sent by him, a sum of Rs. 387 has been fixed as the licence fees for the market for the year 1956-57 and asking him to remit the amount within a week from the date of receipt of the memo failing which the Panchayat threatened to take legal action to recover the amount. The petitioner replied to this memo by letter dated 10th July 1957 Ex. A. 7, stating that he would pay the licence fee for 1956-57 in monthly instalments of Rs. 100 commencing from the month of August 1957. On the face of these documents, it is futile on the part of the petitioner to argue that there was no renewal of licence, that he is not liable to pay the licence fee assessed by the Panchayat and that the suit is not maintainable. As stated previously by me, there is no separate application prescribed for renewal of a licence. The letter Ex. A. 5 written by the petitioner requesting the Panchayat to assess the licence fees for 1956-57 on the net income shown by him in the statement of accounts must be deemed to be an application for renewal of licence.

3. The next question that arises for consideration, is even assuming that there is no renewal of licence, can the Panchayat file a suit for recovery of the licence fee and for the year in question. It has been held in Maridu Gopayya in re, 51 Mad. 866=28 L.W. 342 that licence fee is recoverable even from a person who erected a pandal without applying for or obtaining a licence. Again in Municipal Council, Sannaya alias Narayana Holla Vs. Balarama Hande and Others, the levy of an

 

enhanced licence fee imposed retrospectively based on the gross income of the previous year was held to be not unlawful. Therefore, the Municipality of Thiruvottiyur can certainly file the suit for the recovery of the licence fee for the year 1956-57, even assuming that the petitioner did not apply for renewal of licence.

4. The next contention of the learned Counsel for the petitioner is that the suit is barred by limitation. There is no substance in this contention. The petitioner himself acknowledged his liability to pay the licence fee by his letter dated 10th July 1957, Ex. A. 7, wherein he undertook to pay the licence in instalments of Rs. 100. Limitation runs from the time when the amount, becomes due and payable. Even according to the petitioner he sent his Statement of account only in the month of March 1957 and the Panchayat assessed the licence fee for the year 1956-57 in the month of May 1957. The licence fee became due and payable from the date of the levy of the licence fee in May 1957. If we take the date of the levy of the licence fee, the suit is within time.

5. It was also, contended on behalf of the petitioner that the present suit is not maintainable by the Thiruvottiyur Municipality, as the Municipal Council and the Special Officer have no locus standi to file the present suit for recovery of the licence fee. Here again the argument is without substance. It is true that S. 351 (g) of the District Municipalities Act, 1920 provides that the executive authority may institute or prosecute any suit only with the approval of the Council. But there is a special provision in the case of newly constituted Municipal Councils. S. 368 (1) and (3) provide that when a Municipality is constituted for the first time, the special officer shall exercise the powers, discharge the duties and perform the functions of the Municipal Council until the Council has been constituted. Therefore, the special officer has got every right to file the present suit for the recovery of the licence fee. The lower court was therefore right in decreeing the suit. The civil revision petition is accordingly dismissed. No costs.