

(1928) 10 MAD CK 0031
In the Madras High Court

K.S. Rama Ayyar and Others

APPELLANT

Vs

Municipal Council and Another

RESPONDENT

Date of Decision : 15-10-1928

Acts Referred:

Citation : AIR 1929 Mad 345

Hon'ble Judges : Mackay, J

Bench : Division Bench

Judgement

Mackay, J.—The only point arising in revision is whether the learned District Judge was right in exercising his jurisdiction by dissolving a temporary injunction issued by the Subordinate Judge restraining the Municipal Council of Madura, the contesting respondent, from filing fresh complaints against the plaintiffs in a suit before him, the present petitioners, u/s 249, District Municipalities Act, on condition of their depositing certain-license fees in Court, pending disposal of the suit.

2. The plaintiffs" own rice mill in Madura town and sued for a declaration of their right to work the mills without interference by the Municipal Council. Their contention was that their mills do not come within the scope of Section 249 inasmuch as they are not used for one or more of the purposes specified in Schedule 5 to the Act, Clause (E). Whether these mills come within the schedule is, of course, a question of fact.

3. It has already been decided by the High Court that the owners of rice mills are obliged to take out licenses u/s 249, (if the working is found to be dangerous to human life and health) : Muthu Balu Chettiar v. Chairman, Madura Municipality AIR 1927 Mad. 961 (S.B). I agree with the learned District Judge that a [competent criminal Court is just as much entitled to decide the question of fact as a civil Court. The petitioner"s cases, were among those which came before the Full Bench and it had been found as a matter of fact that the rice mills in question were dangerous. On that ground I think that the Judge was right in holding that there was no prima facie case for an injunction.

4. As regards the power of a civil Court to restrain a person from preferring a complaint to a criminal Court the learned District Judge was of opinion that it is barred by Section 56 (e), Specific Relief Act which runs:

an injunction cannot be granted.

(e) to stay proceedings in any criminal matter.

5. There appears to be no judicial authority on the point; the views taken in the books vary. In *The Corporation of Calcutta Vs. Bijoy Kumar and Others*, the point was left undecided, but the learned Judges refer to the well-settled rule that it is not the practice of the Court to interfere with corporate bodies unless they are manifestly abusing their "powers. I am not prepared to disagree from the appellate Court when it holds that a civil Court has no power to restrain a person or corporate body from contemplated prosecution where proceedings are threatened but are not yet pending although in terms Section 56 (e) may not appear to apply. It seems to me a much more serious thing to restrain a " person from seeking redress in a criminal Court than to restrain him from applying to a legislative body, which is forbidden by Clause (c). However that may be, I am clearly of opinion that this is not a case in which the Municipal Council should be restrained from launching a prosecution against the petitioners, if they use their premises without the Chairman's license and except in accordance with the conditions it specifies. All that they have to do is to take out license (under protest) which will no doubt be granted if the premises are fit to be licensed. It is unnecessary to decide whether Section 56 (e) is a bar to enjoining contemplated prosecutions, because it is clear on the authorities, that even if a Court has such jurisdiction it will only interfere in very special circumstances and I am of opinion that no special circumstances exist in this case. The petition is dismissed with costs.