
(1942) 01 MAD CK 0007
In the Madras High Court

K.S.V. Ramaswami Mudaliar

APPELLANT

Vs

K.L. Dargan, Examiner of Local Fund Accounts

RESPONDENT

Date of Decision : 27-01-1942

Acts Referred:

Citation : AIR 1942 Mad 463 : (1942) 55 LW 188 : (1942) 1 MLJ 394

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The question at issue in this appeal is whether certain items surcharged against the President of the Bhavani Pahchayat Board for

the Official year 1938-1939 have been rightly "90 surcharged or not.

2. The first item refers to a sum of Rs. 35. This sum ought to have been collected by the President, who is the appellant here, from certain persons

who carried on trade within the Union without taking a licence. It is the case for the Government that these persons were permitted by the

appellant to carry on their trades without ever calling upon them to take a licence and pay the requisite licence fee. The learned Additional District

Judge of Coimbatore against whose order this appeal has been filed holds that the Panchayat Board had no right of suit in respect of these sums,

the reason being that no licences were actually issued. If licences are not actually issued, it cannot be said that any licence fee is legally due from

persons to whom they ought to have been issued. There is authority for this position in *Gopayya In re* (1927) 55 M.L.J. 27 : ILR Mad. 866, and

after some argument it was finally conceded for the appellant that there was no right of suit in respect of this money. We accordingly hold that the

order of surcharge in respect of the first item was correct.

3. The second item is one of Rs. 38 due on account of house tax for the year 1935-1936. This was not demanded, and no suit was filed so that

during the presidentship of the appellant it had become time-barred. On the 31st March, 1939, it was written off by the Board as irrecoverable. It

was argued that in some way this action of the Board releases the President from all responsibility in respect of the failure to collect the money.

There is nothing, however, in the Act or in the rules relating to surcharges which makes the Board the judge whether the President has by his

negligence caused loss of money to itself or not. It is clear in this instance that the failure to collect this money was due entirely to the negligence of

the appellant as the evidence is that the persons from whom it was due have been regularly paying their house tax in subsequent years, and there

can therefore be no acceptance of any plea of their inability to do so in the year in question.

4. Finally comes a sum of Rs. 129-8-0 which is due from a number of persons who have taken leases of certain vacant sites in the municipal area.

According to the rules under the Act there ought to have been written lease deeds executed by them, but owing to the indifference of the appellant

in this respect the leases were by word of mouth only. The learned Additional District Judge states that as this is so the Board is precluded from

filing any "Suit. No doubt that is true if the suit is one for rent specifically so-called; but our attention has been called to more than one ruling of this

Court in which it has been held that even though there is no written lease a suit can be filed for damages for use and occupation. The correctness of

these decisions has not been challenged by the learned Government Pleader. It follows that the view of the learned Additional District Judge that

the Board is left without any legal remedy for recovering the money which ought to have been levied from these lessees is wrong. It is argued on

behalf of the Government that the failure of the President to take written leases from the lessees will make the filing of suits by the Board a more

laborious and costly matter than it would otherwise have been, and in particular stress is laid upon the fact that a large number of individual suits for

small sums would have to be instituted. It is also mentioned that it is common knowledge that the costs incurred by a successful plaintiff are usually

greater than those awarded him by "the Court, and therefore it is argued that the net result of filing these suits will be that the money will not be

recovered in full. It seems to us that these are considerations which are foreign to the scope of the decision of this appeal. An order of surcharge

can be rightly levied only when loss has been clearly established. If, of course, the Board is left without any legal remedy, then such loss has been

clearly established; but if all that can be argued is that when a legal remedy is resorted to it is probable that there will be difficulties in realising the

fruits of the decree, or that the Court will not award the actual costs which the Board is compelled to incur, then no present loss has yet been

proved and the matter is still hypothetical. We are accordingly of opinion that in regard to this last item the order of surcharge is not justified.

5. The appeal will accordingly be allowed in respect of the final item and will be dismissed in respect of the first two items. Each party will bear his

own costs throughout.