

(1956) 03 MAD CK 0036
In the Madras High Court

M.A.M. Subbiah Ambalam

APPELLANT

Vs

The Commissioner, Karaikudi Municipality and Another

RESPONDENT

Date of Decision : 28-03-1956

Acts Referred:

Citation : (1956) 2 MLJ 188

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—This is a revision against a conviction under the District Municipalities Act. The petitioner herein has a house in a street

called Uttamavinayakar Lane within the limits of the Karaikudi Municipality. He had committed certain encroachments by putting up certain tops

and also some steps in front of his house. He appears to have been taking out a license u/s 183(1) paying the usual fee for such a license. But, in

the year in question he did not pay the necessary fee and obtain the license. He was, therefore, prosecuted for not taking out a license and he has

been convicted by the Courts below u/s 183 read with Section 313(c) of the Act.

2. It is contended here that this is not one of those cases where a person is compelled to take out a license, without which he is prohibited from

doing those certain acts. All such acts are covered by Chapter XII of the Act, which mentioned the various acts for which a license or permission

from the municipality is a pre-requisite. In such cases where a license or permission from the municipality has not been taken¹ and the act is done,

then certainly the person who does such an act is liable for punishment for not taking out a license. But u/s 183 of the Act, the Council may (*italics*

mine) grant a license, subject to such conditions and restrictions as it may think

fit, to the owner or occupier of any premises to put up varandahs, balconies, sun-shades, weather-frames and the like, to project over a street, or in. streets in which the construction of arcades has been sanctioned by the council, or to construct any step or drain-covering necessary for access. Under Clause 6 of Section 183, on the expiry of any period for which a license has been granted under this section, the executive authority may, without notice, cause any projection or construction put up under Sub-Section (1) or (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in Section 344 from the person to whom the license was granted. Now, under the provisions of this section, if the occupier or owner of any premises wants to put up steps or tops, as the petitioner has done, he has no doubt to obtain the permission of the municipality. Otherwise this encroachment is liable to be removed. If he does not obtain the license, it is open to the municipality to issue a notice to him to remove the encroachment and on failure to remove the encroachment the person can be prosecuted u/s 313(c) of the Act. In fact, the notice that has been issued in this case to the petitioner only calls upon him to renew his license by paying the license fee of Rs. 9, plus a penalty of Rs. 3 in advance and obtain the license, and it states further that if he fails to do so, for the offence of encroachment he will be prosecuted u/s 313 of the Act. He can, therefore, be only prosecuted for non-removal of the encroachment, if after notice he does not remove it. If he does not pay the license fee he does not get the license and the offence becomes one of encroachment in a public street for which he can be prosecuted after giving notice if he does not comply with the notice. But he cannot be prosecuted for not taking out a license. It is for the alleged offence of not taking out a license by paying the licence fee in advance that the petitioner has been convicted. In cases of this nature, persons cannot be prosecuted for not taking out a license but they can only be prosecuted for failure to remove the encroachment.

3. The offence of which the petitioner has been convicted has not been made out. The conviction and sentence are, therefore, set aside and the petitioner is acquitted. The fine and the license fee collected will be refunded.

4. This acquittal does not mean that the municipality cannot by issuing a proper notice call upon the petitioner to remove the encroachment. It is still

open to the municipality to issue the necessary notice calling upon him to remove the encroachment and if he does not do so to prosecute him u/s

313(c) of the Act.

5. Same order in Criminal R.C. Nos. 809 of 1955 and 810 of 1955.