
(1941) 07 MAD CK 0029
In the Madras High Court

Manbuval Hasanath Hamedia Madrasa School	APPELLANT
Vs	
Municipal Council	RESPONDENT

Date of Decision : 16-07-1941

Acts Referred:

Citation : AIR 1941 Mad 834 : (1941) 54 LW 728

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The question for decision in this appeal is whether the owner of a private market in a municipality is entitled to prevent the municipality from opening a new market. Both the lower Courts have decided against the plaintiff. Two grounds are urged before me : (1) that under the provisions of the Madras District Municipalities Act, a private owner has got such a right. The sections referred to are Sections 259 to "267 and Mr. Desikan relies very strongly on Section 267A as conferring that right by necessary implication. I am not able to see how Section 267A gives rise to such a necessary implication at all. All that the section says is that it is open to the Municipal Council to acquire the rights of any person to hold a private market. That does not confer any right on the owner of a private market to compel the municipality to acquire his right and not to open a new market.

2. The second ground is that under the common law of England the owner of a private market can prevent another market being opened within a radius of 6-2/3 miles, and, in the absence of any positive enactment in India, that rule ought to be followed. Such a contention was advanced in a case in Bengal and their Lordships of the Calcutta High Court were not prepared to uphold it. In 47 Cal 1079 : AIR 1920 Cal 255 : 58 IC 879 : 47 Cal 1079 : 24 CWN 800 Hem Chandra v. Kristo Chandra, Eichardson J,, observed that "there appears to be no such thing as a market franchise or a right to hold a market, conferred by grant from the Crown," in Bengal. I do not think that a different principle applies to this presidency. At the same time, the question is whether I should give effect to that

rule of English) law. It seems to me that the rule is an artificial rule and is not countenanced even in England as being a sound one. I do not think it is a rule which is based on any equity or good conscience, which compels me to adopt it. The view of a lower appellate Court seems to me correct. I therefore dismiss this second appeal with costs. Leave to appeal is refused.