

(1936) 04 MAD CK 0057
In the Madras High Court

Municipal Council

APPELLANT

Vs

Nidamarti Jaladurga Prasadarayudu

RESPONDENT

Date of Decision : 02-04-1936

Acts Referred:

Tamil Nadu Elementary Education Act, 1920 — Section 32

Citation : AIR 1936 Mad 857

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—These revision petitions arise out of two Small Cause suits on the file of the Sub-Court, Rajahmundry, wherein the plaintiff claimed refund of certain taxes from the Municipal Council of Rajahmundry on the ground that they had been illegally levied. The learned Subordinate Judge upheld the plaintiff's claim to a certain extent and dismissed it in respect of other portions of the claim; hence these revision petitions filed by both parties.

2. Questions have been raised with reference to three items of taxes: (1) Education tax, (2) profession tax and (3) property tax. As regards education tax the learned Judge held that the levy was unauthorised because an education fund had not been constituted in the first instance as contemplated by Section 32, Elementary Education Act of 1920. The evidence adduced before the lower Court showed that a resolution had been passed by the Municipal Council on 30th October 1922, for the levy of an elementary education tax at the rates specified therein from 1st April 1923 and the Government was requested to accord its sanction. The sanction was duly accorded by G.O. No. 192 dated 3rd February 1923. An argument was advanced here on behalf of the Municipal Council that the reference in Section 32 to the constitution" of an elementary education fund merely means the collection of money for that purpose and need not necessarily mean a formal resolution proposing to constitute such a fund. I do not think it is necessary for me to express any opinion on this argument. In the ordinary course I should have been prepared to presume in a matter of this kind that the

necessary formalities had been observed before the Government gave its sanction to the proposed levy. The enactment is no doubt a taxing statute but I do not see how a subject can say that he has been prejudiced by the mere omission to pass a formal resolution constituting an education fund because it is the taxing resolution sanctioned by Government that really imposes the liability upon him.

3. It has however been brought to my notice by an application filed during the pendency of these C.R. Ps. for the admission of certain documents that a formal resolution constituting an elementary education fund had in fact been passed by the Council on 3rd October. The respondent is no doubt justified in taking exception to an application for admission of fresh evidence at this stage but it must be remembered that there have been changes in the personnel of the officers of the Municipality and I see no reason to think that the officer who attended to the conduct of the suit before the lower Court was negligent in making the necessary search. The affidavit filed in support of the application explains how the omission came about and also how the subsequent discovery was made. The plaintiff has filed a counter-affidavit which does not seriously question the truth of the statements made in the affidavit. I am not much pressed by the suggestion that if the documents are now admitted the matter must be sent down to the lower Court for further evidence. It is sufficient for the purpose of the determination of this question to admit the copy of the District Gazette containing the resolution of the Municipal Council dated 3rd October. I have little hesitation in admitting it because as I have stated already even otherwise I should have assumed that the correct procedure had been followed in the ordinary course. I do not see that the admission of the District Gazette calls for any fresh evidence either in respect of it or to disprove it. I must therefore set aside the lower Court's decision so far as it has directed refund of the education tax.

4. Proceeding next to the profession tax, the lower Court has directed refund of the tax in respect of the half-year ending 31st March 1927. This it did on the ground that the notification embodying the resolution u/s 80 was published in the District Gazette only on 1st October 1926, and that the tax accordingly could not be made to take effect from that very date. This ground does not seem to be tenable. It is not suggested that sufficient time was not given to take objection to the resolution u/s 78 dated 13th August 1926. If no objections had been filed within the time allowed, the mere fact that the resolution u/s 80 was published only on 1st October 1926 is immaterial. This is the ratio decidendi of the decision in *The Municipal Council Vs. Sangsali Vasudeva Rao*, .

5. There is however another difficulty about the profession tax. The Municipality seems to have taken into account the income received by the plaintiff not merely from investments of money but also from lands outside the Municipality. The learned Subordinate Judge has found that since 1922 the plaintiff has not been practising as a pleader and has not been getting any professional income in that

way. He followed the decision in *Veerappa Chettiar v. Municipal Council, Palni* 1925 48 Mad 476 and held that the Municipal "Council was justified in assessing profession tax on the basis of income derived from lands outside the Municipality. This decision is however difficult to reconcile with the later decision in *Madura etc. Devasthanam v. Madura Municipal Council* 1928 51 Mad 301. In the earlier case emphasis was laid upon the first part of Section 93, District Municipalities Act, whereas in the later case emphasis was laid upon the expression "professional income" towards the end of that section. If as held in *Madura etc. Devasthanam v. Madura Municipal Council* 1928 51 Mad 301 the tax is to be levied only on professional income it would be difficult to justify the tax on income derived from lands outside the Municipal limits. This inconsistency between the two decisions was pointed out by Jackson, J. in his order of reference in *The Municipal Council Vs. Kachi Munuswami Mudaliar*, but the Full Bench of which he was himself a member left the question open as it was found possible to dispose of that case on another point. It was again adverted to by Venkataramana Rao, J. in his order of reference in S. A. 1533 of 1931, but the Division Bench which heard the second appeal has followed *Madura etc. Devasthanam v. Madura Municipal Council* 1928 51 Mad 301. In these circumstances I do not think it necessary or worth while to pursue the question and I am content to follow *Madura etc. Devasthanam v. Madura Municipal Council* 1928 51 Mad 301. I do so the more readily because the language of the section has been amended by the Act of 1930 and the question is not likely to arise in the same form hereafter.

6. It however appears from the lower Court's judgment that even if the income from the lands situate outside the Municipality should be left out of account, the plaintiff is in receipt of interest on moneys lent, but in the view taken by the learned Subordinate Judge, he did not think it necessary to decide whether the income received by the plaintiff from investments justified the assessment. Mr. Rama Rao raised a point before me that in the demand notices issued in respect of the profession tax reference was made to interest only in one, while the other two related only to income derived from land. I am not prepared to accept the suggestion that on this ground alone the levy of the tax must be held to be illegal if otherwise its levy was justifiable. These demand notices are prepared by clerks and the fact that at the head of them all the heads of income are not specified should not be taken to vitiate the assessment. On the other hand Mr. Subba Rao, on behalf of the Municipal Council took the objection that if in fact the plaintiff was in receipt of taxable income, viz., under head of interest on investments it is not for the Court to investigate the amount actually received by him under that head or to say that the Municipality was not justified in assessing him on the basis of an income of Rs. 500 per mensem. This no doubt might ordinarily be so where the Municipality has not made a mistake as to the basis of the assessment. For reasons I have already given, it is obvious that the Municipality proceeded to assess him on the footing that even the income from lands situate outside the Municipal limits was liable to assessment. If he had no

income from interest on money lending the whole assessment would be liable to be set aside.

7. In these circumstances the Court will not be justified in assuming that the Municipality would have assessed him on an income of Rs. 500 per mensem if it had not made that mistake. It is to be regretted that the course of the proceedings before the lower Court rendered it unnecessary in the opinion of the learned Subordinate Judge to go into the question whether the plaintiff was in receipt of an income of Rs. 500 per mensem from interest alone. I do not think I will be doing justice between the parties if I refuse to go into that question merely because its importance has been realised only at this stage. I must therefore call upon the lower Court to give an opportunity to both parties to adduce such evidence as they think material to the question of the income derived by the plaintiff during the assessment periods in question from heads in respect of which profession tax is legally leviable, i.e. excluding the income from houses and lands outside the Municipal limits. The plaintiff will be entitled to a refund of such amount as might be found to have been levied in excess in view of the result of this enquiry. Proceeding next to the property tax, several points have been raised in that connexion by one party or the other. Mr. Subba Rao did not press the objection to the finding in para. 11 of the lower Court's judgment as regards the assessment on land bearing No. 60 in Olcott Gardens in view of the lower Court's statement that it accepted the evidence of P.W. 1 that it was used only for agricultural purposes. Mr. Rama Rao for the plaintiff mentioned the general objections dealt with in paras. 8 and 17 of the lower Court's judgment. It seems to me sufficient to say that I see no reason to differ from the lower Court on those points.

8. As regards Mr. Rama Rao's objection to the question dealt with in para. 12 of the lower Court's judgment, viz., that no water and drainage tax could be levied in the present case because there are no water works or drainage works in existence in the locality or even in immediate contemplation it seems to me sufficient answer to refer to the concluding words of Sub-clause (a) of Section 81(1) which contemplate even works "hereafter to be pro-vided." Under what circumstances a water and drainage tax should be permitted to be levied in connection with works to come into existence in the future is a matter for the discretion of the Municipal body and of the Government and not a matter affecting the legality of the levy of the tax if the Municipal body chose to levy the tax. Another objection raised by Mr. Rama Rao is that dealt with in para. 14 of the lower Court's judgment, viz., that at the time the property tax was levied there were revision petitions pending before the Municipal Council in respect of some houses belonging to the plaintiff and that the tax should not have been levied before those petitions had been disposed of. Rules 11 to 14 of Schedule 4, District Municipalities Act, on which Mr. Rama Rao relied in this connection do not support the contention that the levy of the tax before the disposal of the revision petitions is illegal. It is a question of the proper administration of the Municipal affairs of a place whether such revision petitions are disposed of with reasonable

despatch or not.

9. Rule 13 no doubt provides that after the disposal of the revision petitions the Chairman shall communicate the result to the petitioner or his agent and give him an opportunity to pay the tax as per the orders on the revision petition. The disposal of the revision petition may be delayed for various causes and I see no reason to presume that in the present case there was any improper delay. I find no suggestion or evidence bearing upon the disposal. Nor do I even know how and when the revision petitions were disposed of. In these circumstances I think the lower Court rightly held that the levy was not illegal; if the tax was reduced with retrospective effect the assessee might be entitled to a refund of any excess levied from him. In para. 9 the lower Court has dealt with the contentions of the parties based on the circumstance that the proposal contained in the resolution dated 22nd January 1927 to reduce the property tax by one per cent was not given effect to during the year 1927-28, though the sanction of the Government therefor was received on 5th May 1927. I am not able to agree with the lower Court's view in this matter. It is not for the Court to say whether the Municipal Council could not have acted better if it had given effect to the reduction even from 1st April 1927. I have only got to see whether the levy is illegal. The resolution dated 22nd January 1927 was only provisional. Under the law it required the sanction of the Government in the circumstances and by its very terms the resolution called for objections. It cannot therefore be said that that resolution by itself was immediately operative. The order of the Government also shows that it was only after prolonged correspondence with the Collector, with the Chairman and with the Council that the Government gave its sanction: vide papers recited in Ex. 5-b; and it will be noticed that that order imposes certain conditions on the Municipal Council, viz., that the Council should properly maintain its services and provide sufficiently for the general amenities of the town. The Municipal Council was therefore justified in taking its own time to consider whether on those conditions it should act on the sanction of the Government or not. As the sanction of the Government was not received till the 5th May the Council resolved that for the time being the property tax should be levied at the old rate.

10. It is contended by Mr. Rama Rao that this is opposed to Rule 8 of Schedule 3 because this amounts to a modification of the resolution of 22nd January 1927. Even assuming that this amounts to an alteration of that resolution Rule 8 of Schedule 3 does not wholly preclude or invalidate such modification but only lays down that certain preliminaries should be observed for the purpose. As this objection was not raised before the lower Court, I cannot now allow it to be raised for the first time because if raised it might have been shown that those preliminaries had been observed. Holding that the levy of the property tax for the year 1927-28 at the old rate was not illegal, I must set aside the portion of the lower Court's decree relating to it. The only other point argued before me relates to the tax levied on house No. 93. The lower Court has held that because the notice relating to it though served on the plaintiff purported to be addressed

to the plaintiff's son the levy of the tax was illegal. I am unable to agree in this conclusion. The application for mutation filed by the plaintiff shows that by this time the plaintiff had become the transferee of the house and u/s 88 ha undoubtedly had become liable for the tax. Assuming that the taking of distraint proceedings without a proper notice served on the party may be open to objection, it would not follow that a parson who pays a tax which he is legally liable to pay would be entitled to claim refund merely because the distraint proceedings were improperly initiated. In this view it is unnecessary for me to say whether the mere fact of the notice having been drawn up in the name of the plaintiff's son would make the proceedings against the plaintiff improper when in fact the notice had been served on him. The direction in para. 15 of the lower Court's judgment for refund of the amount thus collected must therefore also be set aside. It seems to me most convenient in the circumstances to set aside the decrees of the Court below and send the cases back for the passing of revised decrees in both the suits in the light of the observations above made. As the parties have succeeded in part and failed in part in these revision petitions, there will be no order as to the costs in the revision petitions. The costs in the lower Court will be provided for in the revised decrees.