

(1895) 08 MAD CK 0010
In the Madras High Court

Municipal Council

APPELLANT

Vs

Rangayya

RESPONDENT

Date of Decision : 13-08-1895

Acts Referred:

Madras District Municipalities Act, 1884 — Section 262

Citation : (1896) ILR (Mad) 10

Hon'ble Judges : Shephard, J;Best, J

Bench : Division Bench

Judgement

Shephard, J.—This action is brought to recover the sum paid by the plaintiff in respect of the first instalment of the tax on a house for the

year ending with March 1894. The construction of the house not having been completed till August 1893, it is contended for the plaintiff that the

tax was not leviable for the first half of the year and must, therefore, be recoverable by action. On the other hand it is argued on the defendant's

behalf that any such action is barred by the 262nd Section of the Act of 1884. Unless it can be shown that the plaintiff is, under the circumstances,

saved by the proviso to that section, this defence must clearly prevail.

2. It is said that the provisions of the Act relating to the assessment and levy of taxes have not been in substance and effect complied with, because

according to the right construction of the Act a house not completed at the beginning of the year cannot be made the subject of taxation. It is not

said that in any other respect there has been a departure from, or neglect of, the provisions of the Act relating to the assessment of the property.

3. For the purpose of any argument regarding the construction of the 262nd section, it must be assumed that money paid and sought to be

recovered is money which was not legally payable by the plaintiff.

4. The second Clause of the section is one of a group of provisions designed to give special protection to the municipal council.

5. The 261st Section provides for notice of action; the first Clause of the 262nd Section provides for certain specified cases of mistake.

6. The second Clause provides that no action shall be maintained to recover money paid in respect of any tax assessed or levied under it. Then

follows the proviso. It is clear that this clause is not intended to be restricted to those cases in which there has been a mistake such as is provided

for in the first clause.

7. The second Clause presupposes a case in which a tax has been illegally levied and only requires that the provisions of the Act relating to

assessment and levy shall have been complied with.

8. Assuming that the commissioners have made a mistake, and ought not to have levied a tax on the plaintiff's house for the first half-year, I think

they are entitled to the protection which they claim under the 262nd section, It cannot be said that the house-tax was not in legal existence in

Nellore; the *modus operandi* presented by the Act was adopted, and all that can be charged against the defendants is that they made a mistake of

law, or of fact, in assessing this particular house of the plaintiff. Such a mistake does not, I think, bring the case within the proviso which, as I read

it, is aimed at illegal exactions made by a council or its officers arbitrarily and without any regard to the provisions of the Act.

9. The case is not in my opinion distinguishable from that cited on the defendant's behalf *Kamayya v. Leman* ILR 2 Mad. 37. The plaintiff's

remedy is by appeal under the 97th Section of the Act. In this view of the case it is unnecessary to consider whether in the sections relating to the

tax on buildings the existence of the building at the beginning of the period for which the tax may be charged is presupposed.

10. I would reverse the decree of the District Munsif and dismiss the suit with costs throughout.

Best, J.

11. The question is whether this suit for recovery of a sum of Rs. 3-6-0 collected by the Municipal Commissioners of Nellore as house-tax for the

half-year (March to September 1894) is maintainable.

12. The District Munsif has held that it is, on the authority of Tuticorin Municipality v. South Indian Railway ILR 13 Mad. 78. In that case the money sued for was money that had been collected by the Tuticorin Municipality in direct violation of Section 601 of the Act, which exempts a person who has paid profession tax in one municipality from liability to pay for the same half-year in another municipality. It was therefore clearly a case in which the provisions of the Act relating to the assessment and levy of the tax had not been in substance and effect complied with, and therefore within the proviso of Section 262.

13. The present case is different, as no express provisions of the Act can be held to have been contravened. That it never could have been intended that a newly-built house that only became habitable six weeks before the expiry of the half-year should be taxed for the whole half-year may be inferred from Section 722 which provides for remission of the tax on vacant buildings; but clearly there is no ground on which it can be held in the present case that the tax has been imposed or levied in contravention of any express provision of the Act; and such being the case Ramayya v. Leman ILR 2 Mad. 37 is authority for holding that the suit is not maintainable.

14. It must, therefore, be dismissed and the lower Court's decree set aside.

1.

No liability for half- Section 60: No person shall be liable to the payment of the tax

yearly tax in more than u/s 53, who shall prove that he has paid the tax for one municipality. the same half-year in any other municipality.

2.

Section 72: (1) When any building has been vacant for 60 consecutive days in any half-

Remission on account of year, the chairman shall remit so much, not exceeding one-half

vacant buildings. of the tax due for that half-year, as is proportionate to the number of days during which such building has been vacant.

(2) No person shall be entitled to such remission unless the owner of the house or his

agent shall, at or about the time that the house becomes vacant, give notice of

such

vacancy to the chairman.