

(1899) 11 MAD CK 0009
In the Madras High Court

Municipal Council of Tanjore

APPELLANT

Vs

Umamba Boy Sahib

RESPONDENT

Date of Decision : 21-11-1899

Acts Referred:

Citation : (1900) ILR (Mad) 523 : (1900) 10 MLJ 138

Judgement

1. In this case the Chairman of the Municipal Council of Tanjore professing to act under the authority of Section 71 of Act IV of 1884 inserted the

name of the respondent as liable to pay a portion of the land and water taxes which had previously been levied from other parties who had an

interest in certain land within the limits of the Municipality. The Sub-Judge found that the Chairman had omitted to give the respondent the notice

prescribed by Sub-section 2 of Section 71 and gave the respondent a decree for the amount of the taxes paid by him under protest. The Municipal

Council now asks us to revise this decree on the ground that ""the provisions of the Act relating to the assessment and levying of the taxes have

been in substance and effect complied with"" and that, therefore, Section 262(2) of Act IV of 1884 is a bar to the maintainability of the suit in a

Civil Court.

2. We are unable to admit the validity of this contention. Section 71(2) requires that no person's name shall be inserted unless notices of such

intended insertion has been served on such person not less than thirty days previous to a day to be specified in such notice as the day upon which

such assessment will be revised by the Chairman.

3. The only notice given to the respondent was that contained in the following letter from the Chairman to the respondent.

I have the honor to forward herewith a list showing the amount of land and water taxes due for 1895-96 on Devasthanam lands within the limit of

this Municipality and to request that you will be good enough to cause the amount to be remitted to this office at your earliest convenience.

4. This notice is obviously on the face of it not such a notice as is prescribed by the section. It does not state that the respondent's name will be

inserted at a future date specified in the notice, so as to give him an opportunity, if so advised of appealing against the assessment. It is merely a

demand for a tax assumed to have been already properly assessed on the respondent and due by him (her?). It follows that the provisions of the

Act have not only not been substantially complied with but have been completely ignored. Consequently Section 252(2) has no application.

5. Our attention has been called by the petitioner's Vakil to the decision reported in Municipal Council of Nellore v. Rangayya but we are unable

to accept his contention that the decision is opposed to the view we have taken in this case. Even the somewhat general language used in that case

by Mr. Justice Shephard was not, in our opinion, intended to covers neglect to comply with the express provisions of the Act such as we find in the

present case, nor can we agree with the Vakil's contention that Section 262(2) refers only to defects in regard to the first imposition for the year of

a tax throughout the Municipality, and not to the provisions of the Act relating to its subsequent assessment on individuals, for the section refers to

such assessment in express terms.

6. The failure to observe the procedure prescribed in Section 71(2) is a defect of an essential character since it deprives the tax payer of the

opportunity provided by the act of obtaining redress by an appeal to the Municipal Council whose decision the law declares shall be final.

7. We dismiss the petition with costs.

Madras district Municipalities act.

Section 71(1). The Chairman may at any time amend the said books--

(i). by inserting therein the name of any person or property liable tax.

(ii). by striking out the name of person or property not liable to the tax; or

(iii). by increasing or reducing the amount of the tax.

(2). But no person's name or property shall be inserted, nor shall any increase

of assessment be made under the provisions of this section unless notice of such intended insertion or increase has been served on such person or on the owner or occupier of the property to which the same relates not less than 30 days previous to a day to be specified in such notice as the day upon which such assessment will be revised by the Chairman.

Section 262(1), No assessment charge or demand of a tax under the authority of this Act shall be impeached or affected by reason of a mistake in

the name, residence, place of business or occupation of any person liable to pay the tax or of any mistake in the amount, of assessment or tax or

by reason of any clerical error.

Provided the directions of this Act shall have been in substance and in effect complied with; and no proceedings under this Act shall, for want of

form, be quashed or set aside in any Court of Justice.

(2). No action shall be maintained in any Court to recover money paid in respect of any tax, toll or fee assessed or levied or any payment collected

under this Act, or to recover money or damages by reason of any assessment made, tax or toll or fee levied, or any payment under this Act.

Provided that the provisions of this Act relating to the assessment and levy of taxes, tolls or fee and to the collection of payments have been in

substance" and in effect complied with.

(3). No distress or sale under this Act shall be deemed unlawful nor shall any person making the same be deemed a trespasser on account of any

error, defect or want of form in the bill, notice, schedule, form, summons, notice of demand, warrant of distress, inventory or other proceeding

relating thereto; nor shall such person be deemed a trespasser ab initio on account of any irregularity afterwards committed by him.

Provided that every person aggrieved by such irregularity may recover satisfaction for any special damage sustained by him.