
(1987) 07 MAD CK 0011

In the Madras High Court

Case No : Criminal Appeals No's. 267 to 269 and 271 of 1984

Namakkal Municipality

APPELLANT

Vs

Balasubramaniam and 3 others

RESPONDENT

Date of Decision : 10-07-1987

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 175, 176(5), 178, 339(2)

Citation : (1987) LW(Cri) 520

Hon'ble Judges : Maheswaran, J

Bench : Single Bench

Advocate : K. Sengottian, for the Appellant; K.A. Panchapagesan, for the Respondent

Final Decision : Dismissed

Judgement

Maheswaran, J.—These appeals are preferred by Namakkal Municipality represented by its Commissioner against the judgment in C.C.

Nos. 297 of 1983, 298 of 1983, 299 of 1983 and 301 of 1383 respectively on the file of the court of Judicial Second Class Magistrate,

Namakkal, acquitting the respondents who have been charged for violating Ss. 175, 176(5) and 178 read with Section 339(2) of the Tamil Nadu

District Municipalities Act, 1920, The parties are different. But, these appeals are heard together as the only question involved in these appeals is

whether the sale of sites without laying down or making a street or streets or road or roads giving access to the site or sites and connecting with the

existing public or private street or road, is a continuing offence or not. In all these cases, if it is a continuing offence, the cases will not be barred by

the law of limitation, but if it is a single transaction, they will be barred. The question of limitation was not raised before the Court below. But, it is

now raised as that point goes to the root of the matter. Without entering in to the details of the cases I may straight away point out to a case

reported in *Pattammal v. Munuswamy* 1966 L.W. (CrL.)61, where Anantanarayanan, O.C.J., as he then was, took the view that a sale of a house

site for construction of a building without making any provision for a street, is a single offence, and does not constitute a continuing offence under

the District Municipalities Act. This view was also taken earlier in *Madurai Municipality v. Abdul Razack* 1962 M.L.J. (CrL.) 49 by Srinivasan, J.

The learned Judge pointed out that sale of sites for construction of buildings without making any provision for streets cannot be a continuing offence

and a prosecution for such failure should be instituted within three months from the date of sale complained of. It is pointed out now that all the four

respondents were once convicted. But Mr. Panchapakesan, Learned Counsel for the respondents, says that there is no proof that they were once

convicted. In fact Srinivasan, J., pointed out that there is no meaning in saying that if the sale is an offence it shall still be a continuing offence after

the sale itself has been effected.

2. Mr. Sengottian, Learned Counsel appearing invited Schedule 8 of the District Municipalities Act and strenuously contended that S. 175 is listed

as a continuing breach under Schedule 8 and therefore there will be no impediment for holding that any violation of Section 175 is a continuing

breach. But the view taken by Srinivasan, J., shows that after the sale the vendor is no longer the owner and Anantanarayanan, J., points out that if

the original owner it to be prosecuted for the continuing offence even after the sale, he will have the simple defence that he is no longer the owner

of the property. S. 178 also says that ""if the owner of any land utilises, sells, leases...."" With great respect, the view of Anantanarayanan, O.C.J.,

as he then was, appears to be correct. A sale cannot be a continuing offence in respect of the vendor who ceases to be the owner after the title

passes to the vendee. Of course, it would be better if the Act itself makes clear the position. These are cases of appeals against acquittal. Even if

two views are possible, the High Court must be slow in unsettling the order of acquittal. For these reasons, the appeals are dismissed.