

(1932) 08 MAD CK 0036
In the Madras High Court

(Panniyamkandi) Kelu Kutti

APPELLANT

Vs

Calicut Municipal Council

RESPONDENT

Date of Decision : 10-08-1932

Acts Referred:

Citation : AIR 1933 Mad 428 : (1933) 37 LW 465

Hon'ble Judges : Burn, J

Bench : Division Bench

Judgement

Burn, J.—The facts have been clearly stated in the judgments of the lower Courts. There are findings by both Courts that the plaintiff-

appellant has encroached upon the limits of a water-course. The only question for discussion here is whether the watercourse is a public drain. If it

is, the plaintiff has no right to obstruct it without the permission of the Municipal Council, and the chairman was within his rights in removing the

obstruction: Section 142, Madras District Municipalities Act. There is no definition in the Act of a ""public drain."" It is contended for the appellant

that the only drains which can be called ""public drains"" are those provided and maintained by the Municipal Council u/s 137. This is fallacious.

Every drain provided and maintained by the Municipal Council must of course be a public drain, but it does not follow that a drain cannot be a

public drain merely because it has not been provided, and is not maintained, by the Municipal Council. There were public drains in Calicut long

before the Municipal Council was created. Since there is no definition of a public drain in the Act, the words must be understood in their ordinary

sense. In this case there is evidence upon which both the lower Courts have found that the site in dispute is a water-course along which in times of

rain storm water is drained from the lands to the east of it and from a tank, belonging to a temple, to the south of it. As the learned Subordinate

Judge says (para. 4 of his judgment):

This land or water-course has been in existence for a very long time, serving as a storm water drain.

2. Nothing more is needed to constitute it a ""public drain"" in the ordinary sense of the words. The learned advocate for the appellant points out that

a ""water-course"" connected with water supply vests in the Municipal Council u/s 125(1) of the Act; and argues that since this water-course has

nothing to do with water-supply, it does not vest in the Municipal Council and the Municipal Council has no right to meddle with it. Here again

there is a fallacy. It is not every water-course that is connected with water-supply; many water-courses have no other function than to serve as

drains for surplus water. This is one of such, and it is quite legitimately called a ""public drain."" This second appeal must therefore be dismissed with

costs.