

(1942) 11 MAD CK 0004
In the Madras High Court

P.N.V. Ratnaswami Nadar

APPELLANT

Vs

Virudhunagar Municipal Council

RESPONDENT

Date of Decision : 10-11-1942

Acts Referred:

Citation : AIR 1943 Mad 553 : (1943) 56 LW 318 : (1943) 1 MLJ 406

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—The appellant was the plaintiff, whose suit for an injunction restraining the Commissioner of the Virudhunagar

Municipality from starting or proceeding with any legal action against the plaintiff to remove the cornice and other projections in front of his house

and for a declaration that he is entitled to keep the said cornice and other projections intact without any objection by the defendant, was dismissed

by the appellate Court, though it was decreed, except in respect of the stone steps leading to the house, by the first Court.

2. The appellant is the owner of a big house situate in a lane within the municipal limits of Virudhunagar municipality. Even in the lifetime of the

appellant's father the municipality issued a notice to him to remove certain projections in and over the street in front of the house. The projections

consisted of some cornices in the first and second terraces, monkey tops over the windows, steps leading to the house and a kodangai over the

steps. The father, evidently a prudent man, thought that he would be able to get over the difficulty by applying to the municipality for a licence. The

municipality was about to grant the licence; but before the fees were paid he died. The appellant thought otherwise and filed a suit. The contention

of the municipality is that u/s 182 of the District Municipalities Act the municipality has the right to direct the owners of houses to remove any projections over and encroachments into the street and that therefore it was perfectly justified in asking the appellant to remove those projections and taking steps to prosecute him when he failed to comply with the order of the municipality.

3. The first Court found that so far as the steps were concerned they were encroachments, but that with respect to the other projections as they were 15 feet above the surface of the street they were not encroachments but were only ornamental structures quite innocuous and that therefore the plaintiff was entitled to a decree in respect of those projections. On appeal the learned Subordinate Judge of Ramnad at Madura dismissed the suit holding that u/s 182 of the District Municipalities Act, the municipality was entitled to direct the removal of such projections even though they were not in the street but were over the street. Hence this appeal.

4. The only points for consideration are (1) whether the municipality was entitled to direct the appellant to remove the projections in question and (2) whether the appellant had acquired a prescriptive right to have those projections and if so, is he entitled to any remedy in this suit.

5. As already stated above, u/s 182 of the District Municipalities Act of 1920 the executive authority of a municipality may require the owner or occupier of any premises to remove or alter any projection, encroachment, or obstruction situate against or in front of such premises and in or over any street. In the corresponding section of the old Act there were not the words "" or over."" The decision in Basaweswara Swami Vs. The Bellary

Municipal Council and the Secretary of State for India in Council, relied on for the appellant has no application to the facts of this case. There the question considered was as to what was meant by the word "" street "" and whether the space above 12 feet of the ground was a portion of the

street or not as the section of the Act of 1884 under which the proceedings were taken related to encroachments into the street. The Chairman,

Municipal Council Vs. Subba Pandithar, only deals with the question as to whether any prescriptive title could be acquired and if so by

encroachment for what period against the municipality. The decision in Wandsworth Board of Works v. United Telephone Co (1884) 13 Q.B.D.

904. relied on for the appellant also has no application to the facts of this case. There also the question was as to what constituted a street whether

it was only the surface or any portion below or above the surface and if so what extent of it could be said to constitute the street, and it was held

that it is not only the surface of the street but also the area of user which was fixed at 12 feet above and 12 feet below the surface that formed the

street. Now in this case the street no doubt may be taken to be the area covering 12 feet above and 12 feet below the surface of the street. But

then even if a projection is found above or over the area constituting street, the municipality is entitled u/s 182 of the District Municipalities Act of

1920 to have it removed. This question had to be considered by this Court in The Public Prosecutor Vs. Varadarajulu Naidu, and there it was

pointed out that in the new Act there are the words "" over any street "" and consequently it is open to the municipality to direct any owner or

occupier of premises abutting a road to remove the obstruction. The plaintiff therefore can have absolutely no justification for complaining that he

has been asked to remove the obstructions and projections in question.

6. With regard to the question of prescriptive title, it is admitted, and it is the finding of both Courts, that the appellant has had these projections for

over thirty years. If so, he will have obtained a prescriptive right to have these projections. But then u/s 182 (2) of the District Municipalities Act,

even if such a prescriptive title had been acquired it would be open to the municipality to direct their removal; but in such cases the Municipal

Council should make a reasonable compensation to every person who suffers damage by the removal or alteration of the same. The fact that the

Municipal Council is bound to pay compensation will not entitle the appellant to obtain a declaration or injunction that the defendant Municipality is

not entitled to have the projections removed. The learned Subordinate Judge has dismissed the suit and though he found that the appellant will be

entitled to compensation in case of any such removal he has not stated it in the decretal portion of the order.

7. In the result, the decree of the lower appellate Court will be modified, by declaring that the appellant will be entitled to claim reasonable

compensation if he suffered any damage of the removal of any of the projections which are the subject-matter of the suit. In other respects the

second appeal is dismissed. The appellant will pay the respondent the costs of this appeal.

8. Leave refused.