
(1957) 11 MAD CK 0051
In the Madras High Court

Salem Municipal Council

APPELLANT

Vs

S.V. Subramanian

RESPONDENT

Date of Decision : 15-11-1957

Acts Referred:

Citation : (1958) ILR (Mad) 550 : (1958) 71 LW 232 : (1958) 1 MLJ 217

Hon'ble Judges : Ramaswami, J

Bench : Division Bench

Judgement

Ramaswami, J.—This appeal and memorandum of objections arise from the decree and judgment of the learned Subordinate Judge of Salem in O.S. No. 135 of 1951.

2. The facts are. In Salem town there is a building, bearing door No. 34 in Arunachala Asari Street. It was constructed as a theatre in 1913 for use as a dramatic house and was later converted into a cinema house in 1926. This building originally belonged to Angappa Pillai and his nephew Velayudham Pillai the father of the respondent before us. Angappa Pillai was renting out the premises together with the machinery and furniture to Oriental Talkies at a daily rental of Rs. 20. In this Oriental Talkies Velayudham Pillai was a partner. In a family partition of the year 1943 this building fell to the share of Velayudham Pillai subject to the lease. Velayudham Pillai continued to be the lessor and has been receiving a rental of Rs. 600 per month for the building machinery and furniture. Out of the said rental of Rs. 600 a sum of Rs. 150 is said to have represented the rental for the furniture Rs. 350, the rental for the machinery and Rs. 100 the rental for the building. On the foot of this rental the annual rental value in the Municipal Registers was calculated at Rs. 1,110 and the amount of assessment levied was Rs. 27-10-9. In 1947 the assessment was sought to be increased to Rs. 200. But Velayudham Pillai preferred an appeal to the Tax Appeal Committee and the said Committee restored the original assessment. Thus, including the scavenging tax, etc., the property tax levied upon this building upto 1948 was Rs. 133-3-3, for a half year.

3. On 28th February, 1948, the Commissioner of the Municipality issued a notice to Velayudham Pillai who died in 1950 only, under Rule 10 of Schedule IV of the District Municipalities Act, stating that the property tax for the said building was enhanced from Rs. 133-3-3 to Rs. 3,933 for the half year with retro-active effect from 1st October, 1946. This enhanced assessment was reduced Rs. 799-3-3 on a revision petition filed by Velayudham Pillai to the Commissioner. The assessee again preferred an appeal to the Council and the Tax Appeal Committee confirmed the assessment with effect from 1st October, 1946. In other words, the plaintiff's father notwithstanding this reduction had to pay under protest on 20th October, 1948, Rs. 1,998 over and above the sum of Rs. 133-3-3 Per half year for the first half year of 1947-48, for the second half year of 1947-48 and for the first half year of 1948-49. The plaintiff who is the son of Velayudham Pillai is asking for a refund of this sum of Rs. 1,998.

4. For the second half year of 1948-49, Velayudham Pillai was served by the Municipality with a demand notice for payment of Rs. 799-3-3 on 13th December, 1948 and the said amount was also paid by him on 12th March, 1949. There is no dispute about it and no refund is asked for regarding the same.

5. Then for the second half year of 1948-1949 the Executive Authority got information according to them that the theatre was rented out for a dramatic troupe on a rental of more than Rs. 5,000 a month and purported to take action under Rules 8 to 10 of Schedule IV of the District Municipalities Act and served a special notice on the assessee on 14th March, 1949, enhancing the assessment on the foot of the rental value of Rs. 5,000 per month. The assessment was fixed at Rs. 6,660 per half year on that basis. The special notice served on the assessee on 14th March, 1949, claimed the enhanced assessment from 1st October, 1948. The assessee filed a revision petition and the assessment was confirmed by the Commissioner. Thereupon he filed an appeal to the Council and the Council also confirmed the assessment made by the Commissioner. The plaintiff's father paid under protest the sum of Rs. 5,860-12-9 on 15th July, 1949, besides the sum of Rs. 799-3-3 paid on 12th March, 1949, for the second half year of 1948-1949. Another sum of Rs. 6,600 was collected from the plaintiff's father on 31st January, 1950, for the first half year of 1949-50. In regard to the payments relating to which refund of Rs. 1,998 is asked for and this sum of Rs. 5,680-12-9 the plaint categorically states that these amounts were paid under protest by Velayudham Pillai and this has not been traversed in the written statement filed by the Municipality. The plaintiff claims a refund of the excess amounts of Rs. 5,860-12-9 paid for the second half year of 1948-49 and another sum of Rs. 5,860-12-9 paid for the first half year of 1949-50, totalling Rs. 11,721-9-6.

6. Subsequently, Velayudham pillai filed a revision petition on 31st August, 1949, under Rule 11 of Schedule IV of the District Municipalities Act to reduce the tax. for the forthcoming half year. That revision petition was considered by the Commissioner and he took note of the changed circumstances at the time of its

disposal and reduced the assessment to Rs. 3,330 per half year based on the basis of a rental value of Rs. 2,500 per month. An appeal was preferred to the Council against the said order and the Council confirmed the assessment of the Commissioner. In regard to this, the plaintiff also claims the difference between Rs. 3,300 and Rs. 799-3-3 which according to him is the tax and which is imposable, viz., refund of Rs. 2,530-12-9. Thus, the plaintiff sues under three heads for a total refund of Rs. 16,250-6-3.

7. The contentions of the Municipality are reflected in the following issues framed in the suit:

. I. Whether the assessments referred to in paragraphs 9 and 15 are illegal and arbitrary as contended by plaintiff, and whether provisions of District Municipalities Act have not been complied with ?

2. Whether plaintiff is entitled to claim refund of several amounts asked for ?

3. Whether the Civil Court has jurisdiction to try the suit ?

4. Whether the suit is validly and properly instituted by plaintiff ?

5. To what relief, if any, is plaintiff entitled ?

8. The learned Subordinate Judge came to the conclusion under issue 1 that the assessments referred to in paragraphs 9 and 15 of the plaint are not illegal and arbitrary except the assessment during the second half year of 1948-49 and the first half year of 1949-50 ; under issue 2 that the plaintiff is not entitled to claim refund of the several amounts asked for, except a sum of Rs. 6,660 out of the tax paid for the second half year of 1948-49 and the first half year of 1949-50; under issue 3 that in respect of the two half years for which the plaintiff is found entitled to get a refund, the Civil Court had jurisdiction to try the suit; under issue 4 that it should be answered in the affirmative and under issue 5 that the plaintiff was entitled to get a decree for sum of Rs. 6,600 with interest thereon at four per cent per annum from 2nd May, 1950, date of the notice of demand issued by the plaintiff, till the date of payment. The rest of the plaintiff's claim was dismissed and the parties were made to pay and receive proportionate costs. The Municipality has filed this appeal in respect of the sum decreed to the plaintiff and the plaintiff has filed a memorandum of objections in regard to his claim disallowed by the lower Court. In other words, the entire matter is at large before us.

9. On a review of the entire circumstances of the case, we have come to the conclusion that the plaintiff is entitled to the refund of Rs. 1,998 and Rs. 11,721-9-6 covered by paragraphs 9 and 15 of the plaint and that he is not entitled to the refund of Rs. 2,530-12-9 covered by paragraph 16 of the plaint. In other words the appeal by the Municipality has got to be dismissed and the memorandum of objections of the plaintiff except as regards the sum of Rs. 2,530-12-9 has got to be allowed. Here are our reasons.

10. The scope of the civil Court's interference in regard to the assessments levied by a Municipality when the aggrieved tax payer comes to the civil Court after exhausting the remedies provided under the Municipalities Act and the assessment has become final in .so far as the department is concerned has now become really well-settled. The case-law on this subject has been summarized in a recent judgment of one of us reported as *Alli Ramanan, In re* (1957) 70 L.W. 19. The principles deducible from the long line of decisions of this Court summarised therein are: The Civil Court is not so to say a Court of appeal against the order of the assessing authority and once it is satisfied that the assessing authority has exercised its judgment fairly on the materials placed before "it and has come to a particular conclusion as to the annual value of the property, the jurisdiction of the civil Court is ousted by Section 354(2) of the District Municipalities Act which provides:

No suit shall be brought in any Court to recover any sum of money collected under the authority of the Act or to recover damages on account of any assessment, or collection of money made under the said authority, provided that the provisions of the Act have been, in effect, complied with.

Thus, if the levy of tax by a local authority is within the framework of the Act and is in substantial compliance with the provisions of the Act, the Civil Court has no jurisdiction to go into the question whether the levy is excessive or not. But it is equally well settled that where the basis of the levy itself is wrong or there is no basis at all for the levy and in that sense there is no substantial compliance with the provisions of the Act, it is open to the Civil Court to declare the levy illegal and in fact it is its duty to do so.

11. Therefore, we have got to examine what should be the basis of the valuation of the property for arriving at the annual rental value on which assessment is made by the Municipality. Section 82, Clause (2), of the District Municipalities Act lays down the method of arriving at the annual value of lands and buildings upon which property tax is levied by the Municipality. It provides that the annual value shall be deemed to be the gross annual rent at which the building may reasonably be expected to let from month to month or from year to year. It also provides that in the case of buildings ten per cent. of the annual rent should be allowed as deduction in lieu of allowance for repairs. It is clear from the authorities that the annual value of a building should be arrived at taking into account all factors necessary to find out what would be the probable rent of the building which a prospective tenant would be willing to pay for the building if let out. The rent can be ascertained by local enquiry, by examination of the rent receipts and by the statements and admissions of the parties themselves. In the case of all properties the rent actually paid may be regarded as *prima facie* evidence of their annual value in the absence of rebutting evidence. Similarly the fair rent fixed under the House Rent Control Act. *Madurai Municipality v. Kamakshismdaram* 68 L.W. 583 : (1955) 2 M.L.J. 369 : AIR 1956 M. 49 [following AIR 1951Bom.320 and *Corporation of the Town of Calcutta Vs.*

Ashutosh De, and 1 Rang. 668] and A.S. Kuppusami Iyer v. Tirunelveli Municipal Council (1955) 2 M.L.J.467: 1955 M.W.N. 727. It will be a simple matter if there are a number of similar properties all let to different tenants, and particularly so when the owners are different. In such cases the average paid would be reasonable if the rents were of recent imposition ; if all were not then the older should be eliminated and the newer used. In short the actual rents paid are a sure guide subject to two limitations, namely, they should be carefully scrutinised to see what services they include and wherever possible they should be checked by rents of similar premises in the locality. These propositions are well-established and need no buttressing up by citation of authorities.

12. In this case what was the basis for arriving at the annual value on which assessment was made can be gathered from Exhibits B-2 and A-3 Exhibits B-12, B-19 and B-32. Exhibits B-2 and A-3 cover the assessment dealt with in paragraph 9 of the plaint. Exhibits B-12 and B-19 refer to the assessments covered by paragraph 15 of the plaint and Exhibit B-32 refers to the assessment covered by paragraph 16 of the plaint. Exhibit A-3 following hard on the heels of the Municipal Council Tax Appeal Committee confirming the assessment at Rs. 133-3-3 on 5-3-47 on the grounds that the premises have not undergone any change" or improvement and there has been no change in the rent paid and the lessees continued to be the same for over two decades (Vide Exhibit B-27) merely specified " Increases on rental value" as the ground for enhancement. In Exhibit B-12, the Commissioner arrived at the tentative conclusion that the annual rental value should be fixed at Rs. 60,000 on the foot that his information showed that the theatre had been leased out for a dramatic troupe that the lessee was paying Rs. 5,000 per mensem excluding the collections from beeda and tea shops, cycle stand fees, etc., which were being collected direct by the landlord of the theatre. In Exhibit B-19 the Commissioner has fortified himself with the following additional information. According to the account books produced by Velayudham Pillai for the period from October to end of December, 1948 the gross," receipts from the drama performances amounted to roughly Rs. 21,000 odd for October Rs. 1 1,000 odd for November and Rs. 8,000 odd for December, and the share of the Oriental Talkies out of the total collections amounted Rs. 4,885-12-9 for October, Rs. 2,431-15-0 for November and Rs. 1,793-12-3 for December, 1948. K.N. Muthu-krishna Chettiar the other partner of the Oriental Talkies did not produce his account books before the Commissioner. K.R. Ramaswami, the proprietor of the Nataka Sabha, also failed to produce his account books before the Commissioner. The account books of Velayudham Pillai produced before the Commissioner showed that for January, 1949, the total amount received, representing 25 percent, of the gross income was Rs. 3,487 odd and the figure for February, 1949, was Rs. 2,791 odd. From the account books produced the Commissioner found that the figures given therein showing the income received by the Oriental Talkies during the five months did not correspond with the figures given in the personal ledger in the name of Velayudham Pillai. The Commissioner therefore declined to give any

credence to the account books of Velayudham Pillai. He refers to the circumstance that K.R. Ramaswami himself told him on one occasion that the owners of the theatre demanded a monthly rent of Rs. 5,000 which he considered to be exorbitant and therefore he proposed to vacate the theatre. Therefore, the Commissioner came to the conclusion that in the circumstances he had no other alternative except to confirm the tentative conclusion arrived at in Exhibit B-12. In consequence, taking the monthly rental to be Rs. 5,000 and adding to it the income received by the lease of beeda and tea stalls and cycle stand, which he estimated at Rs. 300 and setting off this sum of Rs. 300 against the rebate towards the rent of machinery and furniture in the theatre, he fixed the tax payable at Rs. 6,660 per half year.

13. In regard to the assessment covered by paragraph 16 of the plaint the Commissioner has in Exhibit B-32 made the following note:

Party's agent (Advocate) comes and represents that now the theatre is run by owner and is not let out, the original assessment should be restored. Though this is not possible, yet considering the present fall in rental of all theatres and in view the fact that the theatre is smaller in dimensions than many others, but taking into account its size I reduce and fix the rental at Rs. 30,000.

14. In regard to the assessment covered by paragraph 9 of the plaint, we have already stated that the Municipal Council's Tax Appeal Committee on an appeal preferred before it had confirmed the assessment of Rs. 133-3-3 on 5th March, 1947, on the ground already set out. viz., that the premises had not undergone any change or improved and that there has been no change in the rental paid and that the lessees continued to be the same for over two decades. Exhibits B-2 and A-3 do not disclose any materials for this enhancement beyond merely begging the question, viz., the increase in rental value. In fact there is no evidence of any change between 5th March, 1947 and February, 1948, in order to justify the retroactive effect being given from 1st October, 1946. In the absence of a title of materials to show that during that period the rent actually received by the owner of the building had increased or that there were circumstances which changed that rental basis on the foot that the building could be reasonably be expected to be let out from month to month or year to year on increased rentals, this would only be a case of enhanced assessment being made on no basis whatsoever justifying interference by the Civil Court and setting aside the enhancement and directing a refund. This would dispose of the enhanced assessment challenged in paragraph 9 of the plaint.

15. Turning to the enhanced assessment in regard to which refund is asked for in paragraph 15 of the plaint, there cannot be the slightest doubt that the basis of the levy, viz., that the owner Velayudham Pillai was getting a rent of Rs. 5,000 per mensem was totally incorrect. First of all, this is a factual error. The Commissioner had before him the agreement of partnership, Exhibit A-21. That document clearly " shows that the Oriental Talkies was to pay a monthly rental of Rs. 600 for the theatre as usual to the owner Velayudham Pillai. Then under the

partnership formed for exploiting the building by putting on boards dramas by the Krishna Nataka Sabha, Velayudham Pillai and Muthukrishnan Chettiar two of the partners, were to receive 25 per cent of the takings minus certain charges on the foot of their contribution to the partnership, viz., Oriental Talkies placing at the disposal of the Krishna Nataka Sabha their entire staff, furniture, electric fittings, arc lamps, undertaking of the sanitary arrangements, maintenance charge of furniture, etc. It is not the case for the Municipality that notwithstanding the sum of Rs. 600 being expressed as rental to the owner Velayudham Pillai, the real rental was something else. On the other hand, the Commissioner has equated the partnership profit as the rental for the building. This was sought to be supported on the ground of the Commissioner's proceedings Exhibit B-19 wherein he refers to the accounts and an alleged statement by K.R. Ramaswami. In the case of the former the accounts have been totally disbelieved by the Commissioner and therefore the accounts cannot be made the basis for determining what was the actual rent paid by the Nataka Sabha to Velayudham Pillai. In regard to the alleged statement said to have been made by K.R. Rama-swami it is not clear whether that gentleman was thinking of the entire amount which had to be paid to Oriental Talkies or the rent payable to Velayudham Pillai. It was a factual error therefore on the part of the Commissioner to have equated the partnership profits with the rental. Then, even assuming for the sake of argument that for a few months a sum of Rs. 5,000 was realised by letting out the theatre for dramatic performances, this income which is almost in the nature of a windfall could not have been taken as the normal income earned from the property throughout the year. In fact in this very case as pointed out by the learned Subordinate Judge:

but for this interlude of dramatic performances the monthly income from the theatre could not have reached the figure of Rs. 5,000 is amply established by the circumstance that on an application by Velayudham Pillai the property tax was reduced with effect from the second half-year of 1949-50 to one half of the tax levied in the two preceding half-years.

The terms of Clause (2) of Section 82 have already been reproduced. It is clear from the decisions which will be referred to presently that two principles guide such assessments. The first is that the probable rent for the whole of the year must be the criterion and not any excessive rents received during a particular portion of the year. Secondly, the hypothetical tenant taken as the standard in these cases of the continuation of his lease. These principles are deducible from the decision of this Court u/s 23 of the City of Madras Municipal Act of 1884, Secretary of State v. Madras Municipality I.L.R.(1886) Mad. 38, and the same question which arose with reference to assessment to property tax of certain salt works situated in Aden, decided by the Bombay High Court in Abdullabhai Lal ji v. Executive Committee, Aden" (1918) 46 Ind. Cases 721, and u/s 9(2) of the Indian Income Tax Act, whereunder the annual value of the property has to be ascertained, viz-, D. M. VAKIL Vs. COMMISSIONER OF Income Tax., ; Jamnadas Prabhudas Vs. Commr. of Income Tax, , and Narayan Chandra Dutt Vs.

Chairman, Municipal Commrs., . See also *Vadlamudai Brahmayya Vs. Guntur Municipal Council*, . Therefore, when the Commissioner disregards the principle that excessive rents received for a certain time should not be taken into consideration in deciding the annual value of the property, the Municipal assessment cannot be said to be in terms of Clause (2) of Section 82 of the Act.

16. The ground specified for increasing the rental value was nothing more than a mere formula for levying enhanced tax. It is not based upon any one of the known grounds for calculating the rental value. We have already set out above the materials which could be considered. The actual rents received by the owner of the building during the year in question should be taken into account. This has not been done. The decision in *Globe Theatres v. Chief Judge of Small Causes Court* v, dealing with the valuation of a cinema theatre for the purpose of assessment to property tax under the Bombay Municipal Act lays down that besides the test of actual rent received or rent of similar theatre in the city, the value could be arrived at a percentage of the net profits earned from the theatre for the year in question. This is not the basis adopted by the Commissioner in this case. The decision in *Corporation of Calcutta Vs. Province of Bengal*, , has held that under the Calcutta Municipal Act III of 1923 for the purpose of arriving at the annual value of buildings for levying property tax evidence afforded by return or assessment of neighbouring premises was admissible and could be taken into account by the assessing authority. This was not also the method adopted by the Commissioner in this case. We therefore agree with the learned Subordinate Judge who has held that the Commissioner disregarded the mandatory provisions of Section 82 of the Act when he fixed the annual letting value of the theatre on the assumption that a rent of Rs. 5,000 per mensem could be received for the whole year. On this conclusion it follows that this enhancement was illegal, ultra vires of the powers of the Executive Authority of the Municipal Council. Therefore the plaintiff is entitled to the relief asked for, viz., the refund of the amount claimed in paragraph 15 of the plaint.

17. Before parting with this portion of the case, we are bound to notice the contention of Mr. D. Ramaswami Ayyangar which was advanced in the lower Court also and repelled by the learned Subordinate Judge, viz., that these amounts of tax were paid by the father of the plaintiff voluntarily without protest and that therefore no relief could be given to the plaintiff. We agree with the finding of the learned Subordinate Judge, Mr. Ganapatia Pillai (now Justice) on this point.

The next question for consideration is whether the amounts of tax paid by the father of the plaintiff were paid voluntarily and without protest and therefore no relief could be given to the plaintiff. The learned Counsel for the defendant cited the following decisions on this question : *The Chairman, Municipal Council Vs. Nyapathi Subba Rao*, , and *The Municipal Council, Tuticorin v. Ralli Brothers*². In *The Chairman, Municipal Council Vs. Nyapathi Subba Rao*, , the assessee paid the tax in question for four years without any demur and thereafter filed a suit for

recovery of money paid as profession-tax. On these facts it was held that there was no express protest. There is a fuller discussion on the point in the Municipal Council, Tuticorin v. Ralli Bros (1933) 67 M.L.J. 566. There also on the facts it was held that the payment made for the five half years was made without protest. But this decision lays down that the protest need not be in the form of a written protest against the levy of the tax. Conduct of the assessee would afford valuable guidance to find out if the payments were made voluntarily. It is true the mere threat in the demand notice that if the tax is not paid within fifteen days of service it will be recovered by distraint process would not amount to compulsory payment. But payment of taxes made before or at the time of filing appeals is not voluntary: Panchayat Board Vs. Narava Ramasami and Others, The following observation of Krishnan Pandalai, J., is to the point: "It is not necessary that the protest should be express ; nor on the other hand does the fact of verbal protest always mean that the payment ceases to be voluntary. But the character of the payment is to be judged from the real nature of the circumstances in which it was made, which are not to be assumed by the extension of any theoretical assumption of what the man paying might have thought, the question always being what he did think". Applying this test to the present case, it is clear that the father of the plaintiff never acquiesced in the increase of the property tax. Ever since it was first increased in February, 1948, he took all available steps by way of revision and appeal against the increase made in February, 1948. He also preferred a revision in 1949 when the tax was again increased to Rs. 6,660. The revision and appeal petitions are Exhibits B-7 dated 24th March, 1948, B-10 dated 3rd June, 1948, B-16 dated 6th April, 1949, B-27 dated 15th July, 1949, B-30 dated 31st August, 1949 and B-34 dated 17th November, 1949. The assessee was bound to pay the tax before he could avail himself of the procedure of filing a revision petition to the Commissioner and an appeal petition to the Municipal Council. Therefore, the mere fact of payment of the enhanced tax without distraint being levied is no indication that the payments were voluntary. The conduct of the father of the plaintiff, deducible from the revision and appeal petitions which he preferred, though unsuccessfully clearly establishes that he never acquiesced in the enhancement of the tax both in 1948 and in 1949. I therefore hold that the taxes were not paid voluntarily but were paid only under protest. See also Maskell v. Horner (1888) 59 L.T. 636 The Krishna Jute and Cotton Mills Co. Ltd. Vs. The Municipal Council, .

18. To this reasoning with which we entirely agree, we have to add the following. In regard to the refunds claimed in paragraph 9 of the plaint the plaintiff has categorically stated in paragraph 8 and in paragraph 12 that his father paid the excess amounts under protest. In paragraphs 15 and 16 of the plaint the significant phrase used is that the "amounts were collected" showing that the payments were not made voluntarily and which also in the context and circumstances of this case could not be deemed to have been made voluntarily.

19. Besides, as pointed by one of us in Alli Ramanan, In re (1957) 70 L.W. 19 though a suit to recover any sum of money paid under a mistake of fact lies as

provided in Section 72 of the Indian Contract Act, and a payment made under a mistake of law cannot be recovered u/s 72 of the Contract Act Pentakota Audinarayana Naidu Vs. The Panchayat Board of Munagapaka and Another, , it has to be borne in mind as mentioned in Ramjee v. Masulipatam Municipality AIR 1940 Mad. 956, by Horwill, J.

As the law stands at present a person who pays tax under a misapprehension of law as to his liability to do so cannot recover it in a Court of law, although one would expect a corporate body to refund voluntarily any amount which had been paid to it in error.

following Municipal Council Vs. Ralli Bros., , and The Chairman, Municipal Council Vs. Nyapathi Subba Rao,

20. In practice when once a Court gives a declaratory relief that a levy made by a Municipality is illegal, it is proper to assume that the Municipality will act in conformity with that declaration. This is the principle of the following decisions : Dyson v. Attorney General L.R. (1911) 1 K.B. 410 at 421. Rex v. Speyer L.R. (1916) 1 K.B. 595 and Wigg v. Attorney General, Irish Free State L.R. 1927 AC. 674. The principle was based by Lord Reading C.J., in Rex v. Speyer L.R. (1916) 1 K.B. 595 as under:

This is the King's Court ; we sit here to administer justice and to interpret the laws of the realm in the King's name. It is respectful and proper to assume that once the law is declared by a competent judicial authority it will be followed by the Crown.

In fact even if the Municipality refuses to give effect to a declaration by a civil Court, the Government will exercise its overriding authority to enforce obedience on being moved in this behalf by the aggrieved party without laches on his part.

21. Therefore, the decree and judgment of the lower Court has got to be set aside and the memorandum of objections of the plaintiff will stand allowed to this extent.

22. Finally, coming to the refund claimed in paragraph 16 of the plaint, we have set out the reasons given by the Commissioner for imposing an assessment of Rs. 3,330. The Commissioner has taken into account the general rise in rental of the theatres in Salem town, the increased income realised by the theatre owners consequent on the increased prosperity of the population during the years in question. The enhancement based upon these adequate reasons would take it out of the category of previous impeachable assessments as this would be a case of the provisions of the Act having been in effect complied with. On that conclusion it follows that u/s 354(2) of the Act no suit can be brought to recover any sum of money collected under the authority of the Act. The decree and judgment of the learned Subordinate Judge have got to be affirmed in respect of this claim and the memorandum of objections of the plaintiff has to be dismissed to this extent.

23. In the result, the appeal by the Municipality is dismissed and the memorandum of objections of the plaintiff is allowed to the extent of the amounts claimed in paragraphs 9 and 15 of the plaint and dismissed in regard to the amount claimed in paragraph 16 of the plaint. The plaintiff will get his costs on the allowed portion and give costs to the Municipality on the disallowed portion throughout.

24. The above appeal having been set down for being mentioned, the Court made the following order : " No justification. No further orders."