

(1908) 09 MAD CK 0001
In the Madras High Court

Samu Iyengar

APPELLANT

Vs

The Secretary of State for India in Council

RESPONDENT

Date of Decision : 29-09-1908

Acts Referred:

Citation : 4 Ind. Cas. 1123

Hon'ble Judges : Pinhey, J; Munro, J

Bench : Division Bench

Judgement

1. The plaintiff-appellant, constructed a private tank in 1886. He subsequently extended the tank. In 1897 he was informed by Ex. D. that his tank

would only be allowed to remain as it was if he constructed a weir, and that if he failed to do so, a prohibitory water-rate would be charged for the

cultivation under the tank. The plaintiff failed to carry out the work and was charged prohibitory water-rate by the Collector. He now sues for a

declaration that he cannot be compelled to construct the weir, and for refund of the amount collected as prohibitory water-rate. The District Munsif

gave the plaintiff a decree for portion of his claim. The District Judge reversed the decree and dismissed the plaintiff's suit. Hence this second

appeal.

2. The first objection is that water-rate should not have been charged inasmuch as no Government water was taken. The District Judge, in our

opinion, clearly found in paragraph 4 of his judgment that Government water was taken. Reliance is placed by the appellant's Vakil upon the

following sentence of the District Judge's judgment: ""The water flowing into plaintiff's tank would otherwise have flowed into Mallikulam"" and it is

argued that the District Judge did not mean that the water came to the plaintiff's

tank from a Government source but thought that any water, which, but for plaintiff's tank, would have flowed into Mallikulam, a Government tank must be Government water. There is no foundation for this

argument. The finding of the District Judge confirmed the finding arrived at by the District Munsif on the 3rd issue and the District Munsif clearly

found that the Government water was intercepted by the plaintiff's tank and that, therefore, the defendant was entitled to have the tank removed.

3. The District Munsif held that the defendant was not entitled to levy prohibitory water-rate because the plaintiff failed to construct the weir. The

District Judge, however, found that the water-rate was imposed not as a penalty for disobedience of the order to construct weir but as a charge for

the unauthorized use of water. It is objected that the District Judge in so doing set up a new case for defendant. A reference to paragraphs 7 and 8

of the written statement and to the first part of the 3rd issue is sufficient to show that the defendant contended that the plaintiff was taking

Government water and that Government was entitled to charge for it. The fact that Government was not entitled to charge prohibitory water-rate

merely as a penalty for the non-construction of the weir would not take away its right to charge water-rate for the use of Government water. The

objection, therefore, fails.

4. The remaining objection pressed is that the Collector had no power to fix the amount of the prohibitory water-rate, inasmuch as u/s 1 of Act VII

of 1865, that power is reserved to Government and cannot be delegated to the Collector, and as the Government did not fix the rate in this case,

the objection was not taken specifically in the grounds of appeal, and does not, clearly, arise from any of those grounds. The Government pleader

also objected to its being heard. In these circumstances we are of opinion that it should not be considered. We dismiss the appeal with costs.