(1928) 03 MAD CK 0038

In the Madras High Court

Sri Sri Sri Pattarani Purnachendra Mala Jamna Devi Morima Garu — APPELLANT

Vs

The President Taluk Board — RESPONDENT

Date of Decision : 19-03-1928

Acts Referred:
Madras Local Boards Act, 1920 — Section 228(2)

Citation : 113 Ind. Cas. 560

Hon'ble Judges : Jackson, J

Bench : Single Bench

Judgement

Jackson, J.—Petitioner seeks to revise the judgment and decree of the District Judge of Ganjam in Appeal Suit No. 51 of 1926 dismissing her suit against the respondent the President of the Taluk Board of Chicacole.

2. The petitioner was assessed to profession tax from 1921 to 1923 and sued to recover the amount collected under that assessment Rs. 440-2-0 on the ground that as a matter of fact she had not practised any profession for that period within the limits of the Taluk Board.

3. The learned District Judge has held that the petitioner''s suit is barred by the provision of Section 228 (2) Madras Local Boards Act 1920. "No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act...provided that the provisions of this Act have been in substance and in effect complied with."

4. The provisions for collecting profession tax will be found in Section 93 and Schedule IV of the Act. The Local Board prepares and keeps books showing the persons liable to the profession tax, Schedule IV 5. Persons liable to the tax are assessed (IV 9) and an appeal lies to the Local Board (IV 27) both against assessment and the levy of the tax. If the Local Board substantially comply with these provisions no suit will lie and whether it has complied is a question of fact, This is clearly laid down in the leading Madras case Municipal Council, Cocanada

v. Standard Life Assurance Co. 24 M. 205 : 10 M.L.J. 401.

5. In the Municipal Council, Mangalore v. Codial Bail Press 27 M. 547 it was held that a Civil Court can intervene when the Municipality has deliberately acted upon a wrong basis in contravention of the clear provision of the Act. In that case it was not an isolated mistake but a fundamental departure from the meaning of the Statute.

6. That no suit lies in the circumstances of this case is clearly put by Krishnan, J., in the Municipal Chairman, Virudupatti v. Saravana Pillai 54 Ind. Cas. 454 : 10 L.W. 592 : 27. It would not be open to the Civil Court to find that his assessment was erroneous on facts.

7. It is clear that the provisions requisite for the collection of the tax were followed in this case and if there was a mistake of fact committed bona fide by the assessing authority, the petitioner''s remedy was that provided by and confined to the Statute.

8. The petition is accordingly dismissed with costs.