

(1937) 01 MAD CK 0008
In the Madras High Court

The Chairman, Municipal Council

APPELLANT

Vs

Nyapathi Subba Rao

RESPONDENT

Date of Decision : 19-01-1937

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1937) 45 LW 489 : (1937) 1 MLJ 496

Hon'ble Judges : Mockett, J; Horwill, J

Bench : Full Bench

Judgement

Mockett, J.—The petitioner is the Municipal Council, Rajahmundry, by its Chairman and the respondent is said to be a gentleman who is a

large land-owner and who also does considerable money-lending business. He sued the Municipal Council for refund of payment of profession tax

for the periods 1926 to 1930.

2. Before us, the only point for decision, which goes to the root of the whole matter, is this. It is contended by the learned Counsel for the

Municipality that this suit does not lie because the payments sought to be recovered were voluntary payments and such voluntary payments being in

the nature of a gift cannot be recovered. The following history of this case is relevant. With regard to the two half-years 1926-1927, the

respondent filed appeals before the appellate authority which were disposed of on the 18th January, 1928, summarily. He apparently being

dissatisfied with those decisions continued to pay this tax from that time until 1930 and filed this suit in July, 1930. No protest accompanied the

payments, but the learned Judge has found on the facts that the payments were made under protest and ordinarily in a revision petition even u/s 25

of the Provincial Small Cause Courts Act we should not go behind any questions of fact. But this is a matter of some importance and on the face of

the judgment it is perfectly clear to us that these payments were voluntary in the sense that word is understood in a matter of this sort and that so

far from showing that they were made under protest the very circumstances set out by the learned Judge emphasise that they were voluntary

payments. It is quite clear that the respondent preferred the procedure provided by the Act by way of appeal and however dissatisfied with the

result he thought fit to go on making payments for four years until he was inspired with the idea of filing this suit four years after, in 1930. He has

relied on the fact that the notice states that in default of payment, his property will be distrained. The whole question of what is and is not a

voluntary payment has been exhaustively considered by Pandalai, J., in the case of *The Municipal Council, Tuticorin v. Ralli Brothers* (1933) 67

M.L.J. 566. I desire to record my complete agreement with that part of his judgment dealing with that particular topic where it will be seen that the

principal cases are considered. One decision should be specially referred to and that is *Maskell v. Horner* (1915) 3 K.B. 106 where the Court of

Appeal reversing the decision of Rowlat, J., dealt with the question of voluntary payments. Dealing with the question of compulsion Lord Reading,

C. J., at page 118 says:

If a person pays money, which he is not bound to pay, under the compulsion of urgent and pressing necessity or of seizure, actual or threatened, of

his goods he can recover it as money had and received.

3. It will be observed that the compulsion is of urgent and pressing necessity or of seizure, actual or threatened. As to what is actual or threatened

seizure, Cave, J., in the case of *Slater v. Mayor, etc., of Burnley* (1888) 59 L.T. 636, points out that threatened seizure does not apply to the

conventional threat contained in the ordinary notices of demand because, as he says:

If that were so, no payment of rent to a landlord would be a voluntary payment.

4. It is evident that the threat must be a real threat operating on the mind of the payer without which he would not have paid. I do not think that

description can be made to apply to many of the formal documents which are sent to people demanding payment. In my view generally as to this

topic it is in each case a question of fact as to whether the payment was or was not voluntary, and in the case before us, it is perfectly clear that not

only is there no evidence that the payment was under protest and involuntary but that the opposite was the fact, namely, that it was made

voluntarily. That being so, it is unnecessary to consider any of the other points raised in this petition which in my judgment should be allowed with

costs.

Horwill, J.

5. I agree.