(1941) 10 MAD CK 0052

In the Madras High Court

The Madura Municipal Council APPELLANT

Vs

The Madura Devasthanams RESPONDENT

Date of Decision : 27-10-1941

Acts Referred:

Citation : AIR 1942 Mad 658 : (1942) 55 LW 528 : (1942) 2 MLJ 269

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—This appeal arises out of a suit brought by the Madura Devasthanam against the Municipal Council, Madura, for a declaration that the building and lands described in the schedule annexed to the plaint were exempt from payment of the property tax to the defendant Municipality. The defendant Municipal Council justified the assessment in reply and contended that in so far as the items contained in the schedules were used for commercial purposes and could not be said to form a portion of the temple property, they could not be exempt from the payment of the tax. The learned Subordinate Judge of Madura held that the items covered by item 1 were not liable to be assessed but those described in items 2 and 3 were so liable. The Madura Municipal Council has preferred an Appeal (No. 293 of 1939) in regard to the items covered by item 1 and the Madura Devasthanam preferred the other appeal (No. 302 of 1939) in regard to the items described in items 2 and 3.

2. The only question therefore to decide in both the appeals is whether the shops and stalls inside the Madura temple were correctly assessed and were liable to pay the property tax. The view taken by the learned Subordinate Judge finds support from a decision of this Court reported in The Municipal Council, Srinmgam v. The Srirangnm Devasthanam (1936) M.W.N. 1088 but the matter was considered subsequently by one of us who referred the matter, to a Bench and the decision of the Bench in The Municipal Council Vs. Sri Dhandayuthapani Devasthanam, , was to the effect that as the power house, which had been assessed to property tax in that case, was being used for supplying electricity to

shops and hotels yielding a profit and was not being used for religious purposes alone, although the whole hill on a portion of which it was erected was set apart for religious purposes, it was liable to assessment of property tax.

3. Learned Counsel for the Madura Devasthanam has, however, contended that in view of the decision of their Lordships of the Privy Council in Corporation of Calcutta v. Moti Chand Chowdhury (1939) 1 M.L.J. 396 : L.R. 66 IndAp 42 : (1939) ILR 1 Cal. 277 (P.C.) the whole of the Madura temple and its adjuncts have to be treated as one unit for the purpose of exemption from taxation u/s 83 of the Act and it would be incorrect to detach certain portions of the temple and consider them to be exempt from paying the property tax while holding others to be liable for the same. The decision of their Lordships of the Privy Council has, in our opinion, no application as it dealt with the question of valuation of the various buildings which had to be valued on a certain basis u/s 127 of the Calcutta Municipal Act of 1923. We are not concerned in this case with the method of the valuation given in that Act but with the construction of Section 83 of the District Municipalities Act.

4. That there are a large number of shops inside the compound of the Madura temple in which all kinds of commodities are being sold has not been disputed and as long as it is not possible to hold that those commodities were such as could only be used for purposes of worship in the temple or in other words, the shops or stalls were being used only for the purpose subservient to the worship in the temple, the contention of the Madura Devasthanam that the properties in which those goods were sold were not liable to taxation could not be upheld. The shops and stalls were, like the power house in The Municipal Council Vs. Sri Dhandayuthapani Devasthanam, , being used for commercial as well as religious purposes and this makes them taxable. Since on the construction of Section 83 of the District Municipalities Act, the items of property contained in item 1 could not be said "to be set apart for public worship" and could not be said to have been actually used for that purpose and no other, the judgment of the learned Subordinate Judge cannot be sustained.

5. In view of what has been said above, the appeal filed on behalf of the Madura Municipal Council must be allowed and the appeal preferred by the Madura Devasthanam dismissed. The appellants in Appeal No. 293 of 1939 will have their costs in respect of item 1 alone. No costs need be paid in Appeal No. 302 of 1939. The costs paid by the Madura Municipal Council to the Devasthanam will be refunded.