
(1927) 07 MAD CK 0001
In the Madras High Court

The Municipal Council

APPELLANT

Vs

M.C. Krishna Nambiar and Another

RESPONDENT

Date of Decision : 21-07-1927

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 93(3)

Citation : 105 Ind. Cas. 147

Hon'ble Judges : Madhavan Nair, J;Curgenven, J

Bench : Division Bench

Judgement

1. This is a civil revision petition presented by the Cuddalore Municipal Council against the judgment of the District Munsif of Chidambaram in

Section O.S. No. 330 of 1925 on his file. The plaintiff in that suit, Mr. M.C. Krishna Nambiar, is a District Munsif, and during the first half of the

year 1923-24 he successively resided and held appointments for more than 60 days within two Municipalities--those of Cuddalore and

Chidambaram. Although he had thus tendered himself liable to pay profession tax to the Cuddalore Municipality, no demand was made upon him

until several months after he had left, and after a similar demand had been made upon him in Chidambaram. Eventually he paid the tax demanded

of him by the latter Municipality, and later again the Cuddalore Municipality compelled him to satisfy its own demand. He thus paid profession tax

twice over. In the suit, in which he made both Municipalities defendants, the lower Court has decreed the refund to him by the Cuddalore

Municipality of Rs. 13-2-0, being equal to the amount of the payment made to the Chidambaram Municipality. The full tax payable to the

Cuddalore Municipality was a little more--Rs. 15-5-0 and he was found liable for the difference.

2. The point for decision thus is whether if a person who becomes successively liable in a single half year to pay profession tax in two

Municipalities pays it in the second, he acquires exemption, from liability to pay it in the first. The answer depends upon the construction of Sub-

section (3) of Section 93 of the Madras District Municipalities Act V of 1920, which runs as follows: ""No person who shall prove that he has paid

the sum due on account of the profession tax levied under this Act, or under the Madras City Municipal Act, 1919, or to any tax of the nature of a

profession tax imposed under the Indian Cantonments Act, 1910 for the same half year in any other Municipality or Cantonment in the Madras

Presidency shall be liable by reason merely of change of business, appointment, residence, or place of business, to pay to any Municipal Council

more than the difference between such sum and the amount to which he is otherwise liable for the profession tax for the half year under this Act.

3. This provision is followed by three illustrations, the first two of which refer to the ordinary case where a person, having paid tax in the first

Municipality, is exempt, up to the sum so paid from paying again in the second. The third illustration is upon a different point. But although the more

common application of the sub-section may be to cases of this nature we are in agreement with the learned District Munsif that its terms are wide

enough to cover the converse case illustrated by the facts now under consideration. Applied to those facts, what the subsection says is that no

person who shall prove that he has paid the sum due on account of profession tax for the same half year in the Chidambaram Municipality shall be

liable by reason merely of change of business, appointment, residence, etc, to pay to the Cuddalore Municipality more than the difference, if any,

between the Cuddalore tax and the Chidambaram tax; and it makes no difference, in our view, whether the assessee resided and held his

appointment first in the one Municipality or first in the other. The phrase "by reason merely of change of business, appointment, residence, or place

of business" applies equally to either case. Had the intention been as contended by the petitioner to restrict exemption from payment to the tax

payable in the second Municipality by virtue of payment made in the first, there would have been no difficulty in so wording the provision. The

intention seems rather to be that in no circumstances where a transfer of residence and occupation has taken place shall a person have to pay the

tax twice over. We are not concerned with the propriety of this rule, once it is clear that it is correct law. But it has at least the merits of

encouraging promptitude and vigilance on the part of a Municipal collecting agency and of protecting an assessee against delayed claims.

4. An attempt has been made to base a further point--that a suit of this nature does not lie--upon the terms of Rule 28 of Schedule IV of the Act.

That rule, which says that the assessment for demand of any tax, when no appeal is made, as hereinbefore provided, and the adjudication of an

appeal by the Council shall be final clearly has reference to an assessment or demand which the Municipality was empowered by the Act to make.

5. Under Sub-section (2) of Section 354, a suit against a Municipality to recover money is only barred, if the provisions of the Act have been in

substance and effect complied with; and this condition was not fulfilled in the present case. We accordingly dismiss the civil revision petition with

costs (one set).