

(1930) 08 MAD CK 0012
In the Madras High Court

The Municipal Council

APPELLANT

Vs

S. Venkatarama Aiyar

RESPONDENT

Date of Decision : 04-08-1930

Acts Referred:

Citation : AIR 1931 Mad 55 : (1931) ILR (Mad) 495 : 129 Ind. Cas. 225 :
(1930) 32 LW 760 : (1931) 60 MLJ 456

Hon'ble Judges : Mudhavan Nair, J

Bench : Division Bench

Judgement

Mudhavan Nair, J.—This second appeal raises the question whether the respondent is exempt from liability to pay ""property tax"" with

respect to a building known as ""Arrack Godowns""--a place within the Municipal limits of Trichinopoly--under Section 63 (1)(a) of the old

Municipal Act (IV of 1884) and Section 83 (a) of the present Municipal Act (V of 1920).

2. The facts are not disputed. The respondent is the proprietor, headmaster and manager of the Aryan Secondary School located in a building

known as ""Arrack Godowns"" at a place called Teppakulam. The appellant is the Municipal Council of Trichinopoly represented by its Chairman.

The respondent purchased the building from the Government (see Ex. C) for ""school purposes only"" for the price of Rs. 4,081-4-0. The

Municipality assessed ""Arrack Godowns"" to property tax and realised from the respondent Rs. 297-4-2 for the years 1917 to 1921 by the issue

of coercive process. The respondent claimed a refund of the amount from the Municipality on the ground that "" Arrack Godowns"" is exempt from

taxation. The refund being refused, the respondent filed the suit out of which this second appeal arises to recover the amount with interest and also

Rs. 1,000 being damages for trespass in execution of the illegal warrant issued to collect the tax in question. The District Munsif awarded the

respondent a refund of all the taxes excepting the tax relating to the year 1917 which was disallowed as barred by limitation and also Rs. 500 as

damages. This decree was confirmed by the Subordinate Judge. This second appeal has been filed by the Municipality against that decree.

3. The claim for the refund for the year 1917 does not now arise because the respondent did not file a cross-appeal in the Lower Court against the

Munsif's decree disallowing the claim. This second appeal relates only to (1) Rs. 208-10-9, property-tax due for eight half-years collected under

the provisions of the old Municipal Act (IV of 1884), and (2) Rs. 58-14-2, property-tax for two half-years collected under the provisions of the

present Act (V of 1920) and also to the damages awarded against the Municipality.

4. I shall first deal with that part of the case which falls u/s 63 (1) (a) of Act IV of 1884. Section 63 (1) (a), (b) and (c) runs as follows:

If the Municipal Council notify, u/s 50, that a tax shall be levied on buildings or lands or both in the Municipality, the Chairman shall impose such

tax on all buildings or lands, or both, exempting (a) lighthouses, piers, wharves, jetties, choultries, hospitals, dispensaries and other buildings or

lands, to the extent to which they are used for public, charitable or religious, but not residential purposes, (b) burial and burning grounds, and (c)

buildings or lands belonging to the Municipal Council.

5. Under this section if the Municipality issues a notification u/s 50 of the Act it has the power to levy a tax on buildings or lands or both within the

Municipality (referred to as property-tax in the subsequent Act, that is Act V of 1920) unless the buildings or lands fall within the exceptions

mentioned in Clauses (a), (b) and (c). The respondent claimed exemption from the tax on "Arrack Godowns" under Clause (a) on the ground that

the building is used for "public, charitable purposes" as it was used for education which is a public and also a charitable purpose. The argument of

the respondent that the purpose is also charitable and on that ground also the building was exempt from liability to pay the tax was overruled by

both the Lower Courts. In this Court he has tried to support the decree also on the ground that the building should be considered as being used for

charitable purposes also. In the view that I take of the case it will not be necessary to deal with this part of the argument.

6. The main question for consideration is whether the building, having regard to the facts of the case, can be said to be used for public purposes in

the sense in which that expression is used in the Act. It is not denied by the appellant's learned advocate that the school, inasmuch as it is open to

all the public and it imparts education, is used for a public purpose; but his argument is that unless the building is used exclusively for public

purposes, it does not come within the term "public purposes" as used in the section. In this case it is admitted that the appellant is entitled to

appropriate for himself all the profits arising from the school after meeting the expenses of the management, salaries of teachers, etc., though he

says in his evidence that there has been no profit all these years. It is argued that if the respondent makes profits for himself out of the institution,

then though the purpose served by it is a public one, it cannot be said to be used for "public purposes." Various cases, English and Indian, were

brought to my notice by both sides, but I do not propose to discuss them in detail as in my opinion the decision of the question should largely

depend on the special facts of each case. The term "public purposes" has not been defined in the Act. As pointed out in *Hamabai F. Petit and*

Moosa Haji Hassam Vs. The Secretary of State for India in Council, , in English decisions interpretations of the term "public purposes" are not

uniform and it is difficult to extract any general principle from them applicable to all cases alike. Mr. Venkataramana Rao relied on *The Queen v.*

The Blackfriars' Bridge Company (1830) 9 Ad. & E. 828 : 112 E.R. 1428 and *The Queen v. The Harrogate Commissioner* (1850) 15 Q.B.

1012 : 117 E.R. 741 to show that in England in order to justify exemption from rateability under the Poor Relief Act, 43 and 44 Elizabeth, Ch. II,

Sections 1 and 2, the claimant had to show that the building or land in question was used exclusively for a public purpose. I may observe--and this

has been pointed out in the English decisions--that the exemption is not mentioned in the Act but it came to be recognised as a result of the

decisions of Courts, These decisions, however useful they are in understanding the meaning of the term in a general sense, do not interpret the

expression as used in any enactment. The strongest case relied on by the appellant is one reported in *Mayor, etc., of Essenden v. Blackwood*

(1877) 2 A.C. 574. In that case which related to exemption from rateability of a racecourse held by the respondent therein in trust for a racing

club, it was held that the land could not be said to be "used for public purposes" within the meaning of Section 253 of the Victoria Local

Government Act (1874) unless it was issued exclusively for public purposes. The facts of that case showed that

there was on the part of the club, according to the true construction of their Act, a beneficial enjoyment of the land beyond that of the general

public, and a pecuniary interest in the surplus, rents, and profits of the racecourse, after providing for its maintenance and use (see the head-note).

7. On the strength of this decision it is argued that inasmuch as the respondent in this case derives profits from the school, though the public is

benefited by it as a place of education, the building cannot be said to be used for a public purpose. This decision no doubt supports the appellant;

but I am not quite sure whether the decision can be said to lay down a general test for the interpretation of the term "public purposes" applicable to

all cases. The building in the case before us is used as a school for educational purposes, whereas the land in the case mentioned was used as a

racecourse. It "is difficult to say whether the learned Judges in *Mayor, etc.*, of *Essenden v. Blackmood* (1877) 2 A.C. 574 would have applied the

same considerations to the case if the land in it was devoted for quite a different purpose. In this connection attention may be drawn to the often

quoted observations of the Earl of Halsbury, Lord Chancellor, in *Quinn v. Leathem* (1901) A.C. 495.

There are," said His Lordship, "two observations . . . which I wish to make, and one is ... that every judgment must be read as applicable to the

particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be

expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is

that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically

from it.

8. Obviously there is no logical connection between the public purpose in the present case and the public purpose decided in *Mayor, etc.* of

Essenden v. Blackwood (1877) 2 A.C. 574 under the Local Government Act in Victoria. In my opinion the decision in Mayor, etc., of Essenden

v. Blackwood (1877) 2 A.C. 574 should not be applied in deciding this case.

9. The respondent relies on the decision in Hamabai F. Petit and Moosa Haji Hassam Vs. The Secretary of State for India in Council, in which it

was held that resumption by the Government ""to provide accommodation for Government officers"" of land leased to a lessee fell within the meaning

of the expression ""public purpose"" as used in the contract between the parties to that suit. This decision was upheld on appeal by the Privy Council

in Hamabai Framjee v. Secretary of State for India in Council and Moosa Hajee v. Secretary of State for India (1914) L.R. 42 IndAp 44 : ILR 39

B. 279 : 28 M.L.J. 179 (P.C.). As I have already said the Municipal Act does not define the expression and there are no decisions of this Court

on the point. It does not seem to me that the Legislature, when it intended to exempt from rateability buildings used for imparting education which is

admitted to be a public purpose, intended to exclude only those institutions from which the headmaster derived no profits for himself. If that was

the intention of the Legislature that would have been explicitly so stated. Under the present Act, Act V of 1920, as I shall presently show, when I

deal with Section 83 of that Act, it is clear to my mind that the Legislature exempts from rateability all educational institutions irrespective of the

question whether the proprietor makes out of those institutions any private profit for himself or not. In the same way, I think all buildings used for

educational purposes were intended to be exempted from payment of the Municipal tax u/s 63 (1) (a) also. I find from the evidence of Moulana

Syed Murtuza Sahib Bahadur, M.L.A., P.W. 5 in this case, that institutions similar to this in the same Municipality, namely, the St. Joseph's

College, the National College, Bishop Heber College and School, the Hindu Secondary School and the Islamia Secondary School during the days

it was in his management, were enjoying exemption and were not made to pay any property tax. I am referring to this evidence only to show how

in applying this section, the intention of the Legislature was generally interpreted by the Municipality. I am unable to uphold the argument of the

appellant on this point. In this view it is not necessary to discuss the question whether the school carried on in ""Arrack Godowns"" comes within the

description of charitable institutions and can claim on that ground exemption from rate-ability. In my opinion the tax collected under Act IV of

1884 from the respondent was rightly ordered to be refunded by the Lower Courts.

10. Coming now to the propriety of the collection of the tax of Rs. 58-14-2 under Act V of 1920 we have to construe Clause (a) of Section 83 of

that Act which says that the following buildings and lands shall be exempt from property tax:

Places set apart for public worship and either actually so used or used for no other purpose, choultries, buildings used for educational purposes

and libraries and playgrounds which are open to the public and from which no income is derived.

11. It will be observed that under this Act all the exemptions are grouped together in a separate section. It is argued by the learned advocate for

the appellant, in Clause (a) the descriptive clause "which are open to the public and from which no income is derived" applies to buildings used for

educational purposes and libraries and playgrounds alike and since income is derived from "Arrack Godowns" the building does not fall within the

exception and is clearly subject to property tax. I cannot agree with this construction of the clause. If this is the correct sense in which that part of

the clause should be understood then I can find no justification for the use of the word "and" between "purposes" and "libraries". If the Legislature

wanted to interpret that part of the Clause (a) in the sense contended for by the appellant's learned advocate then the first "and" between purposes

and libraries" would have been dropped retaining only the "and" between "libraries and playgrounds"; but that has not been done. In my opinion the

words in sub-sec, (a) "which are open to the public and from which no income is derived" are referable according to the natural construction of the

words only to "libraries and playgrounds" and not to buildings used for educational purposes. It is therefore clear u/s 83 of the present Act that

Arrack Godowns" is exempt from property-tax on the ground that it is a building used for educational purposes even though the proprietor of it

makes profit out of the school which he carries on in that building. I would therefore hold that this sum of Rs. 58-14-2 also was rightly ordered to

be refunded by the Lower Courts.

12. The next question relates to damages. In awarding damages the Lower Courts have considered the conduct of the Municipality and the circumstances relating to the collection of the tax. The concurrent findings of the Lower Courts, as regards the liability to pay damages and the amount are based on the evidence in the case. I do not see sufficient reason to interfere with the findings of the Lower Courts on these points.

13. In the result the second appeal is dismissed with costs.