

(1940) 09 MAD CK 0046
In the Madras High Court

The Municipal Council

APPELLANT

Vs

Sri Dhandayuthapani Devasthanam

RESPONDENT

Date of Decision : 19-09-1940

Acts Referred:

Citation : AIR 1941 Mad 185 : (1941) ILR (Mad) 322 : (1940) 52 LW 889 : (1940) 2 MLJ 897

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The Municipal Council of Palni has assessed to the property-tax leviable u/s 81 of the Madras District

Municipalities Act, 1920, a power-house belonging to the Sri Dandayuthapani Devasthanam. The power-house is situate at the foot of the Palni

Andavar Hill and within the municipal limits. The trustees objected on the ground that this building was exempt from taxation by reason of the

provisions of Section 83(1)(a) of the Act. The property having been assessed to this tax and the tax having been paid, the trustees instituted a suit

in the Court of the District Munsif of Palni for the recovery of the amount. The District Munsif found against the plaintiff and dismissed the suit, but

on appeal his decision was reversed and the suit was decreed. The Municipal Council now appeals to this Court.

2. It is common ground that the whole hill was set apart for religious purposes. On the top of the hill is a famous temple which is approached by

means of a long flight of steps. At the top of the hill there are also shops and a hotel which supply the needs of the pilgrims who visit the temple. In

1929, the trustees built the power-house and installed electric plant for the purpose of lighting the way up to the temple and the temple itself. Later

on, they supplied electricity to the shop-keepers and the hotel-keeper for which the trustees charged profitable rates. The fact that electricity was supplied to the shops and to the hotel led the Municipal Council to assess the power-house to the property-tax. If the power-house is to be exempt from this tax, the building must come within the purview of Section 83(1) (a) because there is no other section in the Act which can relieve the trustees from the obligation of paying the property-tax.

3. Section 83(1) reads as follows:

The following buildings and lands shall be exempt from the property-tax-

(a) place set apart for public worship and either actually so used or used for no other purpose, countries, buildings used for educational purposes, including hostels, public buildings and places used for the charitable purpose of sheltering the destitute or animals, libraries and play-grounds which are open to the public and such ancient monuments protected under the Ancient Monuments. Preservation Act, 1904, or parts thereof as are not used as residential quarters or as public offices.

4. It is not necessary to go beyond the words "'places set apart for public worship and either actually so used or used for no other purpose'", as it is clear that the power-house is not a building of the nature of any of those subsequently mentioned. In our opinion, the words "'places set apart for public worship and either actually so used or used for no other purpose'" read with the opening words of the section mean that there shall be exemption for places set apart for public worship and used for that purpose and for places set apart for public worship, but not actually in use. If a place is used for a purpose other than public worship, the place does not fall within the exemption, even though the intention was that it should be used for public worship. It has been suggested that the use of the word "or" instead of "and" makes a difference. It does make a difference, but not the difference suggested. If the word were "and" and not "or" there would only be exemption when a place was set apart, for public worship and actually used for that purpose, but as a result of using the word "or" there is exemption when the place has been set apart for public worship, but is not actually in use. The drafting leaves much to be desired, but it is obvious that the intention is to exempt buildings which are intended for religious purposes and are not being used for secular purposes.

5. What is the position here? The hill has been set apart for public worship and it cannot be disputed that if this powerhouse were merely used for lighting the temple and the approach to it the power-house would be exempted from taxation. But, inasmuch as the power-house, which stands on a part of the hill, is being used for commercial purposes as well as purposes of public worship, the conditions of the exemption are not fulfilled. The Municipal authorities are not suggesting that because a part of the hill, namely, the site of the powerhouse, is being used for other purposes the whole hill and everything erected thereon should be deemed to be taken out of the section. Their case is merely confined to the power-house and we consider that it is well founded.

6. In the course of arguments two decisions of this Court were referred to, namely, *The Municipal Council Srirangam v. The Srirangam Devasthanam* (1936) M.W.N. 1088 and *The Municipal Council of Tirupati Vs. Sree Mahant Prayag Dossjee Varu*, The first case certainly supports the trustees, but we consider that it was wrongly decided. The second case is not really in point. In *The Municipal Council, Srirangam v. The Srirangam Devasthanam* (1936) M.W.N. 1088, the council wished to assess to property-tax certain shops within the Srirangam temple. The learned Judge (K.S. Menon, J.) considered that as the word "or" and not the word "and" was used in Section 83(1)(a), the shops were not taxable. We have said sufficient to indicate that in our opinion this argument cannot be accepted and that the decision of K.S. Menon, J., ought not to be followed. In *The Municipal Council of Tirupati Vs. Sree Mahant Prayag Dossjee Varu*, , the question was whether buildings used for stabling Devasthanam horses which were employed in carrying drums in temple processions or allowed for the use of pilgrims to whom honour was shown by the Mahant were exempt from the property-tax. It was held that they were exempt. This decision is not open to criticism, because the buildings were used for purposes connected with worship in a public place. If the power-house with which this appeal is concerned were merely used for lighting the approach to the temple and the temple itself, there would, as I have already indicated, be no doubt, that the Municipality would not be entitled to levy the tax. But the powerhouse is being used for commercial as well as religious purposes and this brings it within the taxing section.

7. The appeal will be allowed and the suit dismissed with costs here and in the two Courts below.