

(1920) 11 MAD CK 0009
In the Madras High Court

The Municipal Council of Tanjore

APPELLANT

Vs

Krishna Pillai

RESPONDENT

Date of Decision : 17-11-1920

Acts Referred:

Citation : AIR 1921 Mad 487 : (1921) ILR (Mad) 354 : (1921) 13 LW 225 :
(1921) 40 MLJ 306

Judgement

1. This is a petition asking this Court to review the judgment of the Subordinate Judge of Tanjore in a suit between the Municipal Council of that

town and the defendant.

2. The short point is whether the defendant who owned a building in Tanjore which was used as a theatre, is liable for taxation during the period in

which the building was regarded as unfit for use. The zinc roofing has not been removed but the thatched portion of the building has been removed.

There was no covering but the frame was standing. It may be assumed for the purpose of argument that while the roof was off and until a new one

could be put on, the building would not be available for use as a theatre.

3. Now, it appears to be conceded that the defendant is liable for half tax and not for the full tax, because the building was in any event unoccupied

during the period. He contends that he is liable for no taxation at all because he came within the protection of Section 73(2) of the District

Municipalities Act IV of 1884. There are two Sub-sections to Section 73. The first was relied upon in the Court below but the argument in that is

not pressed here. It is clear that the subsection relates to the case, either of a new house being built when there was one before, or of a new house

built being on a site, of a house being enlarged. In each case the duty which is

thrown upon the holder of the building to give notice to the Municipality so that it may assess the tax leviable in the first two cases or enhance the assessment in the third case.

4. But the defendant says he relies on Sub-section (2). It begins thus:- ""When any building is completely demolished or destroyed, the owner

thereof may give notice to the Chairman of such demolition or destruction"" and concludes "" If the said notice is given within the first two months of

a half year, no tax shall thereafter be levied in respect of the building or any tax which may have been levied for that half year shall be refunded.

The argument is that by the taking off the roof of this building and thereby rendering it incapable of use as a theatre, it was within the meaning of the

section ""a building destroyed."" We are quite unable to accede to that argument because an owner might in any case render, by a very slight

removal of some ordinary feature necessary for the purpose, the building incapable of use for the purpose for which it was intended without doing

anything which could possibly be described as destruction or demolition. We think that what the section refers to is physical destruction of the

building so that it is no longer a building but merely a heap of building materials. It is not necessary that no stone should be left standing on another

but that, in the ordinary and usual acceptation of such language, it should cease to exist as a building and not merely as a building designed for

particular purposes. We think that the learned Judge was wrong in accepting that artificial construction of the wording of the section and we think

that the defendant is clearly liable during the period in question for half the tax. An argument was at one time raised as to whether the proper

channel was not to make the defendant pay the whole tax in the first instance and get it back u/s 72. Mr. Ethiraja Mudaliar, on behalf of the

Tanjore Municipality very wisely does not press for that and he is content that the judgment should be against the defendant for the net amount of

tax, namely half the tax for which he is prima facie liable.

5. The decree will be for Rs. 111-10-8 and the defendant will pay the costs.