(1942) 03 MAD CK 0013

In the Madras High Court

V. Kr. St. Kasi Visvanadan Chettiar APPELLANT

Vs

Devakottai Municipal Council RESPONDENT

Date of Decision : 27-03-1942

Acts Referred:
Tamil Nadu District Municipalities Act, 1920 — Section 354

Citation : AIR 1942 Mad 661 : (1942) 55 LW 514 : (1942) 2 MLJ 265

Hon'ble Judges : Byers, J

Bench : Division Bench

Judgement

Byers, J.—This Civil Revision Petition has been brought against the decision of the District Munsiff of Devakottai in Small Cause Suit No.

17 of 1940. That suit was brought to recover profession tax of Rs. 85 paid under protest by the plaintiff. The learned Munsiff found that the suit

was not maintainable by reason of Section 354 of the Madras District Municipalities Act.

2. The facts of the case present no difficulty. The plaintiff admittedly resided in Devakottai for the statutory period of sixty days during the half year

in question and it is also admitted that he exercised his business only at Tinnevelly and Madras during this period. When he was served with an

order to give his return of income for the purposes of assessment to profession tax, he stated that he had no income or profession liable to

profession tax. This was not correct because, unless he had already paid profession tax elsewhere in respect of the income in Madras and

Tinnevelly, he would be liable to pay profession tax in respect of his business u/s 93(1)(a)(it) of the Act. He was served with a notice of demand

on the 10th of November, 1937, but by that date he had already paid profession tax in excess of the amount now demanded to the Madras

Corporation on 10th October, 1937, so that u/s 93(4) of the Act he was not liable to pay again at Devakottai except in respect of any difference.

The plaintiff preferred an appeal in which he denied having any income or profession within the municipal limits and he enclosed with his

memorandum of appeal the receipt granted by the Madras Corporation for the payment of profession tax for the same half year. He did not

specifically plead Section 93 (4) but there can be no doubt that his reference to this payment indicated quite clearly that he was not liable for any

further payment. His appeal was summarily dismissed without any attempt to arrive at any findings On the questions raised by the plaintiff. Although

Section 93 (4) was not open to the plaintiff when he was first called upon to make a return of his income, it was certainly open to him at the time

the assessment order was served, but since the prior payment had not been notified to the Devakottai Municipality the assessment order cannot be

criticized on that ground. The learned Munsiff has referred in his. judgment to the fact that the plaintiff''s Income Tax papers were also produced

before the Municipal Council at the time of his appeal so that there was ample material on which the Council could and should have found that the

source of the plaintiff''s income lay entirely outside the municipality and that he had already paid profession tax elsewhere. The refusal of his appeal

under the circumstances was a purely arbitrary proceeding which cannot now be defended.

3. The only ground which has been urged against the plaintiff is that Section 354 is a bar to his suit, but the argument overlooks the proviso to Sub-

section (2). The refusal of the Municipal Council to grant him relief in respect of the double taxation is clearly outside the provisions of the Act.

4. In the result the petition is allowed, the dismissal of the suit is set aside and the suit decreed for the plaintiff with costs throughout.