

(1924) 02 MAD CK 0070
In the Madras High Court

Velluri Jagannadh Naidu

APPELLANT

Vs

Ch. Rama Rao, Sanitary Inspector

RESPONDENT

Date of Decision : 01-02-1924

Acts Referred:

Citation : 85 Ind. Cas. 646

Hon'ble Judges : Krishnan, J

Bench : Single Bench

Judgement

Krishnan, J.—In this case the petitioner has been convicted under Sections 362 and 313 of the District Municipalities Act V of 1920 and sentenced to pay a fine of Rs. 15 with two weeks' simple imprisonment in default. The facts found on which he has been convicted are that he built a buttress wall, to his compound wall, which projected on to the Municipal street adjoining it. This was, no doubt, an encroachment. Taking the definition of the word "street" in Section 3, Clause (21), encroachment upon the land by the side of a street, even though it is uncovered by any pavement or other structure would be an encroachment on the street. Section 180 would certainly apply to this case. But the lower Courts, though the accused was first charged u/s 180, have altered the charge because of the difficulty of the limitation of three months within which the prosecution has to be started for an offence u/s 180, to one u/s 362 of the District Municipalities Act. It is clear that Section 362 cannot apply to this case but that Section 180 is the section that really applies. Section 362 deals with the removal of earth, sand or other materials or depositing such materials or making such encroachments by depositing such materials on land, river, estuary, canal, back-water or water-course. It has nothing to do with the encroachments on streets. It is not denied in this case that the prosecution u/s 180 must fail, on the ground of limitation. Even if Section 362 were to apply, it seems to me that the prosecution will still fail under the three months' rule, as the proviso to Section 347 does not seem to deal with a case u/s 362 at all. The proviso deals with the failure to take out a license, obtain permission, or secure registration for doing certain things for which a license, permission or registration is required. The accused is not

prosecuted for any failure to take out any license or obtain permission or secure registration. He has been prosecuted for encroaching upon a Municipal street by building a buttress wall to his compound wall. The case against him, therefore, fails on the ground of limitation and should have been dismissed. What exactly the Municipality should do for the purpose of getting the encroachment on the street removed" will be for its own legal advisors to advise.

2. The petition is allowed, the conviction is set aside, and the. fine, if, paid, will be refunded.