

## APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

CHAIRMAN, ONGOLE MUNICIPALITY (DEFENDANT),  
PETITIONER,

1894.  
March 13, 14.

v.

MOUNSEY (PLAINTIFF), RESPONDENT. \*

*District Municipalities Act (Madras)—Act IV of 1881, s. 55—Profession tax—What amounts to an exercise of profession or the holding of office under the section.*

An officer, whose head-quarters are within a Municipality, does not *ipso facto* exercise his profession or hold such office or appointment within the Municipality so as to render himself liable for the payment of profession tax under Madras Act IV of 1884. Accordingly an officer who is not personally present at his head-quarters in the course of duty for a period of sixty days in the half-year is not liable for the tax under section 55 of the Act.

PETITION under section 25 of Act IX of 1887, praying the High Court to revise the decree of V. Subrahmanyam Garoo, District Munsif of Ongole, in small cause suit No. 202 of 1892.

The facts of this case appear sufficiently for the purpose of this report from the judgments of Muttusami Ayyar and Best, JJ. The District Munsif decreed in favour of the plaintiff, and the defendant preferred this appeal.

*Krishnaswami Chetti* for petitioner.

Mr. *Brown* for respondent.

MUTTUSAMI AYYAR, J.—This was a suit to recover back the sum of Rs. 25 which was illegally collected by defendant from plaintiff as profession tax due by him to the Municipality for the year 1891–92. During that year, plaintiff held the office of Sub-Collector of Nellore. Defendant is the Chairman of the Municipality in the town of Ongole which is the head-quarters of the Sub-Collector. His office buildings are at Ongole, but it has been found by the District Munsif, that during the year 1891–92, he resided at Ongole and did his work there, except for 22 days in the first half, and for 20 days in the second half of the year. It is in evidence that he was appointed as the Acting District Judge of

\* Civil Revision Petition No. 747 of 1892.

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Salem on the 15th June, and reverted to his appointment as Sub-Collector on the 19th September. It is also in evidence that he obtained permission to hold his office at Nellore for two months from October. It is clear then that save for the forty-two days mentioned above, he was in circuit and did his work outside Ongole. It appears, however, that some clerk was left at the head-quarters when the Sub-Collector was in circuit, and that the whole office establishment did not accompany him. The question is, whether upon these facts, plaintiff is liable to pay profession tax under section 55, Act IV of 1884. The material words "hold office or "appointment within the Municipality" mean carrying on business there as the holder of the particular office. The intention was to place public servants like the plaintiff in the same position in which others are, who exercise their profession within the municipal limits. It is the nature of plaintiff's duty often to go out on circuit, and if urgent work outside the Municipality requires his presence there for about six months, it cannot be said that he still works within the municipal limits. The cause of his liability is his participation in the benefit and convenience conferred by the Municipality upon those residing within the municipal limits. By section 59 plaintiff is exempted from liability if he does not hold his office for sixty days or more in any half-year. The contention that wherever he may do business as Sub-Collector, he must be presumed to carry on such business at his head-quarters is one to which I cannot accede as sound within the meaning of the Municipal Act, for, under that exactment, it is an essential condition of liability that the profession should be exercised within the municipal limits. The decision of the District Munsif is right and this petition must be dismissed with costs.

BEST, J.—The only question for decision in this case is as to the meaning of the words "exercised such calling or held any such "office or appointment within the Municipality" as used in section 55 of the District Municipalities Act No. IV of 1884 (Madras).

It is conceded on behalf of the petitioner, the Chairman of the Municipality of Ongole (in the Nellore District), that it is only in case of the calling having been exercised or office or appointment held within the Municipality for a period of not less than sixty days within a half-year that the tax is payable; and it is not denied that during each of the half-years in question Mr. Mounsey, the counter-petitioner, did not personally exercise his calling or

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hold office within the Municipality for the minimum period of sixty days. It is contended, however, that as Ongole is the headquarters station of the Sub-Collector of Nellore, and as Mr. Mounsey held the appointment of Sub-Collector for more than the minimum period in each of the half-years, he is liable to pay the tax. The question, therefore, is whether an officer, whose headquarters are within a Municipality, is to be considered *ipso facto* as exercising his profession or calling, or holding his office or appointment, within such Municipality, although as a matter of fact he was absent from the Municipality and discharging the duties of his office elsewhere. If the subordinates left in charge of the office at Ongole could be held to be doing the Sub-Collector's work, there would be ground for holding the contention on behalf of the Municipality to be valid, on the principle of *qui facit per alium facit per se*. But the Sub-Collector's duties cannot be delegated by him to be done by his clerks. His duties must be discharged by himself alone, and that at the place where he happens to hold his office from time to time. This may be anywhere within his division, or even out of it, if sanctioned by the proper authorities. As appears from the evidence in the present case, Mr. Mounsey was absent for some time of the period in question in the Salem district as Acting Judge of that district; for a portion of the period he held office at Nellore, with permission obtained from the Collector, and during other portions he was out on famine duty. He consequently held his office in Ongole for not more than twenty-two days during the first of the two half-years in question and for even a shorter period during the second of the two half years.

I think that the District Munsif is right in holding that, under these circumstances, Mr. Mounsey was not liable to pay profession tax to the Ongole Municipality for either of the two half-years in question.

I would therefore dismiss this petition with costs.