

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

1895.
August 7, 13.

MUNICIPAL COUNCIL, NELLORE (DEFENDANT), PETITIONER,

v.

RANGAYYA (PLAINTIFF), RESPONDENT.*

District Municipalities Act (Madras)—Act IV of 1884, ss. 72, 97, 262.

The plaintiff built a house at Nellore, the construction of which was completed on the 15th of August 1893. The municipal authorities of that place, being governed by Madras District Municipalities Act, gave notice of assessment on the 11th of September, levied the tax as assessed, and credited it as the tax due for the half-year ending on the 30th of September 1893. The plaintiff now sued to recover the amount paid by him as having been illegally levied:

Held, that under the provisions of District Municipalities Act, section 262, the suit was not maintainable.

PETITION under Provincial Small Cause Courts Act IX of 1887, section 25, praying the High Court to revise the decree of W. Gopalachari, District Munsif of Nellore, in small cause suit No. 552 of 1894.

Suit to recover Rs. 3-6-0, being the amount of the tax alleged to have been illegally levied from the plaintiff by the defendant on account of house-tax. The defendant, which was a municipal council constituted under the Madras District Municipalities Act, (Act IV of 1884), admitted that the tax had been levied from the plaintiff and credited as the tax due for the half-year ending the 30th of September 1893 in respect of a house, the building of which was completed on the 15th of August 1893. It was pleaded that the tax was levied in accordance with law, and also that the suit was not maintainable with reference to section 262 of the Act above referred to. This section is as follows:—

“262. (1) No assessment, charge or demand of a tax made
Assessment, &c., not “under the authority of this Act shall be
to be impeached if Act “impeached or affected by reason of any mis-
substantially complied “take in the name, residence, place of busi-
with. “ness or occupation of any person liable to
“pay the tax, or in the description of any property or thing
“liable to the tax, or of any mistake in the amount of assessment

* Civil Revision Petition No. 518 of 1894.

“or tax, or by reason of any clerical error, provided the directions of this Act shall have been in substance and effect complied with; and no proceedings under this Act shall, for want of form, be quashed or set aside in any Court of Justice.

“(2) No action shall be maintained in any Court to recover money paid in respect of any tax, toll or fee assessed or levied, or any payment collected, under this Act, or to recover money or damages by reason of any assessment made, tax, or toll or fee levied, or any payment under this Act, provided that the provisions of this Act relating to the assessment and levy of taxes, tolls and fees, and to the collection of payments have been in substance and effect complied with.

“(3) No distress or sale under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, schedule, form, summons, notice of demand, warrant of distress, inventory, or other proceeding relating thereto; nor shall such person be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him.

“Provided that every person aggrieved by such irregularity may recover satisfaction for any special damage sustained by him.”

The District Munsif overruled both of the pleas above referred to and passed a decree as prayed.

The defendant preferred this petition.

Pattābhīrama Ayyar for petitioner.

Subramania Ayyar for respondent.

SHEPARD, J.—This action is brought to recover the sum paid by the plaintiff in respect of the first instalment of the tax on a house for the year ending with March 1894. The construction of the house not having been completed till August 1893, it is contended for the plaintiff that the tax was not leviable for the first half of the year and must, therefore, be recoverable by action. On the other hand it is argued on the defendant's behalf that any such action is barred by the 262nd section of the Act of 1884. Unless it can be shown that the plaintiff is, under the circumstances, saved by the proviso to that section, this defence must clearly prevail.

MUNICIPAL
COUNCIL,
NELLORE,
RANGAYYA.

It is said that the provisions of the Act relating to the assessment and levy of taxes have not been in substance and effect complied with, because according to the right construction of the Act a house not completed at the beginning of the year cannot be made the subject of taxation. It is not said that in any other respect there has been a departure from, or neglect of, the provisions of the Act relating to the assessment of the property.

For the purpose of any argument regarding the construction of the 262nd section, it must be assumed that money paid and sought to be recovered is money which was not legally payable by the plaintiff.

The second clause of the section is one of a group of provisions designed to give special protection to the municipal council.

The 261st section provides for notice of action; the first clause of the 262nd section provides for certain specified cases of mistake.

The second clause provides that no action shall be maintained to recover money paid in respect of any tax assessed or levied under it. Then follows the proviso. It is clear that this clause is not intended to be restricted to those cases in which there has been a mistake such as is provided for in the first clause.

The second clause presupposes a case in which a tax has been illegally levied and only requires that the provisions of the Act relating to assessment and levy shall have been complied with.

Assuming that the commissioners have made a mistake, and ought not to have levied a tax on the plaintiff's house for the first half-year, I think they are entitled to the protection which they claim under the 262nd section. It cannot be said that the house-tax was not in legal existence in Nellore; the *modus operandi* presented by the Act was adopted, and all that can be charged against the defendants is that they made a mistake of law, or, of fact, in assessing this particular house of the plaintiff. Such a mistake does not, I think, bring the case within the proviso which, as I read it, is aimed at illegal exactions made by a council or its officers arbitrarily and without any regard to the provisions of the Act.

The case is not in my opinion distinguishable from that cited on the defendant's behalf (*Kamayya v. Leman*(1)). The plaintiff's remedy is by appeal under the 97th section of the Act. In this

(1) I.L.R., 2 Mad., 37.

view of the case it is unnecessary to consider whether in the sections relating to the tax on buildings the existence of the building at the beginning of the period for which the tax may be charged is presupposed.

MUNICIPAL
COUNCIL,
NELLORE,
v.
RANGAYYA.

I would reverse the decree of the District Munsif and dismiss the suit with costs throughout.

Best, J.—The question is whether this suit for recovery of a sum of Rs. 3-6-0 collected by the Municipal Commissioners of Nellore as house-tax for the half-year (March to September 1894) is maintainable.

The District Munsif has held that it is on the authority of *Tuticorin Municipality v. South Indian Railway*(1). In that case the money sued for was money that had been collected by the Tuticorin Municipality in direct violation of section 60 of the Act, which exempts a person who has paid profession tax in one municipality from liability to pay for the same half-year in another municipality. It was therefore clearly a case in which the provisions of the Act relating to the assessment and levy of the tax had not been in substance and effect complied with, and therefore within the proviso of section 262.

The present case is different, as no express provisions of the Act can be held to have been contravened. That it never could have been intended that a newly-built house that only became habitable six weeks before the expiry of the half-year should be taxed for the whole half-year may be inferred from section 72, which provides for remission of the tax on vacant buildings; but clearly there is no ground on which it can be held in the present case that the tax has been imposed or levied in contravention of any express provision of the Act; and such being the case *Kamayya v. Lemari*(2) is authority for holding that the suit is not maintainable.

It must, therefore, be dismissed and the Lower Court's decree set aside.

(1) I.L.R., 13 Mad., 78.

(2) I.L.R., 2 Mad., 37.