

and the plaintiff must have a decree as prayed for for all the three faslis with costs throughout.

[Their Lordships called for a finding from the lower Court as to the amount of rent due to the plaintiff in all the cases; and on the return of the findings, the cases were posted for final disposal before SADASIVA AYYAR and SPENCER, JJ., who accepted the findings and decreed the plaintiff's entire claim with costs throughout.]

K.R.

MUTHU-
KUMARA
CHETTY

v.
ANTHONY
UDAYAR.

SADASIVA
AYYAR AND
SPENCER, JJ.

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Ayling.

HENRY MOBERLY (PLAINTIFF), PETITIONER,

v.

1914,
February
14 and 17.

THE MUNICIPAL COUNCIL OF CUDDALORE
(DEFENDANT), RESPONDENT.*

Madras District Municipalities Act (IV of 1884), ss. 53 and 60—'Holds office,' meaning of.

M, a District and Sessions Judge, whose usual place of business was within the Municipality of *C* resided for sixty days within the Municipality of *K*, during the annual recess and during that period did some administrative but no judicial work.

Held, (a) that *M* 'held his office' during that period, within the Municipality of *K*, within the meaning of section 53 of the District Municipalities Act (IV of 1884); and (b) that a payment by him of profession tax for the half-year covering the sixty days to the Municipality of *K* was a lawful payment which would exempt him under section 60 of the Act from liability to pay the tax again for the same half-year to the Municipality of *C*.

Chairman, Ongole Municipality v. Mounsey (1894) I.L.R., 17 Mad., 453, distinguished.

PETITION under section 25 of the Provincial Small Cause Courts Act (IX of 1887) praying the High Court to revise the decree of the Subordinate Judge of Tanjore in Small Cause Suit No. 1381 of 1912.

* Civil Revision Petition No. 995 of 1912.

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 v.
 THE
 MUNICIPAL
 COUNCIL OF
 CUDDALORE.

The facts are fully stated in the second paragraph of AYLING J.'s judgment and the point for decision is stated in the first paragraph of the same.

M. O. Parthasarathy Ayyangar and *V. Ramesam* for the petitioner.

T. R. Ramachandra Ayyar for the respondent.

AYLING, J.

AYLING, J.—It is not contended before us that the payment of profession tax to the Kodaikanal Municipality will entitle Mr. Moberly to the benefit of section 60 of the Madras District Municipalities Act, unless the same is legally due. The sole question for decision is therefore whether Mr. Moberly should be deemed to have held the appointment of District and Sessions Judge within the Kodaikanal Municipality during his stay in the limits thereof from April 30th to July 1st, 1911.

There is no dispute about the facts. Mr. Moberly was the District and Sessions Judge posted to the South Arcot district. He came to Kodaikanal to spend the annual recess, resided there for sixty days, drew his pay there and on various days during that period estimated at fourteen or fifteen in number "did some administrative and quasi-judicial work there." He did no strictly judicial work.

The point is not altogether free from doubt, but after consideration, I think the requirements of section 53 of the Madras District Municipalities Act must be held to be fulfilled. The words of the section are "holds any one or more of the offices or appointments," and do not in themselves necessarily involve any suggestion of discharging duties connected with the offices or appointments. It can hardly be suggested that during the period in question Mr. Moberly did not hold the office of District and Sessions Judge of South Arcot. The office was certainly not in abeyance: nobody else was holding it, and Mr. Moberly was drawing the salary attached to it. The cases quoted deal with a somewhat different question arising out of the same section, and are of no direct help: but they are clear authority for holding that he did *not* hold the office in Cuddalore Municipality during the period of his absence therefrom. Where then, did he hold it except at Kodaikanal, the place where he was residing?

Mr. T. R. Ramachandra Ayyar for the respondent municipality argued that in the section, the phrase "hold the appointment" necessarily involved discharging the duties of the

appointment and for purposes of this particular case was obliged to go further and contend that as strictly judicial functions form the most important part of a Judge's duties, the actual discharge of these duties is essential to the holding of the office.

I do not think this reasoning can be accepted. There is nothing in the wording of the section to support it and the only authority quoted is a passage in the judgment of MUTHUSWAMI AYYAR, J., in *Chairman, Ongole Municipality v. Mounsey*(1), which runs thus:—"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."

With all deference I may point out that section 53 of the Madras District Municipalities Act clearly distinguishes two classes of persons (a) salaried persons *holding* offices or appointments, (b) persons *exercising* particular avocations. There is a corresponding distinction in schedule A to the Madras District Municipalities Act though the word "exercising" being unnecessary does not appear. Both classes under certain circumstances have to pay the tax: but it does not seem obvious that their liability to pay it depends on the same factors. However this may be, the remark of the learned Judge as to the meaning of the words in the section was passed in considering a totally different case to the present one. The question before him for disposal was whether an officer who was absent from the municipality should be deemed to hold office within it, merely because his office building was situated within municipal limits, and one or more of his clerks remained working there. I do not think it need be taken as a deliberate pronouncement as to the law in connection with the point now occupying our attention. If it is to be so regarded the petitioner might fairly draw attention to a subsequent sentence, "The cause of his liability is his participation in the benefit and convenience conferred by the municipality upon those residing within the municipal limits."

Mr. Moberly undoubtedly participated equally in the benefit and convenience of the Kodaikanal Municipality, whether he did,

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or did not discharge any of his official duties at Kodaikanal. The acceptance of the doctrine that, for the purpose of this section, a man only holds office so long as he discharges the duties of the office might in practice lead to curious results: I am not sure that an officer might not claim that Sunday, public holidays and periods during which he was incapacitated from work owing to illness should be excluded from the period during which he held office. I further doubt whether the Courts would be justified in attempting to distinguish between the various duties, judicial and administrative, which have to be discharged by a District and Sessions Judge.

On the whole, I think that Mr. Moberly must be deemed to have held his office of District and Sessions Judge at Kodaikanal during his stay there on recess; and that he was liable to pay profession tax under section 53 of the Madras District Municipalities Act.

I would therefore give him a decree as sued for with costs in both Courts.

SANKARAN
NAIR, J.

SANKARAN NAIR, J.—The question turns upon the construction to be put on section 53 of the Madras District Municipalities Act. Mr. Moberly cannot perform at Kodaikanal any of the duties of the District and Sessions Judge of South Arcot which has to be performed in Court, that is, in public or in the presence of parties. But there is nothing to show that he cannot perform certain other duties of his office which concern parties only very remotely, if at all, outside the district. I agree therefore with the proposed order.

N.R.
