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ODGERS, J.

By that I assume the learned Judge to mean that reliefs can be granted in certain cases, although such reliefs may not be afforded by any provision of law, or by the practice of the Courts. If that be the meaning of the learned Judge, I, respectfully but emphatically, dissent from it.

I agree with my learned brother as to the order to be made in this case.

K.R.

APPELLATE CIVIL

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Coutts Trotter.

1920, November 17.

THE MUNICIPAL COUNCIL OF TANJORE (PLAINTIFF), PETITIONER,

v.

KRISHNA PILLAI (DEFENDANT) RESPONDENT.*

Madras District Municipalities Act (IV of 1884)—ss. 72 and 73 (2)—Theatre unfit for use and unused owing to removal of part of roofing—Exemption from tax.

A building cannot be held to be 'completely demolished or destroyed' within section 73(2) of the Madras District Municipalities Act (IV of 1884) so as to completely exempt it from liability to tax, simply because part of its roof is removed for the purpose of effecting repairs and the building is thus rendered unfit for use. As a building actually unused, it is liable for half the usual tax under section 72 of the Act.

PETITION under section 25 of Act IX of 1887, praying the High Court to revise the decree of S. RANGANATHA MUDALIYAR, Subordinate Judge of Tanjore, in Small Cause Suit No. 201 of 1913.

A building which was once used as a theatre was partly covered by zinc sheets and partly by a thatched roof. For effecting repairs, the thatched roof was removed and the building thus became unfit for use and was not used as a theatre or for any other purpose for the two years 1915-16 and 1916-17. The Municipality of Tanjore, within which the theatre was situated, brought this suit against the owner of the theatre for Rs. 223-5-4, being the full amount of tax payable for the two years. The Court of Small Causes dismissed the suit holding

* Civil Revision Petition No. 488 of 1919.

that the defendant was exempt from liability to pay any portion of the tax under section 73 (2) of the Madras District Municipalities Act. The plaintiff, the Municipality, preferred this Revision Petition.

T. Ethiraja Mudaliyar for the petitioner.

V. K. Venkatarama Ayyar for the respondent.

The Court delivered the following JUDGMENT:—

This is a petition asking this Court to revise the judgment of the Subordinate Judge of Tanjore in a suit between the Municipal Council of that town and the defendant.

The short point is whether the defendant who owned a building in Tanjore which was used as a theatre, is liable for taxation during the period in which the building was regarded as unfit for use. The zinc roofing has not been removed but the thatched portion of the roofing has been removed. There was no covering but the whole frame was standing. It may be assumed for the purpose of argument that while the roof was off and until a new one could be put on, the building would not be available for use as a theatre.

Now, it appears to be conceded that the defendant is liable for half tax at most, and not for the full tax, because the building was in any event unoccupied during the period. He contends that he is liable for no taxation at all, because he comes within the protection of section 73 (2) of the District Municipalities Act (IV of 1884). There are two sub-sections to section 73. The first was relied upon in the Court below, but the argument on that is not pressed here. It is clear that the sub-section relates to the case either of a new house being built where there was one before, or of a new house being built on a vacant site, or of a house being enlarged, in each case the duty being thrown upon the holder of the building to give notice to the Municipality so that it may assess the tax leviable in the first two cases, or enhance the assessment in the third case.

But the defendant says that he relies on sub-section (2). It begins thus:

"When any building is completely demolished or destroyed, the owner thereof may give notice to the chairman of such demolition or destruction,"

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and concludes

"If the said notice is given within the first two months of a half year, no tax shall thereafter be levied in respect of the building and any tax which may have been levied for that half year shall be refunded."

The argument is that by taking off the roof of this building and thereby rendering it incapable of use as a theatre, it was within the meaning of the section "a building destroyed." We are quite unable to accede to that argument, because an owner might render, by a very slight removal of some ordinary feature necessary for the purpose, the building incapable of use for the purpose for which it was intended without doing anything which could possibly be described as destruction or demolition. We think that what the section refers to is physical destruction of the building so that it is no longer a building but merely a heap of building materials. It is not necessary that no stone should be left standing on another, but that, in the ordinary and usual acceptation of such language, it should cease to exist as a building and not merely as a building designed for particular purposes. We think that the learned Judge was wrong in accepting the artificial construction of the wording of the section which he did accept and that the defendant is clearly liable during the period in question for half the tax.

An argument was at one time raised as to whether the proper course was not to make the defendant pay the whole tax in the first instance and get it back under section 72. Mr. Ethiraja Mudaliyar, on behalf of the Tanjore Municipality, very wisely does not press for that, and he is content that the judgment should be against the defendant for the net-amount of tax, namely, half the tax for which he is prima facie liable. The decree will be for Rs. 111-10-8 and the defendant will pay the costs.

N.R.