

## APPELLATE CIVIL.

*Before Mr. Justice Madhavan Nair and  
Mr. Justice Cargenven.*

THE MUNICIPAL COUNCIL, CUDDALORE (SECOND  
DEFENDANT), PETITIONER,

1927,  
July 21.

v.

M. C. KRISHNAN NAMBIAR AND ANOTHER (PLAINTIFF AND  
FIRST DEFENDANT), RESPONDENTS.\*

*Ss. 93 (3) and 354 (2) and rule 28, Sch. IV of the Madras District Municipalities Act (V of 1920)—Levy of profession-tax in two municipalities for the same half-year, legality of—Right of suit, for refund, when.*

If a person who becomes successively liable in a single half year to pay profession-tax in two municipalities pays it in one, although it be the second, he acquires exemption, under section 93 (3) of the Madras District Municipalities Act, from liability to pay it again in the first.

Rule 28 of Schedule IV of the Act bars a suit for refund of tax paid, only if the municipality is empowered to make the demand and not otherwise.

PETITION under sections 25 of Act IX of 1887 and 107 of the Government of India Act praying the High Court to revise the decree of T. R. MALAYAPPA AYYAR, District Munsif of Chidambaram, in S.C.S. No. 333 of 1925. Section 93 (3) of the Madras District Municipalities Act is given in the judgment

Section 354 (2) and rule 28, Schedule IV of the Madras District Municipalities Act are as follow :—

*Section 354 (2)—*

“No suit shall be brought in any Court to recover any sum of money collected under authority of this Act or to recover damages on account of any assessment, or collection of money made under the said authority; provided that the provisions of this Act have been, in substance and effect, complied with.”

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\* Civil Revision Petition No. 1156 of 1925.

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*Rule 28 of Schedule IV—*

“The assessment or demand of any tax, when no appeal is made, as hereinbefore provided, and the adjudication of an appeal by the council, shall be final.”

The facts are given in the judgment.

*T. S. Nataraja Pillai* for petitioner.

*S. R. Dikshit* and *V. P. Karunakara Nambiyar* for respondents.

CURGENVEN,  
J.

The JUDGMENT of the Court was delivered by CURGENVEN, J.—This is a Civil Revision Petition presented by the Cuddalore Municipal Council against the judgment of the District Munsif of Chidambaram in S.C.S. No. 333 of 1925 on his file. The plaintiff in that suit, Mr. M. C. Krishnan Nambiyar, is a District Munsif, and during the first half of the year 1923–24 he successively resided and held appointments for more than sixty days within two municipalities those of Cuddalore and Chidambaram. Although he had thus rendered himself liable to pay profession-tax to the Cuddalore Municipality, no demand was made upon him until several months after he had left, and after a similar demand had been made upon him in Chidambaram. Eventually he paid the tax demanded of him by the latter municipality, and later again the Cuddalore Municipality compelled him to satisfy its own demand. He thus paid profession-tax twice over. In the suit, in which he made both municipalities defendants, the lower Court has decreed the refund to him by the Cuddalore Municipality of Rs. 13-2-0 being equal to the amount of the payment made to the Chidambaram Municipality. The full tax payable to the Cuddalore Municipality was a little more Rs. 15-5-0 and he was found liable for the difference.

The point for decision thus is whether if a person who becomes successively liable in a single half year to pay

profession-tax in two municipalities pays it in the second he acquires exemption from liability to pay it in the first. The answer depends upon the construction of sub-section (3) of section 93 of the Madras District Municipalities Act V of 1920 which runs as follows :—

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“ No person who shall prove that he has paid the sum due on account of the profession-tax levied under this Act, or under the Madras City Municipal Act, 1919, or any tax of the nature of a profession-tax imposed under the Indian Cantonments Act, 1910; for the same half year in any other Municipality or Cantonment in the Madras Presidency shall be liable by reason merely of change of business, appointment, residence, or place of business to pay to any Municipal Council more than the difference between such sum and the amount to which he is otherwise liable for the profession-tax for the half year under this Act.”

This provision is followed by three illustrations, the first two of which refer to the ordinary case where a person having paid tax in the first municipality, is exempt up to the sum so paid from paying again in a second. The third illustration is upon a different point. But although the more common application of the sub-section may be to cases of this nature, we are in agreement with the learned District Munsif that its terms are wide enough to cover the converse case illustrated by the facts now under consideration. Applied to those facts, what the sub-section says is that no person who shall prove that he has paid the sum due on account of profession-tax for the same half year in the Chidambaram Municipality shall be liable by reason merely of change of business, appointment, residence, etc., to pay to the Cuddalore Municipality more than the difference if any, between the Cuddalore tax and the Chidambaram tax and it makes no difference, in our view, whether the assessee resided and held his appointment first in the one municipality or first in the other. The phrase “ by reason merely of change of business, appointment, residence a place of business ” applies equally to either case.

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Had the intention been, as contended by the petitioner, to restrict exemption from payment of the tax payable in the second municipality by virtue of payment made in the first, there would have been no difficulty in so wording the provision. The intention seems rather to be that in no circumstances where a transfer of residence and occupation has taken place shall a person have to pay the tax twice over. We are not concerned with the propriety of this rule, once it is clear that it is correct law. But it has at least the merits of encouraging promptitude and vigilance on the part of a municipal collecting agency and of protecting an assessee against delayed claims.

An attempt has been made to base a further point that a suit of this nature does not lie upon the terms of rule 28 of Schedule IV of the Act. That rule, which says that the assessment or demand of any tax, when no appeal is made, as hereinbefore provided, and the adjudication of an appeal by the council shall be final, clearly has reference to an assessment or demand which the municipality was empowered by the Act to make.

Under sub-section (2) of section 354, a suit against a municipality to recover money is only barred, if the provisions of the Act have been in substance and effect complied with ; and this condition was not fulfilled in the present case. We accordingly dismiss the Civil Revision Petition with costs (one set).

N.R.

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