her to show that they caused her substantial injury. She complains that land worth Rs. 40,000 was sold for Rs. 6,000-odd. [His Lordship discussed the evidence and concluded that the land fetched much less than its value owing to the fault of the appellant herself and dismissed the appeal with costs.]

VENKATA-RAGHAVAMMA v. SINGARAYYA SETTY.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Reilly and Mr. Justice Anantakrishna Ayyar.

THE MUNICIPAL COUNCIL, ANANTAPUR REPRESENTED BY ITS CHAIRMAN (SECOND DEFENDANT—RESPONDENT), APPELLANT,

v.

SANGALI VASUDEVA RAO (PLAINTIFF—APPELLANT), RESPONDENT.*

1931, July 20.

Madras District Municipalities Act (V of 1920), sch. IV, r. 9—Enhancement of assessment of property—Notification under r. 9 of sch. IV—Necessity—Notice in conformity with requirements of r. 9—What amounts to—sec. 80 of Act—Publication in District Gazette not condition precedent to validity of levy of tax under—Revised assessment on which tax imposed illegal—Tax-payer liable on old assessment—Code of Civil Procedure (Act V of 1908), sec. 80—Public officer—Municipal Council not a.

Under the Madras District Municipalities Act (V of 1920) an enhancement of assessment of property is illegal in the absence of the notification required by rule 9 of Schedule IV of the Act.

A notice that the Municipal Council "proposes to revise the taxes" is not a notice in conformity with the requirements of

* Letters Patent Appeals Nos. 93 and 108 of 1930.

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rule 9 of Schedule IV of the Act; nor is a notice running "Making changes in the property gutha", because the word "gutha" is ambiguous and may mean either assessment or tax.

A Municipal Council is not a "public officer" to whom notice under section 80 of the Code of Civil Procedure is necessary.

If a revised assessment on which a tax-payer has been required to pay tax is illegal, he is liable to pay tax on the old assessment. There is nothing in the Madras District Municipalities Act (V of 1920) to show that, if for any reason a revision of assessment is not made before the end of five years, the old assessment lapses.

Section 80 of the Madras District Municipalities Act (V of 1920) does not make the publication in the District Gazette a vital and pre-requisite necessity so that, if publication does not precede the date on which the tax is to come into force, the levy of tax from that date is illegal.

Paragraph 70 of the Municipal Account Code has no statutory force.

APPEALS under clause 15 of the Letters Patent against the judgment of MADHAVAN NAIR J. in Second Appeal No. 266 of 1929 preferred against the decree of the District Court of Anantapur in Appeal Suit No. 110 of 1928 preferred against the decree of the Court of the District Munsif of Anantapur in Original Suit No. 508 of 1928.

Kasturi Seshagiri Rao for appellant.

B. Sitarama Rao for respondent.

JUDGMENT.

REILLY J.

REILLY J.—In this case the plaintiff, who is the owner of three houses within the Municipality of Anantapur, sued the Chairman of the Anantapur Municipal Council, the first defendant, and the Municipal Council, the second defendant, for a declaration that the house-tax levied by the Municipal Council on his three houses for the year 1928–29 was illegal and that he was not liable to pay it and for a permanent injunction restraining the defendants from collecting the tax from him. It

happened that in respect of the tax to which he objected not only had the rate of the tax been increased by the Municipal Council but the assessment of his property on which the rate was calculated had also been increased in the course of a periodical revision of assessment under the Madras District Municipalities Act. The District Munsif dismissed the suit as against the Chairman, the first defendant, but made the declaration and injunction prayed for against the second defendant. The Municipal Council then appealed to the District Court, and the District Judge dismissed the suit so far as the house-tax was concerned. Then the plaintiff came to this Court on second appeal. MADHAVAN NAIR J. found that the increased rate of house-tax was valid but that the enhancement of the assessment of the property was illegal; and he made a declaration that the Municipal Council was entitled to collect the house-tax at the new enhanced rate but only on the old assessment as it stood before the revision and also made an injunction in accordance with that declaration. I may mention that the suit originally covered questions about water-tax and education-tax as well as house-tax, but that by the time it reached this Court it was concerned only with house-tax. Against the decision of MADHAVAN NAIR J. the Municipal Council has preferred Letters Patent Appeal No. 93 of 1930.

Under the Madras District Municipalities Act provision is made for a revision of the assessment of land and buildings for the purpose of house-tax once in five years. Rule 7 of Schedule IV of the Act provides that the Chairman shall enter the annual value of all lands and buildings determined by him and the tax payable thereon in assessment books to be kept for the purpose at the Municipal office, and those books are to contain particulars in respect of each item of property entered.

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REILLY J.

Rule 8 provides that the assessment books shall be completely revised by the Chairman once in five years. Rule 9 provides that, when the assessment books have been prepared for the first time and whenever a general revision of such books has been completed, the Chairman shall give public notice stating that revision petitions will be considered if they reach the Municipality within a period of thirty days in the case of ordinary assessees: that notice shall be affixed to the notice-board of the Municipal office and on the same day shall be published in the Municipality by beat of drum.

The process of revising the assesment in Anantapur Municipality was going on towards the close of 1927 and the beginning of 1928. MADHAVAN NAIR J. has found that there were certain serious irregularities in the proceedings of the Chairman, which made the levy of house-tax of which the plaintiff has complained on an enhanced assessment illegal. He has arrived at that conclusion partly because the provisions of paragraph 70 of the Municipal Account Code were not followed out properly. With great respect I may point out that that paragraph of the Municipal Account Code appears to have no statutory force. It is not, as the learned Judge appears to have thought, a statutory rule made under the Act. So far as I can gather, he was led into that misapprehension by the learned Advocate who argued the case for the Municipal Council before him appealing to the provisions of that paragraph. But without going into that matter any further or into any of the other points in the learned Judge's judgment in my opinion it is sufficient to deal with this case on the ground of defects in the notification published by the Chairman in regard to the revision of the assessment or rather on the ground that no proper notification was

issued by him as required by rule 9 of Schedule IV of the Act.

Exhibit D is a copy of an English notification, dated the 22nd December 1927 and published in *Anantapur District Gazette* of the 5th January 1928, on this subject. It notifies, not, as required by the rule, that the Chairman has completed the general revision of the books, but that the Municipal Council proposes

"to revise the taxes on the properties situated within the Municipality with effect from 1st April 1928."

It calls for objections to be submitted by the 6th February 1928 and states that

"the revision lists of the four wards will be available for verification of the public from 11 a.m. to 5 p.m. daily in the Municipal Office."

Now I have mentioned that at that time there was not only a revision of assessment of property going on but there was an enhancement of the rate of tax under consideration, the enhancement to which the plaintiff objects in this case. This notification to which I have referred is not a notification that a revision of assessment has been carried out and that tax-payers have an opportunity of objecting to the revision of the assessment. It is a notification that the Council proposes "to revise the taxes", which people might well understand to refer to the proposal to increase the rate of tax. It is urged for the Municipal Council that the notification ought not to be read in that way because it is stated that the revision lists of the four wards will be available for verification by the public in the Municipal office. That reference to revision lists is certainly not enough to make it clear to the public that the revision of taxes mentioned at the beginning of the notification is not an enhancement of the rate of tax but a revision of assessment. And the reference to revision lists does not state that the lists have already been completed. It merely

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states that they will be available at some indefinite date. It is clearly the duty of the Chairman under the rules to issue a notification when he has completed his revision of the assessment books, which will give the tax-payers due notice that they have an opportunity of disputing his revised assessment. To give a vague notice that the Council "proposes to increase the taxes" is certainly not to give a notice that he has revised the assessment of their property and that they may come in and dispute it. So much for Exhibit D. But it is urged that at the same time another notification in Telugu was published. That notification was, I think, clearly better from the Chairman's point of view than the English notification. It was generally in the same terms as the English notification. But it ended with a paragraph that every day between 11 a.m. and 5 p.m. the lists for the four wards in respect of which changes had been made would be publicly exhibited. That at least shows that something had already been done, that it was not merely in the stage of a proposal. But the first paragraph of the notification is almost as bad as the English one. Literally translated it runs:

> "Making changes in the property gutha the Municipal Council proposes to bring the changes into effect from the 1st April 1928."

Now it is admitted that "gutha" may mean either assessment or tax. So by that notification also the tax-payers were left in doubt as to what it was that was being done, whether it was the assessment of their property that was being revised or a higher rate of tax which was being calculated on the assessment fixed. To my mind there is no doubt that neither the English notification, Exhibit D, nor the Telugu notification, Exhibit E, has complied properly with the requirements of rule 9 of Schedule IV of the Act.

It has been suggested before us for the Municipal Council that, even if these notifications were not such as should have been issued, section 354 (1) of the Act makes the defects in them not such as to take away the validity of the taxes imposed. The effect of section 354 (1) appears to me to be far too narrow to have that result. It provides that clerical errors or mistakes in respect of the name, residence, place of business or occupation of any person or in the description of any property or thing or in respect of the amount assessed, demanded or charged shall not be enough for impeaching any assessment or demand for taxes. But here we have something very much more serious than a mere clerical error or mistake such as is referred to in that section. The tax-payers were not, as required by the rules, informed that a revision of the assessment of their property had been completed and that they had an opportunity of coming forward and disputing it as it affected them. The tax imposed without a compliance with the Act in that respect appears to me clearly illegal; and without going into the other questions discussed by MADHAVAN NAIR J. in my opinion his decision that the tax based upon the new assessment, which is subject to this important defect, is illegal must be supported.

It has been urged for the appellant here, as it was urged from the beginning, that the plaintiff's suit must fail because he did not give notice to the Municipal Council such as is required by section 80 of the Code of Civil Procedure. It is contended for the Municipal Council that the Council is not only a "person"—which is not denied—but is a "public officer" within the meaning of section 80 of the Code. I entirely agree with MADHAVAN NAIR J.'s rejection of that contention. I may add to what he has said on that subject that, if

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a Municipal Council was a "public officer" to whom notice under section 80 of the Code was necessary, then the provisions in section 350 (1) of the Madras District Municipalities Act would be superfluous.

In my opinion therefore Letters Patent Appeal No. 93 of 1930 should be dismissed with costs.

Letters Patent Appeal No. 108 of 1930 is an appeal in respect of the same suit by the plaintiff against MADHAVAN NAIR J.'s decision. It is contended for the plaintiff that, if the revised assessment, on which he was required to pay the tax for 1928–29, had not been made legally, then he was not liable to pay any house-tax at all. But, although the Act requires that the assessment of property for the purpose of house-tax should be revised every five years, there is nothing in the Act to show that, if for any reason a revision of assessment is not made before the end of five years, no house-tax can be collected but that the old assessment lapses. I see no reason to suppose that MADHAVAN NAIR J.'s view that the tax should be collected on the old assessment is wrong. It is also contended for the plaintiff in this appeal that the enhanced rate of tax at seven and a half per cent instead of six and a quarter per cent could not legally be enforced against him because all the formalities for enhancing the tax had not been carried out. It is admitted that the Municipal Council passed a resolution in January 1928 that the rate of tax should be raised to seven and a half per cent from the 1st April 1928 and that a notification to that effect was published in the District Gazette on the 5th February inviting objections, that no objections were received and that the Municipal Council confirmed its resolution to levy the enhanced tax on the 17th March 1928. All that was in accordance with the prescribed procedure. But there was one further step

to be taken by the Municipal Council in such cases. Section 80 of the Act, as it stood at that time, provided that

"when a Municipal Council shall have determined subject to the provisions of sections 78 and 79 to levy any tax or toll for the first time or at a new rate, the Chairman shall forthwith publish a notification in the District Gazette and by beat of drum specifying the rate at which the tax or toll will be levied from a date to be specified in the notification."

Mr. Sitarama Rao for the plaintiff urges that the intention of that section is that the notification should be published before the tax comes into force. It happens that the Chairman sent a notification in accordance with those provisions to the District Gazette on the 19th March 1928, but that it was not published in the District Gazette until the 5th April 1928. Mr. Sitarama Rao therefore contends that the notification published in the Gazette on the 5th April 1928 stating that the tax at the enhanced rate would be levied from the 1st April 1928 was not a proper compliance with the requirements of the section and was equivalent to retrospective taxation. No doubt it is desirable that the notification that such a tax is to be levied or enhanced should be published before the date from which the levy or enhancement comes into force; but I do not think that we can read section 80 of the Act, as it stood then, as making the publication in the District Gazette a vital and pre-requisite necessity so that, if publication does not precede the date on which the tax is to come into force, the levy of tax from that date is illegal. There is nothing in the section to show that the tax is to become legally enforceable only after the notification is published. The section lays the duty on the Chairman to publish the notification "forthwith", and that duty was fulfilled by the Chairman in this case. It is true, as Mr. Sitarama Rao has contended,

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that the whole scheme under the Act is that house-tax should be assessed and collected for the financial year; but I cannot agree with him that the fact that this notification happened to be published in the District Gazette five days after the commencement of the financial year makes the levy of the tax at the enhanced rate from the beginning of that year illegal.

In my opinion this appeal also should be dismissed with costs.

ANANTAKRISHNA AYYAR J.—I agree.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Curgenven.

1931, July 24.

NANDULA JAGANNADHAM (THIRD DEFENDANT), APPELLANT,

v.

GOTETI VIGHNESWARUDU AND FOURTEEN OTHERS (PLAINTIFFS TWO TO NINE AND DEFENDANTS ONE AND TWO AND NIL), RESPONDENTS.*

Hindu Law—Widow—Property inherited by her—Income out of—Right of disposal over—If bound to pay the principal of binding debts—Sale to discharge a binding debt—Necessity for sale not imminent—Test to be applied—Payment of a small portion of the amount realized by sale for a debt which was not a legal necessity—Effect of on sale.

A Hindu widow succeeded to properties left by her husband which yielded a considerable income. Her husband had executed two mortgages which were binding on the inheritance. The widow sold one of those properties for an adequate consideration, viz., Rs. 3,200, out of which Rs. 2,550 and 650 were

* Appeal No. 181 of 1926.