

## APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., Chief Justice, and  
Mr. Justice King.

THE MUNICIPAL COUNCIL, SALEM, REPRESENTED BY ITS  
CHAIRMAN (DEPENDANT), PETITIONER,

1934,  
October 5.

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v.

B. GURURAJAH RAO (PLAINTIFF), RESPONDENT.\*

*Madras District Municipalities Act (V of 1920), sec. 93—  
Profession tax—Commutation money received by pensioner  
—Liability to profession tax.*

When a pension is commuted it ceases to be a pension and becomes a capital sum. Commutation money received by a pensioner is not therefore taxable under the Madras District Municipalities Act.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of the Court of the District Munsif of Salem in Small Cause Suit No. 2183 of 1932.

*T. M. Krishnaswami Ayyar* for petitioner.

*S. V. B. Rao* for respondent.

*Cur. adv. vult.*

The JUDGMENT of the Court was delivered by BEASLEY C.J.—The respondent is a retired Sub-ordinate Judge. He retired from service on 6th September 1930 on a pension. Under the Madras District Municipalities Act he was liable to pay profession tax to the petitioner, the Municipal Council, Salem, half-yearly. In 1931 he commuted a portion of his pension, viz., Rs. 150 a month for a lump sum of Rs. 17,820. The petitioner levied

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\* Civil Revision Petition No. 978 of 1933.

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profession tax on that sum in addition to the tax payable on the uncommuted pension treating it as a receipt of pension. The respondent refused to pay the tax in respect of that sum, but later on paid it under protest and sued the petitioner in the District Munsif's Court for a refund of the tax paid. The District Munsif gave a decree in favour of the respondent here holding that the sum received in lieu of the portion of his pension when it was commuted was no longer pension and therefore was not taxable under the Act. With this view we entirely agree. Pension has been defined in *The Secretary of State for India in Council v. Khemchand Jeychand*(1) as "a periodical allowance or stipend for past services" and in *Lachmi Narain v. Makund Singh*(2) as "a periodical payment of money" to the pensioner. *Amna Bibi v. Najm-un-nissa*(3) and *Nawab of Murshidabad v. Karnani Industrial Bank, Ltd.*(4) also give the same description to "pension". When a pension is commuted there is no longer any periodical payment; the pensioner receives once and for all a lump sum in lieu of the periodical payments. The pension is changed into something else, and becomes a capital sum. In an English case, *Crowe v. Price*(5), it was held that money paid to a retired officer of His Majesty's Forces for the commutation of his pension does not retain its character as pension so as to prevent it from being taken in execution. On page 217, COLERIDGE C.J. says :

"It is clear to me that commutation money stands on an entirely different ground from pension money, and that if an

(1) (1880) I.L.R. 4 Bom. 432.

(2) (1904) I.L.R. 26 All. 617.

(3) (1909) I.L.R. 31 All. 382.

(4) (1931) I.L.R. 59 Calc. 1 (P.C.).

(5) (1889) 58 L.J.R.Q.B.D. 215.

officer commutes his pension for a capital sum paid down, the rules which apply to pension money and make any assignment of it void, do not apply to this sum."

In our view the District Munsif was clearly right and we dismiss the petition with costs.

A.S.V.

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## APPELLATE CIVIL.

*Before Mr. Justice Curgenvin.*

MANIKKAM PILLAI (PLAINTIFF), PETITIONER,

v.

N. M. NAGASAMI AYYAR, AND ANOTHER (DEPENDANTS),  
RESPONDENTS.\*

1934,  
September 7.

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*Court Fees Act (VII of 1870) and Madras Act (V of 1922), art. 17-B of Sch. II—Tank-bed land—Court-fee payable in respect of.*

A tank-bed being land which has no market-value because it is unsaleable except as accessory to other property, and for ascertaining whose value in the event of sale no means exist, falls under article 17-B of Schedule II of the Court Fees Act (VII of 1870) for purposes of court-fee to be paid, and not under section 7, clause (v) (c).

*Rajagopala Naidu v. Ramasubramania Ayyar*, (1923) I.L.R. 46 Mad. 782, referred to.

PETITION under sections 115 of Act V of 1908 and 107 of the Government of India Act, praying the High Court to revise the order of the Court of the District Munsif of Melur, dated the 29th day of July 1933 and made in Original Suit No. 180 of 1932.

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\* Civil Revision Petition No. 1159 of 1933.