[L. & M. 5,000—5-4-20.]

Local & Munl. (1899) Department.

MISCELLANEOUS.

G.O., No: 725 & 726 M

DATED 19-5-99.

INDEXED.

[Despatch Abstract.]

License fees.

Forwarding for the information of His Excellency the Governor-General-in-Council a copy of the opinion of the Advocate-General on the action to be taken to recover the ——— illegally levied by the Madras Municipality on Government timber.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Local & Munl. (189) Department.

CURRENT No. 749m

TO BE RETURNED WITH REPLY.

ASSISTT SECY TO GOVT. MADRAS MINE FOR & LEG DEPTT. 24 MAR 1899

No. 342 dated 23-3-99

~~Order~~

From The Government of India
Military Department

Referred to the Advocate General for favour of opinion.

No. 2112-9-C

H. Tremenheere
Secretary to Govt.

Dated 23-2-99
Received 7-3-99
Registered 8-3-99
Enclosures Nil
Spare copies —

To
The Government Solicitor

SUBJECT.

Requesting that the Advocate General may be asked to advise what action should be taken to recover the license fees illegally levied by Madras Municipality Government timber.

15

C.No. 749 & 1221 M/99

Mi
Order No. 725 & Mis.
19.5.99

The following letter will be addressed to the Govt of India.

Letter No. 726 Mis. H.M.
To 19/5/99

The Secretary to the Govt of India
Military Department.

Sir, Mdt 15.5.99

In reply to your letter No. 2112-G.C, dated 23rd February 1899, requesting that the Advocate General of Madras may be asked to advise what action should be taken to recover the license fees illegally levied by the Madras Municipality on Govt timber, I am directed to forward for the information of His Excellency the Governor General in Council, a copy of the opinion of the Advocate General on the Subject

I have &c

V.G
10/5/99

H
12 V. 99

Reps 20/5/99

BACK PAPERS

G.O.	No.	Department.	Date.
Ms	2152	Mil	15-12-98
—	1034	Mil	8-5-99

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Cantonments
Taxation.

It is requested that the above heading, with number and date of this communication, may be quoted in any subsequent correspondence on the subject.

No. 2112-G-C.

GOVERNMENT OF INDIA,

MILITARY DEPARTMENT.

Fort William, the 23rd February 1899.

[illegible] MILITARY DEPT.

To [illegible] No. 749 M

ASSISTT SECY TO GOVT. 6-MAR 1899 LEGISL. MUNI. FDE & LEG. DEPT.

THE SECRETARY TO THE GOVERNMENT OF MADRAS,
LOCAL AND MUNICIPAL DEPARTMENT.

SIR,

I am directed to acknowledge the receipt of your letter No. 2152-M-Miscellaneous, dated the 15th December 1898, forwarding a copy of the resolution of the Municipal Commissioners of Madras, stating that in the face of the expressed provisions of the City of Madras Municipal Act, they are unable to see their way to exempt Government timber from the payment of license fees.

2. With reference thereto I am to invite attention to the opinion of the Advocate-General, Madras, forwarded with your letter No. 1035-M, dated 10th June 1898, stating that the Madras Municipality had no legal power to impose the fees in question, and to request that the Advocate-General may now be asked to advise what action should be taken to recover the license fees illegally levied by the Municipality on Government timber.

I am,

Sir,

Your most obedient servant,

C. H. Belcraja
for *Secretary to the Government of India.*

M. D. Press—Reg. No. 415—24-2-99—41.

Local & Munl. (1899) Department.

CURRENT No. 1221 M

From

The Govt. Solicitor
Madras

Order

No. 216

Dated 2-5-99

Received 3-5-99

Registered 4-5-99

Enclosures C. no. 749 M of 99 returned

Spare copies Nil

SUBJECT.

Forwarding the Advocate General's opinion as to what action should be taken to recover the license fees illegally levied by the Madras municipality on Government timber.

BACK PAPERS

G.O.	No.	Department.	Date.
Do	2157-82 Ld	15 12 99
"	1034-35 Ld	8 6 98

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Sections 190-196 & 206 City Municipal Act
G.O. No 725 dtd 19.5.99

LOCAL & MUNICIPAL DEPT.
OPINION CURRENT No. 1221/99

I. I am of opinion that the license fees wrongfully demanded by the Municipality and paid by Government in respect of Government timber - brought within the city cannot be recovered by legal process from the Municipality. As regards the special procedure provided by ss. 190-195 of Act I of 1884 for the hearing and disposal of complaints against - taxes or tolls imposed or demanded by the Commissioners, the license fee in question is not, in my opinion a "tax" within the meaning of - s. 190, and I question whether it is a "toll" within the meaning of - that section. But, however, this may be, under s. 191 (c) of the Act the complaint or objection must be lodged within 7 days of the date - of the demand. It is obvious, therefore, (even assuming that ss.190 - 195 are applicable to the case of a license fee wrongfully demanded) that, as regards past payments of the fee in question, the Government cannot avail themselves of the procedure provided by these sections - of the Act.

2. The real question in this case is whether an action will lie - against the Municipality for money had and received to the use of the Government. I feel considerable doubt as to whether, on general - - principles and apart from the statutory restriction imposed by s. 196 of the Act, an action would lie. The fees were paid under a mistake of law and not of fact, and although s.72 of the Indian Contract Act is general in its terms and may be read as including money paid under a mistake of law as well as of fact, I think the Courts would follow - the general principles of the English law in dealing with a case like the present. An action for "money had and received" lies for the - recovery of money paid in order to release goods unlawfully detained (see Atlee v Backhouse, 3 M. & W. 633, Green v Duckett, II Q.B.D. 275, and Illustration (b) to s.72 of the Indian Contract Act; but money - obtained in prosecution of a bona fide claim by the enforcement, or - under threat of, legal process is not recoverable and the fact that - the money was not really owing is immaterial (see Marriot v Hampton, 2 Smith's Leading Cases, 405, and the recent decision of the Court of

Appeal in Moore v Vestry of Fulham (1895) I Q. B. 399.) I am not sufficiently instructed as to the circumstances in which these - license fees were paid by Government to express an opinion as to whether or not, on general principles of law, these fees are - recoverable by action. However, in the view which I take of the effect of s.196 of the Act, this question, for the purposes of - the present case, need not be considered.

3. It seems to me that s.196 (par.2) of the Act has the effect of taking away any right of action in respect of the payment of the license fees in question. The section applies to "money paid "in respect of any tax, toll or fee assessed or levied, on any - "payment collected under this Act". The section corresponds to - s. 262 (2) of the District Municipalities Act of 1884. (The - amendment of s.262 of Act IV of 1884 by Act III of 1897 does not affect the present question) In Kammaya v Leman, I.L.R. 2 Mad.- 37, and in Municipal Council, Nellore v Rangayya I.L.R. 19 Mad.- 10, it was held that, having regard to s.262 of the District - Municipalities Act, suits to recover certain taxes illegally - levied and paid were not maintainable. In the latter case - - Shephard, J. in giving judgment, said " —— all that can be "charged against the defendants [the Municipality] is that they "made a mistake of law, or of fact, in assessing this particular "house of the plaintiff. Such a mistake does not, I think, bring "the case within the proviso which, as I read it, is aimed at - "illegal exactions made by a council or its officers arbitrarily "and without any regard to the provisions of the Act". On the - other hand, where a tax has been levied in violation of the - express provisions of the Act - e.g. where money had been collect- ed by a Municipality in violation of the section which exempts a person who has paid profession tax in one Municipality from lia- bility to pay for the same half year in another Municipality - (Tuticorin Municipality v S.I.R., I.L.R. 13 Mad. 78) the money - paid has been held to be recoverable by action. See, too, the - recent case of Fisher v Twiss, I.L.R. 21 Mad 367, where the -

ground of the decision was that an imposition, which is expressly - prohibited by the Act, cannot be deemed to be made under the - - provisions of the Act. It must be borne in mind that a "tax" stands on a different footing from a "license", and it might well be that a tax wrongfully imposed might be recoverable by action whilst a - license fee wrongfully demanded and paid would not be recoverable.

4. In the present case the Municipality demanded certain license fees which the Government paid. In the words of Shephard, J. in the case above referred to "all that can be charged against the [Municipality] is that they made a mistake of law". It cannot be said that, in demanding these license fees, the Municipality acted in contravention of any express provision of the Act. In my opinion the Municipality are protected by s.162 and the fees paid cannot be recovered by action.

5. If the Municipality persist in demanding the fee in question the most convenient way for testing the legality of the demand would be for Government to file an objection under s.191 of the Act and then ask the Magistrate to state a case under s.193. The objection to - this course is that the Municipality might raise the point that the license fee is not a "tax" or a "toll", and that, consequently, ss. 190 - 195 do not apply. The question might also be settled by an - action by the Municipality under s.206 of the Act.

C. Arnold White

Ootacamund)
) Advocate General.
April 28th 1899)

(True Copy)

Ernest Barclay

Government Solicitor.

(1899) Department

From

Ernest Barclay
Government Solicitor
Madras

To
The Secretary to Government
Local & Municipal Department
Madras

No 246
Dated 2 May 1899
Recd

Encld: 1.

Forwarded with enclosure mtr reference to the endorsement of Government No 342 dated 23 March 1899. Local & Municipal Department.

Ernest Barclay
Government Solicitor

given for copying ____
copied ____
examined ____ 189
signed 1915

G.O., No. , DATED
189 .

ENT No.

OSURES TO C. No.

DER OF GOVERNMENT .. .. .. A A A A A A A

TTER OF GOVERNMENT.

STATEMENT WITH DITTO.

APERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.

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