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In Re: Maridu Gopayya

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Court : Chennai

Decided On : Nov-29-1927

Reported in : 110Ind.Cas.233; (1928)55MLJ27

Appellant : In Re: Maridu Gopayya

Judgement :
ORDER

Phillips, J.

1. The District Magistrate of Kistna has referred an order of the Sub-Magistrate of. Gudivada under Section 221 of the Madras Local Boards Act for revision.

2. One Gopayya had erected a pandal without the permission of the Union Board and the Board applied to the Sub-Magistrate under Section 221 of the Local Boards Act for collection of the license fee due in respect of it. Admittedly no license was applied for or granted before the pandal was erected and it was open to the Board to take action under Section 219 of the Act which provides a penalty not exceeding Rs. 50 for omission to take a license. Under Section 212(9) the Magistrate may also recover the amount of the fee chargeable from the accused. Instead of taking this action the Board took a lenient view of Gopayya's act and agreed to license the pandal on payment of the fee. This action cannot be said to be illegal and consequently if the fee thereby became payable the Board can apply for an order under Section 221 as it did. Gopayya in the proceedings raised a plea

that no fee was payable as he had not erected a pandal in contravention of Section 163, but in accordance with the decision in Ramachandran Servai v. President, Union Board, Karaikudi : (1925)49MLJ356 , the Sub-Magistrate declined to decide that point on the ground that it was not open to him to entertain such a plea. This view was taken in Ramachandran Servai v. President, Union Board, Karaikudi : (1925)49MLJ356 by a Bench of this Court consisting of Devadoss and Wallace, JJ., but in a later case Union Board, Paramakudi v. Challaswami Thevar (1926) M.W.N. 676. Waller, J., was of opinion that this decision was open to doubt. Devadoss, J., did not express the same opinion but did not repeat the view taken by him in Ramachandran Servai v. President, Union Board Karaikudi : (1925)49MLJ356 . Under Section 221 the amount or apportionment of the sum to be recovered shall be ascertained by such Magistrate after enquiry, and it is difficult to understand why when he has that power it should not be open to him to decide that the amount is nil. The anomaly pointed out by Wallace, J., is that such a view would amount to the Magistrate being set up as a final Judge over the Local Board. When, however, it is remembered that the Board has applied to the Magistrate for the recovery of the dues it is not open to the Magistrate to decide the case summarily and recover the amount without enquiry and he must be satisfied before he issues the order that such order is correct. If the offender had been prosecuted under Section 219 he would be able to plead that no offence had been committed by him, and therefore on the facts of this case it is difficult to hold that he must be precluded from such a defence because a different form of procedure has been taken against him.

3. However this point need not be decided here for Gopayya made no application for a license and no license has been issued. If then there has been no grant of license the license fee payable under the Act cannot be said to be due within the meaning of Section 221 and that section is inapplicable. The order of the Sub-Magistrate is therefore wrong and must be set aside, leaving the Board to take such further action as they think fit.

Madhavan Nair, J.

1. The question for consideration is whether the Union Board can move the Magistrate under Section 221 of the Local Boards Act to recover the penalty imposed by it upon a person who erected a pandal without obtaining a license from the Board tinder Section 163 of the Act. It is admitted that no license was applied for and none was granted by the Union Board.

2. To meet cases of this kind the Act has made provision in Sections 212(9) and 219. Acting under these sections the Magistrate after convicting the person for failure to obtain a license can, in addition to the fine which may be imposed, recover and pay to the Local Board the amount of fee chargeable for the license. There is no provision in the Act empowering the Local Board to fix a penalty for erecting a pandal without a license as there is, for example, provision for levying a fine for unauthorised encroachment under Section 164 of the Act which may be recovered under Section 221. Nor can the Local Board levy fees without granting a license. No doubt under Section 163 the Local Board can recover the cost of removing an obstruction on a public road but it is not suggested that amount sought to be recovered in this case represents such cost. In these circumstances it seems to me that the license fee has not become due under the Act within the meaning of Section 221'. The Sub-Magistrate has, therefore, no jurisdiction to proceed under that section and recover the amount. His order must be set aside.

3. In this view, it is not necessary to consider whether in a proper case under Section 221 the defaulting party can plead by way of defence that no amount is due from him as he had not erected a pandal. On this point there is a conflict of authority in this Court see Ramachandran Servai v. President, Union Board, Karaikudi : (1925)49MLJ356 : contra per Waller, J., in Union Board, Paramakudi v. Chellaswami Thevar (1926) M.E.N. 676. For the reasons given by my learned brother, I am inclined to hold that it is open to the defaulting party to put forward such a plea.

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