

# **SPECIAL RULES FOR REGULATING THE CONSTRUCTION AND MAINTENANCE IN THE VIVINITY OF CIVIL AERODROMES**

(G.O. Ms. No. 502, Local Administration, 10<sup>th</sup> march, 1972) Published in the Tamil Nadu Government Gazette, Part V, page 320, dated 5<sup>th</sup> April, 1972)

S.R.O.NO.A-277 of 1972 - In exercise of the powers conferred by section 191 and sub-section (1) of section 303 of the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), the Governor of Tamil Nadu hereby makes the following special rules for regulating the construction of buildings, installations or structures and planting of trees in the vicinity of Civil Aerodromes.

## **RULES**

### **1. Short title and extent : -**

These rules may be called Special Rules for Regulating the Construction and Maintenance in the vicinity of Civil Aerodrome, 1970.

### **2. Application of building rules :-**

These rules shall be in addition to the building rules made under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), but shall have effect notwithstanding anything inconsistent therewith contained in the building rules.

### **3. Definition :-**

For the purpose of these rules -

(i) " Vicinity of the civil Aerodrome" and "" Vicinity of Air-force, Air-filed and Installations" the areas and the distances respectively specified in Schedules I and II appended to these rules; and

(ii) " Schedule" means the Schedule appended to these rules.

#### **4. Prohibition of buildings in the vicinity of Civil Aerodrome or Air-Force or Air - field and Installations:-**

No person or authority other than the civil Aviation department or the Ministry of Defense, Government of India or State Government shall erect or re-erect or make material alterations in any building, installation or structure in the vicinity of a Civil Aerodrome or Air-Force, Air-field and Installations save as expressly provided in these rules.

#### **5. Application for construction or re-construction of buildings, structures and Installation:-**

(i) Every person or authority other than the Civil Aviation Department or the Minister of Defense, Government of India or the State Government Who intends to erect, re-erect or make material alterations in any building, installation or structure in the vicinity of a Civil Aerodrome duplicate the municipal council.

(ii) The application shall be accompanied by plans and statements in duplicate relating to the proposed work, and indicating precisely the distance from the outer boundaries of the civil Aerodrome or Air force, Air force and Installation, as the case may be.

#### **6. Obtaining of report from Aerodrome Authority :-**

The municipal council on receipt of the application under rule 5 shall forward one copy of the application to the Aerodrome Authority or the Station commander of the Air-force, Air-field Authority Installations as the case may be, and obtain as report, only in respect of constructions that fall within 2400 meters from the perimeter of the Aerodrome or Air-force or Air-field Installations and then the municipal council will see that the standards prescribed in the Schedule are adhered to; and in respect of constructions that fall beyond 2400 meters the municipal council shall see that the standards prescribed in Schedules I and II are adhered to.

#### **7. Time-limit for intimating objection by the Aerodrome Authorities:-**

The Aerodrome Authority or Station Commander of the Air-force, Air-field and Installations, as the case may be, shall intimate to the municipal council within 30 days from the date of the receipt of the documents under rule 5 whether or not he has objection to the proposed construction.

## **8. Refusal of permission:-**

(i) If the Aerodrome Authority or Station commander of the Air-field, Air force and Installations objects to the proposed work or and part thereof the municipal;" Council shall refuse permission for the work or its parts, as the case may be.

(ii) Permission shall not be given by the municipal council for erection, re-erection, of or making material alterations in a building, installation or structure in vicinity of a Civil Aerodrome or Air-Force, Air-Field and installations, if "" No Objections Certificate" is not received by the municipal council from the Aerodrome Authority or the Station Commander of the Air-force, Air-filed and Installations, as the case may be. -

(a) if the height of the proposed work exceeds or would when carried out, exceed the limit specified in Schedule I in the case of Civil Aerodrome and the limit specified in Schedule II in the case of the Air-force, Air-field and Installations, as the case may be.-

## **9. Planting of trees:-**

No tree shall be planted by any person or authority within the limits of the distance of a Civil Aerodrome mentioned at Serial No.9 of Schedule I, without first obtaining the permission the permission in the writing from the Aerodrome Authority.

## **10. Erection of radio-masts:-**

No person shall fix or erect within the limits of the municipalitany radio-mast or such similar types of installations, exceeding five hundred feet in height without first obtaining the permission in writing from the Director-General, civil Aviation.

The elevation of the top (Which is also called the reduced level of the top) of the buildings, structures installations proposed to be constructed in the neighborhood of International Air-ports and their alternates should be within the limits indicated in the table below:-

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Serial number and limits of distance from the aerodrome reference point measured horizontally, buildings structures or installations.

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(1)	(2)
<b>I. INTERNATIONAL AIRPORTS</b>	
1. Between 8400 meters and 20 nautical kilometers.	Less than 150 meters
2. Between 7200 meters and 8400 meters:	Less than 120 meters
3. Between 6000 meters and 7200 meters:	Less than 90 meters
4. Between 4800 meters and 6000 meters:	Less than 60 meters
5. Between 4200 meters and 4800 meters:	Less than 48 meters
6. Between 3600 meters and 4200 meters:	Less than 36 meters
7. Between 3000 meters and 3600 meters:	Less than 24 meters
8. Between 2400 meters and 3000 meters:	Less than 12 meters
9. Between 2400 meters and less	Nil Except with the prior concurrence of the local aerodrome authorities

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## **II. OTHER CIVIL AIRPORTS AND CIVIL AERODROMES\_**

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1. Between 7800 meters and 20 nautical kilometers.	Less than 150 meters
2. Between 6600 meters and 7800 meters:	Less than 120 meters
3. Between 5400 meters and 6.600 meters:	Less than 90 meters
4. Between 4800 meters and 6000 meters:	Less than 60 meters
5. Between 3600 meters and 4200 meters:	Less than 48 meters
6. Between 3000 meters and 3600 meters:	Less than 36 meters
7. Between 2400 meters and 3000 meters:	Less than 24 meters

- |   |   |
|---|---|
| 8. Between 1800 meters and 2400 meters: | Less than 12 meters   |
| 9. Between 1800 meters and less         | Nil<br>Except with the prior concurrence of the local aerodrome authorities |

## SCHEDULE II

**(Referred to rule 2 & rule 8.)**

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|---|---|
| serial number and distance, area etc.<br>Particulars of structures<br>(1)   | Particulars of structures<br><br>(2)            |
| 1 Within 670 meters<br>(a) Radar, i.e<br>(i) Fixer Station<br>(ii) High Frequency Direction Finding Station<br>(iii) Very High Frequency Direction Finding station<br>(iv) Sector Operations Centre<br>(v) Ground Controlled Interception Station<br>(b) Wireless receiving station | Structures of any height or depth<br><br>"<br>" |
| 2. Between 670 and (i), (ii) and (iii) of item I (a) above  |   |
| 3. With in the approach circuit of an air field, i.e  |   |
| (a) Between 1050 meters and 3150 meters of the perimeter of an air field having a runway.   |   |
| (b) with 3150 meters of the perimeter of the available landing area of an air-filed having no runway.   |   |
| 4. With in the flying funnel areas of an air-filed upto 1050 meters from the nearest end of the run way   | -Do-  |

## **Explanation.-**

A Flying Funnel area may be defined as the area included between two lines paid off at angle of fifteen degrees outwards from the point where the outer-edge of the sixty eight meters cleared strip joins the perimeter track and the area bounded by lines extended from the edge of the full strip to where they meet the fifteen degree lines.

## **Section 1**

Tamil Nadu District Municipalities (Amendment) Act (Act 25 of 1985) is not ultravires of the constitution of India-Vai Balasundaram-Vs-State of Tamil Nadu. (1986) 2ML J122.

Eventhough the legislature has vested the street with the municipality, the ownership or other rights in the soil is only with the owner. Municipality has the right on the surface of the soil to maintain street, prevent the trespasses and to that extent only as owner. The municipal Council of Conjeevaram-Vs-T.V.Kumara Venkatachaur and others 39 MLJ58. IILW.199.

Offences under the District Municipalities Act are even though punishable under Chapter IX-A of the Indian Penal Code, it does not require sanction from the state Government.- A. Nune panakalu-Vs-Rao sahib Ravula subba Rao and others-57MLJ 531 AIR 1928 Madras.

## **Section 3: Definition**

The protection available under Section 353-A means only the executive authority and not the Officer or servants of the Municipality or whom the powers of the executive authority delegated to others. The protection is specifically only to the executive authority as defined section 3(8C) and not and not the individuals delegated with such powers.- sundaresa Ayyar-Vs-Inre. 1956 IMLJ.204. 69 LW.504.

The facilities provided by municipality could not be restricted to only streets formed by municipality on acquisition of land or ownership only. It extends to the case of private streets as defined in section 3(20) and (21) also. -Sundaram Aiyar-Vs-The Madura Municipal Council. 12 MLJ 37.

Section 3(10) and 217J: Applier only to Hill station.

As Gudalur was only notified as hill station 1998. then the impuned order is not applicable. - K.P. Mohammed-Vs-The Collector of Nilgiris and others. 2002 Writ Law Reporter 280.

## Section 4.

Before upgrading a Town panchayat into a 3<sup>rd</sup> grade municipality, the procedure required under sec 5 of the Tamil Nadu Panchayats Act has not been followed and is as much as the Notification has been issued under sec 4 of the Tamil Nadu District Municipalities Act, and whether therefore the Notification is bad in law, (V. Perumal-Vs-State of Madras (1968) I MLJ 27 relied on). Its held that in this case the entire panchayat area has been upgraded or converted into that of a third grad municipality. The procedure required under sec 5 of the Tamil Nadu panchayat has approved the proposal. That being so because the Government order does not made reference to sec 5 of the Tamil Nadu panchayat Act, 1958, though the said order satisfies all the requirements of sec 5 if the Twon panchayat Act. there is no reason to interfere with the said notification, which has been issued after following the procedure laid down under sec 5 of the Tamil Nadu panchayat Act. - Al Ameen Youth Movement represented by its Vice-President, K. Anwar Ali-Vs-The Secretary to Government, Municipal Administration and Water Supply Department and other. 1996 II MLJ 309 (D.B).

### Section 4(1)

Sec 4(1) (a) deals about issuance of Notice by Government declaring its intention to constitute municipality by combining a group of panchayats.

For that the procedures prescribed in sec 5(1) and (2) of the Tamil Nadu panchayats Act shall be followed. Then sec 4 of the Tamil Nadu District Municipalities Act comes into vogue. Hence, the function of the Government In constituting a municipality being administrative in nature, there is no necessity for them to give their reasons for the order. - V. Perumal-Vs-State of madras 1968 IMLJ 27. Also see K.V. Murthi-Vs-Inre 1957 I MLJ (Crl) 619.

### Sec 4(1) (c)

When even after the promulgation of the order that the local area has been included in the municipality, the Accused was running a coffee hotel without obtaining any prescribed license. The Accused did not derive any protection from saying offence has been committed in French pet, and hence held guilty of violatin of rules relating to licences. -K.V. Murthi-Vs-In re 1975 MLJ(Crl)619.

## Sec 6

The capacity of a Municipal Council as a corporate entity to hold property includes its right to enjoy the property by leasing it out and receiving fees thereof.

As the said right born from the right of ownership unless usage of right in a particular manner is prohibited by a statutory provisions, it can use its right in the manner most advantageous to it.

On the hand levying in fees, collecting rent on licenses is as referred in sec 260(2) of this Act contains the element of return for investment, the contention that it must be commensurate with the services rendered by the municipality either to the stall holders or the marketers a whole loses all its validity. The right to levy and recover such fees on the basis of quid pro duo for the services rendered is different from the right to realize rents or fees on licence and there being no conflict between the two and as there being no statutory provision preventing the Municipal Council from realizing rents or licence fee by virtue of its ownership of its market, both the right can be exercised simultaneously and hence it cannot be contended that the right to levy under section 6(2) of this Act is subject to or the Act. Its further held that if the expressions "fees" in section 260(2) (a) and (b) means rent or fees for licence within the Municipal Council can collect by virtue of its ownership of public market, then its merely and amplification of the Act - Arumugha Kone-Vs-Palayam Cottai Municipal Council - 1974 I MLJ 102.

sec 7

The Municipality has an independent existence apart from the Councillors. Hence vacancy in one of councilors would not invalidate the constitution of Council as well as election of Chairman.- A.R.V. ACAR-Vs-The Madras State. 19541 MLJ 102.

sec 8

The provision to section 8(2), of the Madras District Municipalities Act, 1920 has to be read in the context of the main sub-section. The main sub-section deals with the holding of ordinary elections to fill ordinary vacancies on the Office of Councillors as a whole with regard to Municipal Councils and if that is so, there is no reason to confine the operation of the proviso not to such vacancies; but only to stray vacancies.

The real point to be noted is that the Municipal Council as a body corporate is different from the Municipal concillors who constitute such a body corporate. Even if the entire office of the councilors is vacant, still the body the corporate will continue to be in existence till the existence of the body corporate is brought to an end by any special provision made in the Act itself.

It's difficult to accept the argument based upon the submission that if elections are to be held after the occurrence of vacancies to the entirety of the Office of the Councillors, there will be a hiatus in the corporate existence of the council, but such hiatus is not contemplated by the election but also deals with casual election.

At the same time, the section refers to the case where no councilors is elected" at an ordinary or casual election. The coupling of casual election with an ordinary election in section 9(1) is a clear indication that its scope cannot be the same as the scope of proviso to section 8(2). Consequently, its difficult to accept



the contention that vacancies by applying the language of section 9(1) of the Act. Therefore it has to be held that the proviso to section 8(2) will cover the case if ordinary elections to fill up vacancies in the Office of Councillors as a whole with regard to any Municipality as well as and therefore because of this proviso, its not correct that the statute has imposed an obligation on the Government to conduct the election within three months before the occurrence of the vacancies. - Coimbatore Municipal Corporation C.P. Nanjappa Coimbatore and other-Vs-State of Tamil Nadu Local Administration Department, Chennai 9 - 19701 I MLJ 71.

#### Sec. 9

Fresh election for Chiraman as per sec 9(1) applies to cases of valid election conducted as per sec 8 only. This Section does not apply to cases where election have been contemplated but on account of various irregularities no councillor was elected- C>K. Subramania Mudaliar-Vs-The Chairman, Municipal Council Coimbatore and others. - 53 MLJ 816.

#### Sec 12

Declaring the result of the poll by the presiding member in the election meeting is purely an administrative or ministerial activity, a writ of certiorari cannot be granted in respect of such an activity. - Sree Rajah Malraju Venkata Narasimha Rao Bhagadur Zamindar Garu-Vs-The Sampurna Laksjminarayana Pantulu Garu, Chairman and others- 60 MLJ 260.

#### Sec 12

Sec 12(7) confers power on the Revenue Divisional Officer to convene meeting only for election of chairman. Rule 1(2) (b) of the Rules framed under the Act does not abridge any of the rights conferred on him by section 12(7) and there is no conflict in both provisions and hence he has no power to convene a meeting to elect vice Chairman - Selva alias G. Sarangapani Chettiar-Vs-C.L. Aravamudha Iyengar and others.- 1953(2) MLJ 293.

#### Sec 26(A)

##### Tax

Tamil Nadu District Municipalities Act 1920, Sec 26(A) Rule 26(B)  
Rule 26(B) provides for filing appeal before the District Court against the decision of Taxation Appeal Committee. But neither the rule nor the act prescribes or provides for deposit of and any arrears of tax before filing appeal, But it is held that to sustain appeal is preferred before the concerned District Court depending upon the facts and circumstances of each case, it would be open for the District Court to exercise its mind and pass appropriate orders as to whether any deposit should be directed to be made while granting interim orders of suspension of tax revision to be either revised or confirmed by its Taxation Appeal Committee.

Regarding such orders of suspension in the nature of discretions order to be passed by the District Court its held that the concerned District Court concerned can validly exercise its discretions depending upon the facts and circumstances of each case and grant appropriate interim order providing for either deposit of entire amount or at and particular rate at which such deposits should be made in the interest to juristic.

- Kothari Industrial Corporation Limited Fertilizer Division, Chennai rep by its companu secretary-Vs-Kathivakkam Municipality, Ennore. Chennai, rep by its commissioner and other. - 2001 (3) CTC 65(Mad).

Under Madras city Municipal Corporation Act & Limitation Act.

'Taxation Appeals Committee" constituted under rule 14 schedule IV to the Madras City Municipal corporation Act, 1919 is a court for the purpose of Limitation Act, 1963.

It's held that neither the Limitation Act, 1963 not the General Clauses Act 1897, defines the term court. If the intention of the parliament was to restrict the Limitation Act only to the Civil Courts, it would have certainly defined the only to the Civil Courts, its would have certainly defined the terms 'Court" in the Limitation Act, 1963 refers not only 'Suits" but also other proceeding" under

'Special" and 'Local" laws as contemplated under sec 29(2) of the limitation acr, 1963.

The Supreme Court of India in Braijnalldan sinha-Vs-Jyoti Narain (AIR 1956 Sec 66) has held that in order to constitute a 'Court" in the strict sense of the term an essential conditions is that the court should have, apart from having some of the trappings of a judicial Tribural, power to give a decision or a definite judgment which has finality and authority aliveness which are the essential tests of a judicial pronouncement. The Taxation Appeals Committee exercises powers under the Madras City Municipal Corporation Act, 1919, Which is an enactment of the state legislature. Its vested with the power to decide the controversy between the corporation and the assesses and there is in existence a 'lis" between them. There is ascertainment and desial. The dispute involved the rights and obligations of two parties which are divided by the Taxation Appeals Committee in judicial manner. The parties are entitled as a matter of right to be heard in support of this contentions and to adduce evidence in proof of it and it also imports a judicial function to decide on the evidence adduced and in accordance with law thereafter declare the rights of the parties is a definite judgment with all the paraphemalia of a court and the power of as ordinary civil court of the land.

The procedure and final decisions are taken to that of a court. The decisions of the Taxation Appeals Committee are final and binding upon the parties to the dispute and bear authoritativeness, unless they are set aside or

modified by appropriate proceedings in the names established by law. The indisputable conclusion that will have to be arrived in these circumstances in that taxation Appeals Committee deserver to be regarded as a court.

Also apper judgement in Srikant Kashinath Jijuti-Vs-Corporation of the city of Belgaum (AIR 1995 sec 288) the jurisdiction civil court as per sec 9 of CPC to entertain suits challenging revision of property tax has been implially . Ousted. - Sivabushnam Ammal-Vs-Commissioner, Corporation of Madras - 1995 (I) CTC 598 (Madras)

Sec 36(2), 36(1) (c)

Sec 36(2) of the Act empowers the collector to take immediate action necessary on and of the grounds referred to in clause (c) of the sub-section (1). He can thus suspend the resolution or order or license of permit or act as the case may be provided section 36(1) (c) is satisfied.

Section 36(1) (c) is to the effect that where the execution of such resolution or order, the continuance in force of such licence or permission or doing of such act is likely to cause danger to human life, healthy or safety or is likely to lead to a riot or an affray the concept has power to suspend the resolution. Then the collector will have recourse only if section 36(1) (c) is attracted.

Here by no stretch of imagination, it can be stated that the resolution passed by the Town Panchayat rejecting the bid of the 3<sup>rd</sup> respondent and proposing to collect fees directly is likely to cause danger to human life, health or safety, or is likely to lead to a riot or as affray. In fact, when the collector sent a report to the Government as required under the section he has not chosen to mention order probable. Infect, even if the action of the collector in suspending the resolution is improper, arbitrary and capricious. It amounts to stifling the voice of a democratic body. Issued by the facts that the panchyat has not obeyed his earlier order the action has been resorted to under section 36(1) (c).

And hence order of collector suspending the resolution of the Panchayat is improper and arbtrary. - Mrs. Pitchammal-Vs-The Collector, Kanyakumari District, Nagercoil and others.- 2000 III CTC 636.

Sec 40-A

Its not obligatory on the Revenue Divisional Officer to annexe the copy of resolution to be moved or the charges against the chairman along with notice of the meeting for passing of no - confidence motion.

Actually the old Madras Panchayat Act is different from section 40-A of the MADRAS District Munciplities Act. - M.S.A. Jayraman-Vs-The Revenue Divisional Officer, Namakkal and others. (1962) 2MLJ 300.

Under sec 40-A, the Revenue Divisional Officer is duty bound to convene a meeting for passing no-confidence motion when the request is made. He has no jurisdiction to examine the reasons incorporated in the notice given and to consider their relecancy to the discharge of the duties of person against whom its made as a chairman, so long as there I the clearly expressed intention to move - S. Ethiraja Mudaliar-Vs-The Revenue Divisional Officer, Chingleput.- 31 MLJ 634.

sec 41

The Municipal Councilor can function by transacting business at its convened meeting only and there is no other mode by which this statutory body functions at all. Hence this function of convening meeting and transacting business thereon could not be limited to minimum member of meetings prescribed in Rule 1 of schedule III. And hence seven meetings broken up in disorder without transacting any business were relevant to the ingredients mentioned in section 41(1)

Further more the municipality could not claim any fundamental right or common law right for purpose of enquiry leading to super session as the right of the Municipal Council to carry on its administration is a right spring from statute.

Exercise of such powers under this section depends on subjective satisfaction of Government and such satisfaction must be bonafide and must be arrived at by following due Judical process under this section and principles of Natural Justice. Any how court can strike down such order of Government on Some Circumstances. - State of Madras represented by the secretary to Government Rural Development Department-Vs-Tirunelveli Municipal Councillor M. Abdul Magid and others. 1967 I MLJ 47.

Election petition and Sec 51

Neither a defeated candidate not a voter can take advantage of this section 51. Therefore they cannot take proceedings to impeach the election of a candidate. Section 51 does not operate as a bar to a rival candidate or a voter to agitate the matter by means of an election petition; if the elected candidate was disqualified. There is no indication in the Act that a voter or a defeated candidate is prevented from taking action to question the election of a councilor. Section 51 does bit deal with election disputes. Infact, in the whole of the Act, there is no reference to an election petition.

It's for that reason that rules were detailing these duties. Want of qualification cannot fall within the ambit of the earlier part of rule 10(c) of the rules made under the Act, namely, any "irregularity in respect of ta nomination paper" or the improper reception or refusal of a nomination paper or vote. A combined reading of section 19 and 44 of the Representation of the people Act establishes that its only a person who is atleast 21 years old that could get his

name entered in the electoral roll and be qualified to seek election to the Municipal Council as a candidate. The election of a candidate who is below 21 years is therefore contrary to law.

It follows that the election of a person who lacks the requisite qualification can be called in question under rule 10(c) of the rules made under District Municipalities Act.- J. Selvaranga Raju-Vs-T. Doraiswami Mudaliar. 57 MLJ 241.

#### Sec 43

##### Individual consultation required

As per section 43(1) duty is cast on the Government to consult municipality. Irrespective of the fact whether the proposal to divide the municipality into wards or setting apart the reserved wards. In such cases individual consultation is required and not general consideration is enough. - R.Pushpam and other-Vs-The state of Madras, and others. 1953 I MLJ. 88.

Unless the order is without jurisdiction or excessive Jurisdiction, the High Court cannot interfere by writ of certiorari further more if he has jurisdiction, to decided the dispute in a particular way, also would not take the jurisdiction. Even when his reasons and conclusions are wrong writ of certiorari could not be issued. -A. Ramamurthi-Vs-The Ootacamund Municipal through The Commissioner, Ootacamund and others. 67 MLJ 809.

When the result of the election was in noway affected by the irregularity in procedure and the Act of the election commission in conducting enquiry was without jurisdiction, its held that it's a fit case to issue writ of quashing the order of the election commissioner- T.S. Sankaranarayanan pillai-Vs-A.M Ahmad Mian Sahib and other-66 MLJ 601.

When the election commissioner holds election to be void and declared the person who got the next highest number of votes duly as elected, his order is valid even though the effect of the order may be to disenfranchise a large number of votes, who had voted in ignorance of the disqualification of the candidate whose election has been set aside. also the cases in which fresh election can be ordred have been discussed. - M. Shanmuga Muraliar\_Vs-S, Subbaraya Mudaliyar and other. 63 MLJ 932.

#### Sec 44

The Election Authority has power to include the voers in the voters list. He has the only power to bring the list in accordance with the electoral prepared for the relevant assembly constituency. --- Kuppuswamy-Vs-N. Kotty Muthu Govindan.

Express Malice.

When the chairman refuses to register the name of a person who is entitled to vote on behalf of a firm, and when such refusal is not in good faith which implies a due case and diligence then the chairman is liable for damages. Here Express Malice is not a necessary one.- The firm of K.E.P.T.V. Draviam Pillai and Venkatachlam Pillai Tuticorin-Vs-Cruz Fernandez other. 29 MLJ 704.

Election

44-B, 4991 and 60.

Making a false declaration before an electoral officer, would entail punishment of imprisonment, disqualification to contest in Municipal Elections and disqualification to vote in future elections. And hence the period of electoral office expires would not make the election petition infructuous and hence it shall be completed. -A. Prakasam-Vs-Ponnammal. 1997 I CTC 50(Mad)

Sec 44-B

The period of elected office completed, does not make infructuous the election petition. It shall be proceeded and the declaration shall be given for consequential direction.- A. Prakasam-Vs-Ponnammal. 1997 I CTC 50 (Mad)

When the street ceases to be a highway by its being diverted to some other use, the interest of the corporate body determines.

It's further held that the owners of houses abutting in a public street have right of access to and from the public street, and if anything is done by the municipality to interfere with the rights of such owners, the owners have an actionable claim.

The vesting of the public street in the municipality in the instant case is only for the purpose of maintaining it properly as a public street. It's not entitled to put up any structure along the public street to prevent the owner of properties abutting the same from having access to and from the public street-and hence the municipality has no right to cause obstruction even though there is a vesting of public road with it. - The Commissioner, Panruti Municipality, Panruti-Vs-Sri Kannika parameswari Amman Temple by its Managing Trustee, K. Narasimha Chettiar. -1996 II MLJ 339.

Sec 50

When the disqualification under sec 50(1) (hh), then the requirement under law shall be fully complied with and conditions enabling forfeiture should also be fully satisfied.-P.V. Srinivasan-Vs-The Prescribed Judicial Authority and others, Salem. 1968 I MLJ 403.

## Sec 50 (1) (d)

### Interest in substituting contract with municipality

its held that though the District Judge is not correct in proceeding on the basis that the petitioner is having right in the subsisting contract in view of the fact that the petitioner's son is a member of undivided Hindu joint Family, the order disqualifying the petitioner can be sustained, as the petitioner is having interest in the subsisting contract. When a person like petitioner is discharging public duty, he should avoid granting contract to his blood relations that too his undivided son, especially when the son is having common kitchen with the father, and it cannot be said that the petitioner is not having any interest in the business, though not monetarily. -A. Rajangam-Vs-A. Mohammed Hani and another. -- 2000 (1) CTC 215. (Mad)

## Sec 51

### Remedy is only to elected councilors

Its held that the remedy contemplated by section 51 of the Madras District Municipalities Act is available only to the councilor whose election is in doubt or to other councilors or to the executive authority at the request of the council.

## Sec 50 (1) (c) and (d)

When a contract was awarded, the contractor was a mere student and has no independent source of Income, and dependent on the father who was Chairman of panchayat then the Chairman earned disqualification under section 50(1) (d) and the trial court declared that the Chairman cannot continue to act as Chairman.

Further in Revision petition High Court has hold that if the member of panchayat had any interest in subsisting contract that by itself would be sufficient to hold that he was disqualified from holding post and observed that the first respondent admitted in his evidence that the petitioner was not in any way benefited would not in any way absolve the petitioner of his involvement in the contracts came to be awarded to his son, the third respondent. In any event overwhelming evidence available on record did establish beyond doubt that the petitioner had every nexus to the contracts awarded by the second respondent in favour of his son, the third respondent. The said unimpeachable evidence thus grossly militates against any contrary version of the petitioner. Rajagam-Vs-Mohammad Hani and another 2000 (1) CTC 215 is followed.

Tata Cellular-Vs-Union of India 1994(6) sec 651 distinguished. - R.Kannimuthu-Vs-Rajendran and 20 others 2000-2001 (4) CTC 366.

-Mrs. Pitchammal-Vs-The Collector, Kanyakumari Dist Nagerkoil as 2000.2000 III CTC 636

Improper allotment seats would from subject matter of election petition before District judge Under sec 51(A) and 51-B of Tamil Nadu District Municipality Act. Also writ Jurisdiction is barred. -M. Vaikundaraj-Vs-State of Tamil Nadu rep by the secretary to Govt municipal Administrators and Water Supply Fort St.Georage, Madars 9 30.- 1997 10 CTC 296 (d.B.Mad).

Sec 61, 162, 163.

In front of the plaintiffs house, encroacher encroached the road site. The plaintiff field for mandatory Injunction against municipality. In this case the encroacher himself impleaded him.

At this Juncture having found that the action of the respondent is purely a trespass, and the same causes obstruction, to the high way or access to the plaintiff's property, naturally nothing remains to be done by the municipality on the basis on the basis of notice.

After all notice is given only by way of affording reasonable opportunity to the second respondent to showcause why the obstruction should not be removed, when that opportunity has been given to her by civil courts, Its better to modify the decree to remove construction of encroachment. - Kullammal-Vs-K. Perumal and another.- 1996 II MLJ 37.

Tax

Its held that as per section 82, and interpreting the said provision and analogous provisions in the corresponding other Acts of states, the Supreme Court and this court, have consistently held that the gross annual rent has to be assessed only in terms of the provisions contained in the Rent Control Legislation.- Sreenivasan and four other-Vs-Pollachi Municipal Council, rep by its commissioner Pollachi and other. 1998 supplemented MLJ 498. Checj-382 1998 III MLJ 382. Entry tax.

Sec 61

All road margins vest with municipality only

- Rasel Muthiriar-Vs-The Thiruchirappallu municipality rep by its commissioner, having its officer at Municipal Office Building, Thifuchirappalli - 1996 I LLJ 578.

Sec 67

When a land has been acquired under the Land Acquisition Act, then the title vests first with Government only and subsequently only municipalities derive such title from Government. - Chellar Palli Hanumulu Pantulu-Vs-The Secretary



of the State for India in Council represent by the Collector of Krishna. 22 MLJ 445.

#### Sec 68

##### Requirement of contract inconformity with No bar

In a suit for recovery of balance of money due to the municipality from the contractor who bought the right to held that the defence that the contract was not in writing as required under section 45 of the Madaras Act IV of 1884 was unsustainable as he having enjoyed the right of collecting the tolls for a year, was liable on an implied contract and hence concluded that the Municipal council was entitled to a decree against such contractor. - Rao Bahadur K.S. Venkatarama Aiyer-Vs-Junab V. Hamid sultan Maracayar sahib Bahadur and others. 45 MLJ 164.

A Contract shall be in conformity with the requirements of sub-section (1) and (2) of section 68 and section 69 of the Act, and otherwise it doesn't bind and is unenforceable by either the municipality or the party contracting with municipality. Its held that for the suit filed by municipality not to enforce a contract or for award of damages does not fall within the Ambit of the Rule and hence there is no bar. - L.M. Mohammad Abdul Munaf Rowther (alias)- Vellayappa - Vs - The Municipal Council Coimbatore by its Commissioner Coimbatore - 1975 I MLJ 153.

Also see the corporation of Madaras by its Commissioner-Vs-M. Kothandapani Naidu. 1954 (2) MLJ 743.

#### Sec 75

Municipal commissioner having power of appointment and dismissal under sec 75 of the District Municipalities Act and the Municipal Health Officer having power to appoint under the Madras public Health Act. Both the municipal commissioner or Municipal Health Officer could sanction prosection of food Inspector of Coimbatore Under the Prevention of Corruption Act. - Sathia seelan and others-Vs-Inre 1969 2 MLJ 379.

#### Sec 76-A

When the criminal complaint was pending, surpension has been ordered. On subsequent acquittal, the other was reinstated with full pay for the period on supernsion. The Government by G.O. directed the municipality to refund subsistence allowance and the pay of salaty etc., It was held that the Madurai Municipality was entitled to recover the amounts paid under protest from the State Government since the officer was entitled to these amounts under rule 54,

Fundamental Rules-The Madurai Municipality rep by its commissioner Madurai-Vs-The State Madars- 1961 (2) MLJ 315.

## Sec 80.

When municipality under sec 78 issued a preliminary notification stating its intention to increase tax and invited objections or suggestions for the same and having not issued any notification contemplated by sec. 80, specifying rate of increased tax, then municipality has no jurisdiction to levy the increased tax. -The Municipal Council conjeevaram represented by its Chairman M.R, RYC, Sambasiva Chettiar-Vs-Kanch Munuswamy Mudaliar. 62 MLJ 175.

When the resolution to increase tax was passed before enforcement but publishing in District Gazette after the date of enforcement, does not preclude such enforcement as invalid or illegal as the requirement of publishing in District Gazette prior to enforcement is not a condition precedent and such is not a vital thing to conclude the levy of tax from that date would be illegal. -The Municipal Commissioner, Anantapur- Represented by its Chairamn-Vs-Sangali Vasudeva Rao-61 MLJ 642

## Sec 81

When there was no specific notification by Central Government Under the Government Under the Madras District Municipalities Act 1920 to levy property tax, the Municipal Council, Cuddappah, assessed the Madras and southern Maharastra Railway company liable to property tax in respect of certain vacant sites belonging to the Railway company Under this Act.

Also the Municipal Council relies on a Central Government Notification dated 24<sup>th</sup> November 1911, which was issued under previous Act. Hence the Bench has held that the taxes in respect of which the notification of 1911 issued were substantially different from 'property tax" mentioned in Section of the Act of 1920 and as the rate were different and the incidence was also different, the Notification of 1911 did not justify the levy of the tax in question. Its further held that the axing enactments should be strictly constructed and the right to tax should be clearly established. Conditions precedent to the imposition of any tax should be strictly complied with. Also Chief Justice has held that where the mere notification of categories of taxation sanctioned without specific reference to the section of the District Municipalities Act which purport of imposed such a tax is not Ultravires of the Government of India. -The Municipal Council, Cuddappah-Vs-The Madras and Southern Mahratah Railway Co.Ltd. 57 MLJ 471.

## Levy of Tax and Civil Court Jurisdiction.

Held that when a statutory power is given to a corporate body, like the Municipal Council, to levy tax, the only Jurisdiction that the civil courts have in the matter is to go into the question whether impugned taxation was within the taxing power of the body in question and whether the requirement of law to be followed

before such taxation was imposed and in their case they have been in fact followed.

When once it's granted that the municipality has power to levy the tax and that it has also the power to fix the annual value of the land and also to determine by resolution the percentage of assessment to be levied therein, it is not open to civil court to reexamine the propriety of the action of the municipality which are plainly beyond all doubts within the statutory power given to them.

If such scrutiny or examination at every stage is permitted, then it will be impossible for the municipality to prefer its statutory function uninterfered with by an outside authority of: agency. The civil court has no jurisdiction to question the propriety of the resolution of the municipality either in fixing capital value or in fixing the percentage of tax leviable thereon. These are all matters exclusively within the province of the municipality and to determine which municipality by statute. The plaintiff municipality has power and jurisdiction to fix the annual value of their land under sec 81(2) of this Act.

It is also given power to adopt a different basis if it is so chosen under section 81(4), provided that the municipality is satisfied that the land was used exclusively for agricultural purposes. Even if the municipality was so satisfied there is nothing in the statute which prevents the municipality from fixing the assessment acting under Section 81(2) or which compels it to make the assessment only under section 81(4) of the Act. -Commissioner Municipal Council-Vizaga Pattaram-Vs-Srimathi Siddewaren Devite and others. 1948 (2) MLJ III.

Sec 82.

The method of estimate contemplated by the Tamil Nadu District Municipalities Act shows that the State Government shall have power to make rules regarding the manner in which the value of the land, the present cost of erecting the building and the amount to be deducted for depreciations. Rule 6 in part I of schedule IV under the heading 'Assessment of the property tax' states that the value of any building for purposes of the property tax shall be determined by the executive authority, provided that the value of any and or buildings the tax for which is payable by an executive authority shall be determined by the Revenue Divisional Officer is also the executive authority by the council. So it is rule 6, that has been framed in part I of schedule IV to this Act that is applicable with respect to the determination of the value of the land. It is only by analog or what is called principles governing the manner in which an estimate has to be made the principles imbedded in the Rent Control Act have been thought to afford some kind of guiding principle.

Further it is observed that it is nowhere laid down in any of the decisions including AIR 1971 School, 353 that it is incumbent on the municipal authorities

to follow the procedure laid down in Rent Control Act for amount of the value of the building, which is the subject matter, imbedded under the provision of the Tamil Nadu District Municipalities Act. - The Salem Municipal Council by its Commissioner-Vs-Karuppan pillai. 1892 2 MLJ 191.

Sec 82

Assessment of tax:

In this case there was failure to make assessment on the basis of fair rent fixed under Act 18 of 1960 and absence of substantial compliance with to Municipalities Act. High Court has held that the courts below have erred in not applying the ratio decidendi of the Supreme Court in AIR 1971 School, 353 and in holding that municipality can make an assessment on the basis if rent not in accordance with the fair rent fixed Under the Tamilnadu Act 18 of 1960.

Further held that it is well settled that when the basis of the levy itself is wrong or that there is no basis at all for the levy and in that sense there is no substantial compliance with the provision of the Municipalities Act, it is open to the Civil Court to declare the levy as illegal and in fact it is its duty to do so.- Alandur Municipality rep. by its commissioner - 1992 I LW p. 110 (Md).

House Tax:

By, G.O. Ms.No.1182 - Municipal Administration and Water Supply Department, dated 27.11.1987, clause (b) the powers of the Taxation Appeals Committee in reducing the revised tax has been restricted to 5% only. This provision has been challenged.

It's held that in the exercise of power of conferred by clause (iii) of section 23A and 308 of the Act, the Tamil Nadu Municipal Taxation Appeals Committee (Transaction of business) rules have been framed. A conjoint reading of the said provision of the Act and rules, makes it clear that the Taxation Appeals Committee is a statutory body and as such it exercises quasi. Judicial function as prescribed Under the provision of the Act. The exercise of quasi judicial function by the appeals committee has to be in terms of the provision of the Act and the rules framed there under.

Further held that the appeal committee being a quasi judicial authority, the being no statutory restrictions at all with respect to the power of the said committee and its function in deciding the appeal, its not known as to how the Government under the clause (b) of the impugned Government restricts the powers of the Taxation Appeals Committee, where by the Government has directed that Taxation Appeals Committee shall order reduction of tax only by 5% out of the increased tax. Such administration directions run counter to the statutory provision of the Act and Rules framed there Under. The impugred GO has been issued presumably in exercise of powers conferred Under Act 162 of

the constitution of India and its not referable to any rule making power of the Government conferred Under section 303 of the Act.

The executive power of the state Under Act 162 of the constitution of the state has power to laws. The Government business is conducted Under Act 166(3) of the constitution in accordance with the rules of business made by the Governor. The executive power of the state cannot be exercised in the field which is already occupied by the laws made by legislature.

Also held that there could be no restriction with respect to such quasi judicial power of the appellate authority and at any rate by the administrative Go. issued Under executive power of the state. For the reason stated clause (b) of the impugred Go is declared as null and void.

After concluding dist was brought to notice by Government that by subsequent Go, the impugred GO is nullied, the writ petition was decided as infructuous. Anyhow, till that time various disposals by the could have been made by appeals committee the committee is directed to follow the impugred GO in pending.

- B. Sundararajan-Vs-The Government of Tamil Nadu rep by the Special Commissioner and Seretary to Government Municipal Administration and Water Supply Department Fort St. George. Madras-9-1997 Unit Law Reporter 391 (Mad)

Sec 82

The Supreme Court has held that section 82(2) of the Act makes provision for the fixation of annual value according to the rent at which lands and buildings may reasonably be expected to be let from month to month or from year to year less the specified deduction. The test essential is what rent that premises can law fully fetch if let out to a hypothetical tenant. Further held that the municipality is not free to assess any arbitrary value and has look in to and is bound by the fair or standard rent which would be payable for a particular premised Under the Rent Control Act in force during the year of assessment. No distinction can be made between buildings the fair rent of which has been actually fixed by the controller and those in respect of which no such rent has been fixed. The assessment of valuation must take into account the measure of fair rent as determinable under the Rent Control Act.

It may be further held that where the controller has not fixed the fair rent Municipal Authority will have to arrive at their own figure of fair rent provide that can be done without any difficulty by keeping interview the principles laid down in the Rent Control Act for determination of fair rent.

- The Guntur Municipal Council-Vs-The Guntur Town Rate payer Association. AIR 1971 School, 353.

- K.M.S. Abdul Hasan-Vs-The Tituvarur Municipality, rep by its Commissioner, Tiruvar. 1978 IMLJ. 121.

- Chellammal-Vs-Alandur Municipality rep by its Commissions (1992) MLJ 299.

Tax paid by mistake is recoverable by declaratory relief-Salem Municipal Council by its Commissioner-Vs-S.V. Subramanian 1958 I MLJ 217.

The profit basis method is a well accepted basis and is one of the practical working rules to determine what the tenant would be willing to pay and the land Lord is prepared to let the premises. But that basis has not been adopted where a building, as an ordinary building is let out and the tenant thereafter, making addition, provides various amenities converts it in particular use, i.e., lodging house.

It's only after such improvement, alteration, treatment of the property by the tenant that the property becomes suitable for a particular purpose and if the property tax is levied on the basis of potential earning capacity of the premises in the altered situation in the hands of the tenant, the property tax which is levied is not the property of the land Lord but its essentially a tax upon the profits of the business of the tenant and would amount to levy of property tax upon the property belonging to both the owner and the tent which is contrary to section 82. Under the guide of levying property tax, it would not be competent to the municipality to levy tax upon the profits earned by the municipality to levy tax upon the profits earned by the tenant in his business, though the municipality seeks to levy and recover the tax from the owner.

The main basis is the rent realized by the land lord, ie, the value of the holding in his hand of the tenant after he had invested capital and effected several improvements and changes and made it suitable improvements and changes and made it suitable for particular purpose after providing various amenities. -Municipal Council Tirunelveli through Commissioner-Vs-S.C.M Hanffa and other. 1969 (2) MLJ 495.

### Machinery and furniture

Its held that the words 'Machinery' and 'Furniture' have a special connection in the popular and in the commercial sense. It cannot be said that fans, bulbs and such other accessories, which are put into the building at the whims and fancies of the owner could even characterized as machinery. It would be absurd to equate bulbs or a fan or a street light in a factory precincts as electrical installation as if it is a part and part and parcel of the building itself so

as to attract the incidence of taxation Under sec 81 of the Madras District Municipality Act. In arriving at the annual valuation of premises, the values of the land and the building thereon have also to be evaluated. There are no guide lines struck in the Act itself which might provide the necessary hypothesis for either the Statutory Tribunals or the Civil Courts.

In all such cases an amount of guess work necessarily enter into the computation as mathematical exercise is not possible. If the annual value adopted and arrived by the municipality and the values as reflected in the documents filed in a given case, that it cannot be said that such an estimate is still as arbitrary or capricious one. Only if the record discloses that no hypothesis was the basis of the Ultimate assessment adopted by the municipality, and element of laprice may be assured in the circumstances.

Anyhow due to increase in market value of the property the assessed tax was concluded as valid, not Unreasonable as much less capricious.

-The Municipal Council Madurai through its Commissioner-Cs-The Sree Meenakshi Mills Agents Thiagaraja Chetty and others. --- 1975 I MLJ 59.

The Rent Control Act and The Madras District Municipalities Act are different enactments enacted to achieve special features. Hence, for the purpose of ascertaining the reasonable rent of the rental value Under section 82(2), The Municipality shall not be guided by the fair rent fixed by the Rent Controller. -A.S. Kuppusamy Iyer-Vs-The Tirunelveli Municipality by C.O.Chidambaram. 1955 2 MLJ 467.

Fees levied in a market Is not basis

Fees levied in a market in the nature of a rent could not form part of anu basis for assessment for property as the rent of tenant should be ascertained and the property assessed for the purpose of taxation Under sec 82(2).

-V.S. Thanusthaseen Hammapalli Madrasa Melapalayam -Vs-Melapalayam Municipality Melapalayam Tirunelveli District. 1959 (2) MLJ 92.

Sec 82

When the guidelines have been issued in conformity with a Sec 82 this Act and Sec 4 of the Tamil Nadu Buildings (Lease and Rent Control Act) there is nothing wrong in the municipality fixing different basic value for different zones depending upon the importance of locality, the market rate of the land and other amenities available in that zone for the purpose of fixation of rental value is

arbitrary and liable to Rev. Lt. A. Vedamanicam, K. Suden, Madurai-Vs-Srivilliputhur, Municipality through its commissioner srivillipudhur, Remnad Dist. (2000) (i) MLJ 341.

Demolition provision is no bar for prosecution.

When some additions in the building are made and completed on 25<sup>th</sup> April, when application for such permission is made only on 20<sup>th</sup> April 1942, then the prosecution launched on 21<sup>st</sup> December 1942, is within the 12 months ie, limitation period. Under sec 374 of the Act.

It is further held that availability of provision to require launching prosecution. - P.L. Kandaswami Pillai-Vs-V.S. Municipal Commissioner, Palphat Air 1944 Mad. 476.

### Sec 83

Even though a particular community alone in worshipping a temple, if the said community forms a considerable section of Hindu Public, then it does not cease to be a public place and entitled to exemption as per sec 83(1)(a) as of this Act. Also such temple being owned by, managed by and worshipped by particular community would not cease the applicability of Sec. 83(1) (a) of this Act.

Even though there is Bar to Civil Court Under Section 3, 54, when the property tax has been levied against Devasthanam, and when its wrong as per sec 83(1) (a), then the suit by Devasthanam for Declaration that such levy is illegal is maintainable ten the bar would not attract --Sree Kannika Parameswari Devasthanam Ammaper, by its managing Trustee A. Viswanathan Chetty-Vs-The sale municipal Council. 1981 2 MLJ 199.

Choultry is exempted

The choultry must, in truth and reality, bear the hall-mark of a charitable institution and should not partake of the character of a hotel run for profit. In the absence of a precise definition of the word choultry in the Act, excluding officer, shops and concern in the precincts, one cannot restrict the economic development and improved standard of living of our people to only that portion of that building which is directly used for lodging of visitors and pilgrims when there is directly used for lodging of visitors and pilgrims when there is no evidence to show that any rent as such is charged for the occupation of the choultry and the minimum of service charges even for the room in the first floor cannot be treated as rent, it is obvious that the entire income, including even the nominal rent charged from cooperative stores, is exclusively used for the purpose of the choultry is clearly coming Under section 83(1) (b) of the exemption clause. -



Municipal Council, Tirupathi-Vs-Thirumalai Tirupahy Devasthanam (TTD) 1974  
(a) Sec. 683.

Partly vacant or porposionate vacant of a building is entitled for remission Under Sec 87. The expression 'any building" in section 87(1) does not becessarily mean a building in its entirely or as a whole but may be read as including any protion of a building. -The Eluru Municipality represented by its Chairman-Vs-Samini Veera Mainkagam and others. 1975(2) MLJ 556.

Sec 88

As per sec 88(4), it's the duty of the transferor to notify about the part of the transfer and to bring such transfer in register. Failing which he will be liable to pay tax for the entire property continues. But it does not mean that the transferee is not liable to pay tax for the transferred portion. Also it does not mean that the transfer of a part of a property is liable to pay tax for the part not transferred to him. -The Palayamkottai Municipality - rep by its Commissioner Subramanian-Vs-G.V. Kontayya and others 1961 I MLJ.

Sec 88

Municipal Authority court refuse to register about the transaction of property because certain award has to be paid under the stamp Act.

Further more the transferor and transferee is duty bound to communicate the municipal authority about the transaction concerned. -M. Ravi-Vs-The Commissioner. Karur Municipality, Karur and other - 2000193) MLJ 478.

Sec 26(A) (a) Kothar Indian - 2001 2 MLJ 847

Sec 89.

In section 89 the word 'Notice" only is provided it means not only formal but also informal intimation also. The asme has been provided to safeguard the municipality when the construction was deliberately eept in ignorance of municipality. -Nil Dantha Sidaramappa Bingashalti-Vs-Dasinath Samanna Ningahelti and others. 1962 School, 666.

In this case since the plaintiff has informed about reconstruction and on the very same day the Inspector has inspected the suit property, the plaintiff is entitled for refund of half yearly tax collected. -1966 I MLJ 160. Yajam Amnal-Vs-The municipal Council Kurumbakonam represented by its commissioner.

Sec 89 does not mean that

Intimation about completion and occupation of the premises by the Owner is necessary. But mere intimation about completion of works is sufficient that itself entitles the owner for remission of tax. - Nilkanta Sidrama Ningshelti-Vs-Kashianth Somanna Ningshelti and others. 1962 1 MLJ (School,) 263.

Sec 93

As per 3(22) of the Tamil Nadu General Clauses Act 'a person' includes any company or association of individuals, whether incorporated or not and hence Madras Electricity System includes in such definition and hence The Madras Electricity System is liable to pay professional tax for its every Branch carrying on business in the Municipality -Superintendent Engineer, Erode Electricity System Erode-Vs-Executive Officer Town Panchayat Bhavani, Erode, 1975 2 MLJ 256.

Sec 103

Since the words Used in sec 103 of this Act 'kept within the municipality' do not have any limitation that the person possessing a taxable vehicle shall have accommodation to park or keep it. Hence, the requirement is in the half year for 60 days he shall keep the taxable vehicle within the municipality. Hence, the requirement is in the half year for 60 days he shall keep the taxable vehicle within the municipality. Hence a person who is possessing a taxable vehicle and keeping it in a road side but having no shed to park it, is also liable to pay tax. - P.M.R.M Sivasami Nadar and others-Vs-Madura Municipality AIR. 1935 mad 1056.

Sec 129

In the expression public health, safety and convenience the word 'convenience' would be wide enough to include refusal to grant licence to carry on a business in the property belonging to Municipality, in which the party claims adversely. - Raman Nair-Vs-State by the commissioner, Karikudi Municipality. - 1968 2 MLJ 217.

Sec 138

Right to drain by private persons by adverse possession, not only establishing that the drains are repaired by that establishing that the drains are repaired by that the municipality is prevented from using such drains. -Seshagiri Aiyar Arumugam Pillai-Vs-Krishnaswami Naidu and others- 39 MLJ 222.

## Sec 145

Sec 145 does not take away the right of injunction against the municipality, when the public drain constructed by the municipality causes Nuisance to private person near the locality. -The Madura Municipality through Executive Authority, the commissioner-K. Nataraja Pillai and others. -1941 I MLJ. 768.

## Sec 156

### Concession of Entry fee

Sec 156 provided about contribution from person having control over places of 'Pilgrimage', etc., or other person having control over such place to contribute to the municipality towards the special arrangements made by the municipality for public health safety or convenience. Such contribution has to be determined by the State Government.

Sec 156 -- has no relevance at all not it could be relied upon by the first respondent to levy kist or toll or fees, from the motor vehicles which enter the limits of the first respondent. The reliance placed on sec 156 cannot be sustained as section 156 does not empower the Town panchayat to levy toll or collection of fees from the motor vehicles entirely the limits of Town Panchayat.

The explanation to sec 270-B makes it clear that a cart-stand shall the purposed of this Act, include as stand for carriage including the motor vehicles within the Motor Vehicles Act for animals. Section 270-B enables the Municipal council to levy fees for the use of landing places, or halting places and cart stands.

Section 270-C provides that where a Municipal Council has provided a public landing place halting place or cart stand, the executive authority may prohibit the use for the same purpose by any person within such distance thereof, as may be determined by the Municipal Council, of any public or the sides of any public street.

Sec 270-D provides for recovery of cart stand fees, when the fee is not paid on demand by the person appointed to collect fees, the vehicle could be seized and detained for recovery of fees as provided in that Section 270-E provides for private for private cart-stand.

Thus a reading of section 270-B, 270-D, and 270D of the Act show that collection of fee is authorized, only if the vehicles use the halting place or public landing place or cart-stand constructed or provided and maintained of fee for the case of cart-stand or landing place. The municipality has to provide and maintain the said halting place and notify the same. For the use of halting place, the municipality could collect fees either directly, or farm out of the same.

There could be no levy of toll or tax on vehicles entering the limits of the Town Panchayat to assist is not a fee collected towards halting places of vehicles in a public halting place or cart stand. Hence the reliance placed on section 270B is little assistance to the Town Panchayat.

No toll also could be levied or collected by the Town panchayat as there has been no authorization by the state legislature to levy toll on the vehicles which enter the limits of the Town Panchayat.

Article 246 X enables the state legislature by law to authorize a municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure. Automatically no such law by state legislature authority to collect the same.

Article 265 of the constitution provides that no tax shall be levied or collected except by authority of law. Act 265 of the constitution provides that not only levy but also collection of a tax must be under the authority of valid enactment, which falls within the legislative competency of the legislative imposing the taxes.

So toll could be levied or collected or appropriate by the Town Panchayat, in the absence of any legislative enactment by the state legislature Under Article 243-X of the constitution. -Shrine Basilica of our Lady of Health Vailankannit, Vailankani, Bagai District rep by its procurator, father R. Jesuraj-Vs-The Executive Officer, The special Grade Town Panchayat, Vailakanni 611, 111 Vagarappattinam District and another. - 1998 II CTC 327 (Madd DB)

Sec 163

The right of the Municipal Council over of streets and drains is not mere easement rights but a special right created Under statute-Basaweswara Swami-Vs-The Ballary M8nicipal Council, The Secetary of state for India.- 23 MLJ 479.

The right of the owner on the roadside property over an access to road:

The right of the owner of the roadside property to have access to the road is a totally different right from the 0public tight of passing and recognized in a number or decisions. An owner of land which runs right Upto a public highway is entitled to access to that highway from his land and that is so whether he is the presumptive owner of the soil of the high way or not. The mere vesting of a public street In the municipal council does not confer any power on the municipality, and the power to close any public street temporarily, or permanently, does not imply a power to cause obstruction to the use of the public street by the owners adjacent to the same. The owners of houses abutting on a public streets and if any thing is done by the from the public streets and if any thing is done by the municipality to interfere with the rights of such owners, the owners have and

actionable claim. And hence for the purpose of maintaining the public street, the municipality has no right to raise a wall to prevent the access to and from by public and to collect any licence fee for the same. -Govinda Asari-Vs-The Kancheepuram Municipal Council-1981 2 MLJ. 336.

#### Sec. 165

Layout has been approved and the promoters have handed over the possession to the plots owners. But not handed over the land allotted for park purpose to the town panchayat. In the mean time Tamil Nadu Water Supply and Drainage Board has commenced construction of over head tank in the said park area. Challenging the said construing writ petition has been filed by plot owners. Before the disposal of writ petition construction has been completed. And hence the- has held that the effect of reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. On the basis of this decision (1995 - 1 SCC. 47) it is clear that the second respondent herein holds the property for the benefit of inhabitants of various plots. I make it clear that the Water and Drainage Department and initiate proceedings for the fixation of the market value for the area reserved as a park area. Within a period of six months from today. The assurance given by the Town Panchayat that the remaining area shall be retained as a park is also recorded and the Department from changing the uses of that area for any other purpose. - M.Kamamesan -Vs- The Tamil Nadu Water and Drainage Board represented by its Executive Engineer vellore and 20 others, -- 1999 writ Law Reporter 56.

#### Sec 168

When a part of the land has been occupied and the ownership of the municipality is taken away by adverse possession, then municipality cannot remove such encroachment Under sec 168 of this Act. -Chairman, Municipal Council Sriangam-Vs-Subba Pandithar, 25 MLJ 297.

While disposing off public property, the Municipal Council Municipal Committee, Jagraon, AIR 1939 Lag 199.

#### Sec 174-A

Under sec 174A and 313(1) of this Act, mere using of lorry is sufficient. Where is hired is not relevant. When a Registered lorry used for private trade used in a municipality from a place outside the municipality, then it shall be held its plying for hire without licence and the owner of the lorry is liable to conviction under sec 174-A. read with section 313(1) of this Act.- A.T, Kava-Vs-Accesses. I MLJ 700.

## Sec 175

Limitation for prosecution for not providing streets.

Limitation for continuing offences would not apply to sale of land for construction of building without providing for streets. For such offence limitation is for three months from the date of complaint. -Madurai Municipality, Madurai-Vs- Abdul Razack Sahib 1962 MLJ cr 49.

## Sec 178

The person liable under sec 178 of this Act are the owners or occupiers of the houses or lands fronting or abutting private streets or lanes and not the owners of such private streets or lanes. -Syed Mustafa Sahib and others. AIR 1938 Mad 916.

## Sec 180

Under the District Municipalities Act 1884, its held that the municipality cannot insist upon the person who applies for sanction to construction in building to leave open space on his land for public use. -P. Mahadeva Aiyer and others-Vs- The Municipal Council Kumbakonam - 25 LW. 329.

Under 1884 Act its held that when a party making projection which did not contravene any provision of law, then for removal of such projection remedy would be only compensation and not injunction. -Mother Achayya Garu and others-Vs-The municipal Council of Ellore. 19 MLJ 757.

Twelve years adverse possession against municipality before Limitation Amendment Act 1900 is sufficient -The Chairman Municipal Council sriangam-Vs-Subbu Pandithar. -- 25 MLJ 297. Basaweswara Swami-Vs -The Bellary Municipal Council and Secretary of the State India Council. 23 MLJ 479.

Unless the rule explicitly prohibits opening window on the wall of a private house without sanction of the Municipality is of no offence.- P.C. Kandaswamy Pillai-Vs-Municipal presecutor, Palgat. 1942 2 MLJ 145.

## Sec 180.

Laying of statute in the middle of a road

No power is conferred upon the Municipal Council to allow any person to put up any permanent construction. However, small it may be, in the middle of a public street. The fact that no express prohibition is contained against granting such permission does not mean that the power to granting such permission does not mean that the power to grant such permission could be inferred. A statutory

body like the Municipal Council cannot claim any implied powers by the mere absence of a provision of bar, its powers are limited and circumscribed by the statute creating it. Only temporary structures like pandal could be erected in the middle of a street. From the restriction placed upon the power of the council with respect to the occupation of the places in the street on which projections, etc., could extend and occupation could be permitted by way of lease, and having regard to the scheme underlying section 180 and no power to grant permission to anybody to construct anything permanent in the middle of a public street would cause hindrance to free passage of vehicle traffic as well as to pedestrians and should thus constitute obstructions within the meaning of section 180. For definition of building there is no roof in the statute is immaterial. Six feet less height boundary wall is also building. Since the statute committee is going to hand over the statute to Municipal Council, Salem and others. 1972 2 MLJ 485.

Sec 182

#### Removal of Encroachment

Direct of Municipal Administration and Water Supply Chepauk has directed all municipalities to remove encroachment, and the said municipality has passed resolution to eject the encroachers.

By the residents Welfare Association, challenging the said resolution writ petition has been filed. It is held that when the municipality failed to take any action against the encroachers, in this case, the second respondent has directed to take suitable action to remove the encroachments in accordance with the said sub-section (1) of sec 39 of the Section respondent has acted in arbitrary manner or without any restriction or interference with the administration of the municipality.

It is further held that though in reply affidavit the petitioner has stated that all the members of the petitioner's associations are employees under the municipal administration no material has been placed before the court to establish the same. In the counter affidavit filed that the petitioners have grabbed the land which was occupied by the poor municipal worker by force. Hence, it cannot be said that the members of the petitioner association are the municipal worker.

Hence, the view that the petitioner's members cannot be considered to be those who are entitled for alternative accommodation, especially when the Government cannot be directed with a man date to provide the same.

-Dharmapuri Town Segodipuram Employees Welfare Association IVCP by its Secretary K.Kali Gounder, Sengodipuram-Vs-The Government of Tamil Nadu rep by its Secretary, Department of Municipal Administration as water supply, Fort St. George, ch-9 and 20 others.

- 1999 Writ Law Reporter 335 (Mad)

### Renewal of Licence

Renewal of licence is different from fresh licence deemed grant to licence not applies to renewal.

For renewal, such grant in writing is required and no presumption after expiry of 60 days.

- P. Natarajan & Sons -Vs- The Inspector of Police, Madaras-41. 1995 ICTC 164.

### Tax

#### Sec 180-A

All streets maintained by municipality shall be open to persons of all castes and creed. -- O.N. Natarajan and others-Vs-The Municipal Council Turaiyur, 1990 2 MLJ 506.

#### Sec 181

Power to remove encroachments is limited to only streets vested in the Municipality - The Chairman, Municipal Council Srirangam-Vs-Subba Pandithar. - 25 MLJ 297.

#### Sec 182

It empowers municipality to acquire in the public interest, obstruction and encroachments to be removed. But the object of the section is not empowering to acquire compulsorily. Also the Sec. 182 applies to both private and public streets, and in private streets the remedy would be compensation only. -The Public Prosecutor-Vs-Chinnala Chumana Naidu 1942 I MLJ 586.

Under section 182, municipality has got power to remove or direct to remove protection above the land also provided it shall pay compensation. - P.N.V, Rathanaswami Nadar-Vs-Virudhu Nagar Municipal Council, Commissioner, Virudhu Nagar. AIR 1943 Mad. 553.

#### Sec 183



When the municipality exercised its power under sec. 183(3), again it cannot exercise its power under other subsections separately.- T.P. Ramaswami Ayyar-Vs-The Triuchirappalli Municipality, rep by its Commissioner -- 1945 2 MLJ 606.

When A person obtains licence without paying fees, and when the municipality issues a notice requiring him to renew such licence by paying fees alongwith penalty, on such failure, he could be prosecuted only for non-renewal and non payment of fees but not obtaining licence. -M.A.M. Subbiah Ambalm-Vs-The Commissioner Karakuddi municipality and others. 1956 2 MLJ 188.

#### Sec 195

While construing section 195, the court ought not to travel outside the clear wording of the section so as to introduce into it the word continuance. -- The chairman, Municipal Council, Conjeevaram-Vs-D.R. Nageswara Iyer. 54.MLJ 642.

#### Sec 197

When wall of a house fell down, for reconstruction of such wall sanction from municipality not necessary- Maria Prakasam-Vs-Maria Masha sal (died) and others -1992 2 MLJ 611.

When a thatched roof destroyed by fire, replacing the same by asbestos, whether the prior sanction is required, the High Court held that whether the roofing was a thatched one or even if it had been of any other roofed into is the cubical contents of the area of reconstruction that is carried out at the parts under point of time. When such a reconstruction carried out, under section 197 of the Act the owner of the building should ask for prior permission. If the reconstructed area is more than 50 percent of the cubical contents of the entire building then the prior sanction ought to have been obtained from the municipality under sec 197, of the Act, its further held that the orders passed by the ,municipality to demolish the asbestos roofing cannot be characterized as illegal or passed without Jurisdiction-Karaikudi Municipal Council by passed without Jurisdiction-Karaikudi Municipal Council by Commissioner-Vs-K.P Abdullah. 1978 2 MLJ 285.

#### Sec 199

In the case of unauthorised construction, when the municipality is injected from interfering with peaceful possession and enjoyment of such unauthorised construction, the said injunction is of no bar against municipality in launching

prosecution for such unauthorised construction. -Sanitary Inspector, Madurai-Vs-Narasimhalu alia Dr. Simhan. --- 1969 LW (CrI) 170 (Madras)

Commencement of construction and reconstruction without permission constitutes offence but not maintaining of building already in existence. -M.A. Razak-Vs-Pet. (Accused) --52 MLJ 620. Also see INre.K. Subbrao-Vs-Criminal Revenue - sub Divisional Magistrate, Vizagapatnam. AIR 1948 MAd 466.

### Sec 205

When a person entered into agreement with municipality for supply of water to his house under sec 147(4) of old Act then he is liable for cost of maintenance under New Act also, -Be Zwada Municipal Council-rep by c. Narasimhan, Commissioner-Vs-See The Palli Venkata Nagabhushnam. AIR 1943 Mad 555.

The word 'after" referred in this section shall be given liberal meaning, must be read as 'materially or substantially affect" not as mathematically or technically affect" and hence few inches increase in height of the wall would not necessarily result in increase or affect in dimension of building. The Eluru Municipality reply its commissioner-Vs-Gaminiveera Manikyam and others. 1954 MLJ 556.

### Sec 216

When a building is constructed in puramboke, without obtaining sanction from municipality can prosecute for unauthorized construction only. On the other hand under relevant provision it can take appropriate action for removal of such unauthorized construction. -Commissioner pattukkottai Municipality, Thanjavur-Vs-Sohandra sekaran (mior) rep. by guardian as father Natanam Chettiar. 1975 2 MLJ 251.

When building construction commenced and completed before receipt of licence, action under sec338 to demolish the same would be unjustifiable. Maxim generalic specialilous non derogant applies-Mayandi Chettiar-Vs-Madura Municipality the commissioner -1941 Mad 259.

### Starting Point of Limitation

The owner has got the right to show sufficient cause after receipt of show cause notice. After considering such cause, then only the municipality can confirm the order. After the confirmation of that provisional order. An offence therefore can be found to have been committed only after the passing of the confirming order and its service upon the owner. Section 317 make it clear that

it's the final order or confirming order passed under section 216(3) and not the provisional order under section 216(1) and (2) that would provide the starting point of limitation for the commencement of prosecution. The charge sheet filed within the three months of service of the final order would be in time. - The Public Prosecutor-Vs-S.M. Vellaiya Mudaliar.- 1948 I MLJ 413.

Sec. 219 Contributory, Negligence applicable to municipality also

In this case in the private land old and dangerous tree was lying but the municipality has failed to direct the land owner to remove the same. Knowingly, nearby the municipality has laid post. subsequently the tree fell on the post and caused damages to the post. Contributory negligence plays role and land owner is not liable for damage. -Mathuranayagam Pillai-Vs-The Municipal Council Madurai, Commissioner, S.Samuel Pillai.-44 LW . 801.

Sec 244

Exemption not applicable to private trading concerns-Rahman Bivi and another-Vs-Aysa Bivi and another - 1954 2 MLJ 667 AIR 1954 95.

The income derived at by municipality from licence fee shall be proportionate to the trouble by such trade and expenses incurred in controlling the same. If such fee is unreasonable then the court can interfere. -Corporation of Madras-Vs-Messrs Spencer Co.Ltd., Mount Road, Madras. ---57 MLJ 71.

No exemption to private person running canteen in railway premises

It is held that the emphasis in the Section as regards the persons entitled to exemption should be read as extending only to those whose occupation or ownership is extending only to those whose occupation or ownership is referred to in it. This Section has not specifically included private individuals also. And hence notwithstanding the language of the Section the exemption is only in favour of the activities of the Government and of the statutory bodies named in that Section. Hence, the municipality was not precluded Under section 244 from acting under section 249 requiring the said private canteen owner to get licence from municipality.- The Municipal Council, Bimlipatnam-Vs-Ripley and Co.Ltd., Bimlipatnam. -- 1951 2 MLJ 675 555. -V.R. Alangaram Chetty-Vs-The Municipal Council of Pollachi, rep by Commissioner and another.- 1975 MLJ 324.

Sec 249.

When a licence to carry on trade or industry, is refused and the industry is carried on, then the court can look into, on jurisdictional aspect, whether such licence is required or not, when the order of the municipality is without jurisdiction, whether on the face of it, the order is illegal, or conscience. But where the order is in legitimate exercise of jurisdiction vested in the statutory

body and passed bonafied, after considering all the evidence before it, the court cannot hold it to be wrong even it's wrong also on the merits.

Where licence is not necessary in a jurisdiction aspect, but though its necessary the licence has been refused wrongly on the merits, its not jurisdictional point.

-S.P. Thiruvengadasamy Naidu-Vs-Municipal Health Officer Karaikudi. 1949 I MLJ 488.

Different door numbers in one building does not require different licence - K.S.M Gurusamy Nadar -Vs- Municipal Health Officer, Coimbatore Municipality. 1958 2 MLJ 180.

To claim benefit under sec 321(11), the application for renewal of licence shall be made within thirty days prior to end of licence period. -The Public Prosecutor, Andhra Pradesh, Hyderabad-Vs-T.L. Vasudevaiah Chetty.- 1958 MLJ CrI 170

Fixing licence fees on the basis of rent of premises is not unreasonable. - Thirtha Swamiar of Sri Sriurumutt-Vs-The State of Travancore Cochin.1954 I MLJ 596.

Section 249 is not Ultravires

Vesting of powers with municipality under sec 249 is not arbitrary or capricious and hence Ultravires of the constitution. -Additional Subordinate Judge Mangalore-Cs-B. Purushothama Baliga.- 1959 MLJ CrI 923.

For relative scope of section 250, 249 and 321(1) sec. S. Govinda Iyer-Vs-The Municipal Council Villupuram-Vs-Executive Authority Commissioner of Municipal Office, Villupuram South Arcot. District 1966 2 MLJ 164.

Interim order not to commence work till the permission is granted is not order Under section 250 and hence it shall be deemed that permission has been granted under section 321(11) - P.K. Ramaswamy-Vs-Municipality of Coimbatore. 1968 I MLJ 199.

When bye-law is violated, lease or permission terminates, direction by municipality in a market to the shop owner, to vacate the premises it includes the order not to sell anything in the said premises. - The municipal Corporation of Madura-Vs-Samdladkan (Accused) - 2 MLJ 206.

256, 200, 261, 270 - Section 259, 260, jointly read, provides that the Municipality had necessary powers to hold each auction in respect of right to sell flower in the market. But as per see 270(b) it can regulate the market area and has permitted the won person in that area. But it cannot fix at what rate contractor should sell. It is outside the purview of the Municipal Council to decide.- P. Thuraipandi and others -Vs- Ramanathapuram Municipal Corporation and -- 2001 LW 21 (School,).

Sec 260

Sec 260(2)(c)

Sec 260 (2)(c) provides for the award the contract for collection of fees in respect of the persons bringing goods for sale in the market.

There can be no dispute that the bus-stand premises could be declared to be 'The market' combined reading of sec 259 and 260 would show that the local body like the 1<sup>st</sup> respondent had the necessary powers to hold such auction in respect of the rights to sell flowers in the market. The complaint is on the base that the petitioners are not allowed to sell the flowers in are first purchased from the 2<sup>nd</sup> respondent or unless the 2<sup>nd</sup> respondent is paid some amount like Rs30% per day or so far being permitted to sell the flowers in the bus-stand premises.

It is held that we are in entire agreement that there is ample power in the municipality vide the provisions Under the act and more particularly the provisions of sec 260(2)(c), to award the contract for collection of fees in respect of the persons bringing goods for sale in the market. There can be no dispute that the bus-stand premises could be deemed to be 'the market'.

We are in entire agreement that section 270(b) doesn't provide any such compulsion on the municipality to fix the rate. All that the Municipal Council has done is that it has regulated the sale of flowers in its market areas and has permitted only the person who has\*\*\*the contract in that behalf. As to what should be the rates at which that contractors should sell the flowers would be clearly outside the powers of the municipal Council to decide. By writ petition, this court is asked to interfere

in the matter of sub-contracts in between 2<sup>nd</sup> respondent and persons like petitioners. That may not be venturing to do that in our jurisdiction.

Under Art 266.- P. Duraipandian and 6 other-Vs-Ramanathapuram Municipal Corporation rep by its commissioner.

-Ramanathapuram-2000 IV CTC 96 (Mad DB)

The expression 'fees' occurred in the entire Act should give the same meaning but in sec 260(2) (a) and (b) refers to municipal market and letting the same and it includes not only return of money for services rendered by municipality but also on investment and hence fixing different rent depends upon various factors. -Arumuga kone-Vs-The Palayamcottai Municipal Council represented by its commissioner and others. 1974 I MLJ 258.

Difference between lessee and licensee

When municipality constructed a market and permit stall holders to occupy and sell, he is having no interest in land or building only for occupation licence fee is collected and the municipality is not bound by Rent Control Act and it can increase the licence fees. -- P.K. Azeez Vaidyar and others- Vs -The Commissioner, Coonoor municipality and others. 1994 I MLJ 433.

Justice Gokula Krishnan and Varadharahan JJ held that increase in licence fee shall be in uniform basis not on individual basis but justice Balakrishnan held that it can be levied on individual basis. -Coimbatore -Vs-Co subbiah-1980 I MLJ 51.

Sec 262

Fees on income basis

Increase in fees on income basis has no relevancy with service rendered and hence not valid. The Municipal Council Tiruvellore by Commissioner-Vs-Syed Nazirudin Hussaini (Minor) by father by Gaffar Mohideen Hussaini. 1972 2 MLJ 132.

Sec 267-F

No right to prevent municipality in opening a market.

Section 267 E says that the municipality can acquire the right of the private market. It does not mean that instead of municipality opening a new market it shall instead of municipality opening a new market it shall acquire the right of private market owner. The private market owner has no right either to

compel the municipality to acquire that right or to prevent from opening a new market. -Mambuval Hasanath Hamalin Madaras School by its Trustee S. Mohammad Sheriff Sahib -Vs- Municipal Council, Tiruvar. 2 MLJ 374.

#### Sec 270

Its held that tax imposed Under this Section on persons selling or displaying for sale any articles on the margins of any articles on the margins of any public road is only a fee and not a tax. -Corporation of Madras -Vs-Spencer Co.Lte.AIR 1930 Mad 55.

#### Sec 270 B

Seizure can be by contractor also.

If a person wisher to ply his bus for fire, he has to conform to the rules made in that behalf under the Motor Vehicles Act. He is therefore liable the pay his fees prescribed by a municipality for the case of the parking place or street by a municipality for the case of the parking place or street and hence a contractor formed to collect such levy of tax violation.- Thekke Mannengath Ittishiri alis Ammu Poduvalssial Vengalur Naduvilepet Poozhi Kunnam Karnavan Appu Menos and others. AIR Mad 122.

#### Sec 270 - D

Municipality can adopt cheapest process for recovery :

Its held that its clearly the duty of the municipality to utilize the cheap and expeditious method of recovery said to be acted in indirectly in the manner provided by Section 270-D instead of filing a suit - G.D. Naidu-Vs-The Palghat Municipal Council, Municipal Office in Yakkara Amsam Palphifik Taluk, 1942 2 MLJ 472.

#### Sec 294

Before removing an infected person to an Isolation Hospital, the Helath Officer shall satisfy that he has no proper lodging, and the disease is such as infectious. Also there must be direction to remove, and there shall be Unlawfull disobedience to that order and had the effect of spreading the diease- P. Kandaswami Mudaliar-Vs-Inre. 20 MLJ 785.

## Sec 300

When a person has been convicted for not producing child for vaccination, after first notice, he cannot be convicted again for the same facts on second notice.- K.V. Subramania Iyer-Vs-Accused in both. 60 MLJ 299.

The court shall satisfy itself that not only the rule making authority has no power to act under which he is purporting to act but also he has no power at all Under any law to act and then only declare the rule as Ultravires. - Khawja Muhammad Hamid-Vs-Mian Mohammed. 45 MLJ 156.

Rule 11(2) and 33 no inherent power to the Election commissioner

The power to determine by lot does not give him inherent power to determine by lots. - Govindaswamy Chetty -Vs-vadivelu Naicker and others. 1957 I MLJ 247.

Result of election shall be affected by breach of rule

Breach of rule does not ipso facto declare the election void. It shall be satisfied that the breach affected the result of the election. -Golla Narasimbalu-Vs-Kodi Narasimhan and others. 1953 2 MLJ 279.

## Sec 303 (1)(2) (d)

In the exercise of the power under section 303(1)(2), (d), G.O.Ms. No.285 Municipal Administration and Water Supply Department dated 29.4.1985 has been amended which provides that any vacant lands and buildings including banks and stalls etc., shall be granted only in public auction once in every three years in the first instance commencing from 1.4.1986. The lease holder shall pay the lease amount for the first year at the rate of highest bid in the public auction. The lease amount for the second year shall be at an increased rate at 15% over and above the lease amount for the year in addition to lease amount for to second year.

Provided.....

Its held that its clear what the Government order contemplated was given statutory basis by amending the statutory rules. Its clear that the statutory rules



now in the field and the rules require that the auction be held in the public once in three years and that a person who had bid twice successfully, is not to be allowed to take part in the further auctions. The rules does not recognize any right in any person who has been successful at one action to claim to pay 15% more than the rate at which the lease rental was being paid for the earlier three period paid for the earlier three period. -M.Palanisamy and others-Vs-Sriramapuram Town Panchayat, represented by its Executive Officer, Srirampuram, Dindigul District and others. 2000 ( 3) MLJ 691.

#### Sec 306

Amendment of bye-law made to require the private house owner to make deposit to avail water supply from municipality. The amended bye law has been sent for State Governments Approval. In the meantime, its required by the municipality, that pending Approval. In the meantime, its required by the municipality, that pending approval of bye law by State Government, if any one wants to get water connection they shall accompany security deposit along with application.

Its not an unreasonable one as the owner is of option either to apply of pending approval. Further held that having the bye law approved those who got the connection prior to approval shall also make deposit.

-Pudukkottai Municipality tax Payers Sangam rep by the Secretary R. Nagappan-Vs-The Commissioner. -- Pudukkottai Municipality, Pudukkottai - 1995 I MLJ 210.

#### For reconstruction sanction not necessary

1<sup>st</sup> different to put the westernized wall which as fell down, has applied for sanction, In the meantime the plaintiff has filed a suit seeking permant injunction restraining the first defendant from putting hp any house or constriction on the suit property, without sanction and approval of the site plan from the municipality. The trial court decreed in suit but lower Appellate Court dismissed the suit. The High Court has held that the expression reconstruction of a building is specifically defined Under Sec 3(24) of Act when there is a specific, definition of a particular expression, the definition of a particular expression, the definition should be applied unless there is any thing repugment to the context. The specific definition of the expression 'reconstruction of a building" shall be applied for the purpose fo sec.197.If that definition is applied, the present building will not fall under sec 197 and hence sanction is not necessary. -- Mariaparkasam-Vs-Maria Mathlasal (dide) and 9 others. ---- 1992 I LW p 648.

## Assessment of Tax.

In this case there was failure to make assessment on the basis of fair rent fixed under Act 18 of 1960 and absence of substantial compliance with the Municipalities Act. High Court has held that the courts below have erred in not applying the ratio decidendi of the Supreme Court in AIR 1971 School, 353 and in holding that municipality can make an assessment on the basis of rent not in accordance with the fair rent fixed Under the Tamil Nadu 18 of 1960.

Further held that it is well settled that when the basis of the levy itself is wrong or that there is no basis at all for the levy and in that sense there is no substantial compliance with the provision of the Municipalities Act, it is open to the Civil Court to declare the levy as illegal and in fact it is duty to do so.- Alandur Municipality rep. by its commission - 1992 I LW p. 110 (Md).

## House Tax:

By, G.O.Ms. No. 1182 -- Municipal Administration and Water Supply Department, dated 27.11.1987, clause (b) the powers of the Taxation Appeals Committee in reducing the revised tax has been restricted to 5% only. This provision the revised tax has been restricted to 5% only. This provision has been challenged.

It is held that in the exercise of power conferred by clause (iii) of section 23A and 308 of the Act, the Tamil Nadu Municipal Taxation, Appeals Committee (Transaction business) rules have been framed. A conjoint reading of the said provision of the Act and rules, makes it clear that the Taxation, Appeals Committee is a statutory body and as such it exercises quasi-judicial function as prescribed under the provision of the Act. The exercise of quasi-judicial function by the appeals committee has to be in terms of function by the appeals committee has to be in terms of the provision of the Act and the rules framed there under.

Further held that the appeal committee being a quasi-judicial authority, there being no statutory restrictions at all with respect to the power of the said committee and its function is deciding the appeal, it is not known as to how the Government under clause (b) of the Taxation Appeals Committee, where by the Government has directed that Taxation Appeals Committee shall order reduction of tax only 5% out of the increased tax. Such administrative directions run counter to the statutory provisions of the Act and Rules framed there under. The impugned GO has been issued presumably in exercise of powers conferred under Article 162 of the constitution of India and it is not referable to any rule-making power of the Government conferred under section 303 of the Act.

The executive power of the state Under of the state Under Act 162 of the constitution of the state has power to make laws. The Government business is conducted under Act 166(3) of the constitution in accordance with the rules of business made by the Governor. The executive power of the state cannot be exercised in the field which is already occupied by the laws made by legislature.

Also held that there could be no restriction with respect to such quasi judicial power of the appellate authority and at any rate by the administrative GO. Issued Under executive power of the state. For the reason stated clause(b) of the impuged GO in pending cases.

-B. Sundararajan-Vs-The Government of Tamil Nadu rep by the Special Commissioner and Secretary to Government . Municipal Administration and Water Supply Department, Fort St.George. -Madras-9-1997 Writ Law Reporter 391 (Mad)

Sec 313

When a criminal case been lodged, I was under the bonafide belief that deeming provision Under sec 321 (ii) applies is a good defence. -S. Govinda Iyear-Vs-The Municipal Council Villupuram South Arcot District. 1966 2 MLJ 164.

An Omission to do so is also an illegality and liable to fine Under section 249, 313 and 338. - Peedikakandi Anandan-Vs-Accused. 1955 I MLJ 188.

Offence Under Section 175 is not a continuing offence and hence prosecution shall be made within 3 months.- Daniel Durairaj-Vs-The Management of the Buckingham & Carnatic Co.Ltd Madras.- 1962 I MLJ 47.

When an accused is attempting to take the distraint officer to the front of the door, the said resisting could be termed as he exceed as he exceeded his private defence. -D.Madar Sahib alias Maddur and another-Vs-Accused. 58 MLJ 193.

A licence can be cancelled by the chairman provided it shall be for contravention of terms, but not according to his reasons think proper and hence canceling licence for non payment of water tax is illegal-Chairman, Municipal Council Chidambaram-Cs-Thirunarayana Aiyangar. 55 MLJ 566.

Sec. 321

Licence and Lease

The licence Under a municipality in respect of a public convenience (levorotary) at a bus stand has taken a stand that what was granted to him was

lease and not a licence, and that the lease may be extended and that the municipality ought not to be permitted to hold a fresh auction inviting bids for the subsequent year. It is held that by the very nature of the property involved being a levatory, there cannot be a lease as such in favour of the petitioner. The condition of the auction under which the petitioner became the highest bidder makes it clear that it is only a licence for a specific period. Having agreed to these conditions and taken the licence right in the auction, it is not open to the petitioner now to raise a contention that it's a lease and that he cannot be disturbed. - *Pendara Pandian-Vs-The Commissioner, Tirunelveli Municipality - 1990-2-LW.332 (Mad)*.

As per G.O.Ms.No.285 dt.29.4.1985 the Government provided municipal buildings being leased out for three years and for increase of rent in the second and third year at particular rates mentioned in the G.O. The question in which the petitioner participated and became the successful bidder in 1987 was held only in pursuance of said G.O. The maximum period having come to an end, the petitioner cannot claim any benefit under that said G.O.

It is held that it is not open to the petitioner to challenge the validity of the G.O. after having taken part in the auction which was held in pursuance of the said order in pursuance to the said action, the petitioner cannot challenge the G.O. at this stage. The G.O. is challenged only by the prior lessees who were in possession at the time of the G.O. and the petitioner cannot place himself on par with them.

The contention that the municipality cannot misuse the exemption granted by the Government Under the Provision of sec 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act cannot be accepted as there is no challenge of the exemption as such so long as the exemption is in force, the municipality is certainly entitled to impose its own terms on its lessees. Having entered into a contract with the municipality for taking the stop on lease and enjoyed the fruits of the lease for the entire period fixed in the contract, the petitioner can't now contend that the municipality is misusing, the exemption granted Under the Rent Control Act.

Also further held that the petitioner makes an attempt to enforce a contract of lease between the petitioner and the municipality the contract between the municipality and the petitioner is a non-statutory one and a non-statutory contract can't be enforced under Art 226 of the Constitution. *C. Thulasimani-Vs-The State of Tamil Nadu rep by its Secretary to Government Municipal Administration and Water Supply Department Madras.- 1990-2 LW 322 (Mad)*.

Sec 338

For any Unauthorised constructions separate provision Under chapter X and sec 313 in chapter 15 is available, the prosecution cannot be assailed Under sec 338. -Kalliam Kutty Amma-Vs-state of Kerala - 1958 MLJ CrI 153.

A rice mill is a machinery likely to be dangerous to human life and running the same without licence is punishable Under sec 249. The Public Prosecutor-Vs-P .A.S. Ranganayakula Chetty. - 52 MLJ 653.

Omission to impose fine on conviction is an illegality- Peedikakandi Anander-Vs-Accused. 1955 I MLJ 188.

For an offence to be made out Under Section 339, the ownership in the land abutting the road is not necessary. -Syed Mustafa Sahib and others-Vs-Accused. 1938 (2) MLJ 382.

## Sec 343

### Limitation for recovery

Since special provision Under sec 62 is available Limitation Act would not apply to suits, distraint proceedings and for prosecution Under this Act. - Sethurama Udayar-Vs-Chidambaram Municipality rep Executive Authority Commissioner. -1985 2 MLJ 6.

Before distraint proceedings the bill claiming arrears shall be served giving 15 days notice after 15 days notice only distraint proceedings can be initiated. Limitation points commence there from only P.R.V.R. Veeragava Chettiar-Vs-state of Madras. 1969 LW CrI 58.

Limitation point of three years is for initiation only prosecution has been initiated within the time but kept pending and subsequently reopened would not affect limitation. -The Public Prosecutor-Vs-Sampath Kumar. 1960 MLJ CrI97.

Where a chairman has lawfully authorized to exercise his power, including to lodge complaint, express authorization to lodge complaint, express authorization to lodge complaint is not necessary. -T.G. Krishnaswamy Naidu and another-Vs-Accused. 12 LW 427.

## Schedule IV

### Rule 4

It is held that although the income of the bank from investments is found to be liable assessment to profession tax no interference in revision in favour of the municipality will be made in view of the fact the bank would on other substantial

grounds be entitled to relief. -The municipal council Kumbakonam-Cs-Kumbakonam Bank Ltd., Kumbakonam. 57 LW 347.

#### Rule 16

The assesses is under the option of being assessed Under the rule the proviso. The officer referred to in rule 16 is to office of the company. Office is categorized as head office, principal office, and branch office of a company. Where a company has its deport where it did nothing except distribute and sell goods, if could not be termed an office. -The Eastern Distilleries and Sugar Factories Ltd-Vs-The Municipal Council Nagapatnam by Chairman Sahip Moghideen and Marakayar. 38 LW 226.

#### Proseccion of non renewal of licence:

Application along with renewal fee paid concerned officers not passed any order within 60 days. Hence as per sec 250(7) the deemed renewal is presumed and hence prosecution for not obtaining renewal is held invalid. -Candranathan-Vs-Commissioner, Ambattur Municipality -- I9977 III CTC 716 (Mad).

The Supreme Court has held that in the present case, the Governor has promulgated the said ordinance suspending the Existing Act. The power of legislature has to be constructed in both ways, namely positive and negative.

The positive power is to make law. The negative power is to repeal a law, r making the law inoperative. In either case, the power of legislature on only with the power given Under constitution.

As the legislature is having such power, the ordinance 5 of 2000 dated 23.8.2000 making the law inoperative cannot be assailed on the ground that the Government has no power to suspend the said Act cannot be countermanded. -- Arun Shankar-Vs-State Tamil Nadu 2000(2) CTC 33. (School,)

-Tamil Nadu outdoor Advertising Association rep by its Secretary, Thiru. A.G. Nayagam, Chennai 14-Vs-The Government of Tamil Nadu, represent by its Municipal Administration and Water Supply Department, Fort St. George, Chennai 2001(2) CTC 1031.

Chennai - kotthari Industrial Corporation Limited Fertilizer Division Chennai rep by its company Secretary-Vs-Kathivakkam Municipality, Ennore, Chemmai rep by its Commissioner and another. --2001 (3) CTC 65.

Under madras City Municipal Corporation Act 1919-Sec 289.

Power to abate Nuisance.

As per sec 289 of the Act the Commissioner is empowered to issued necessary direction or if the abatement is found impracticable, the commissioner can also prohibit the working of the factory, workshop or work place altogether until such directions have been carried out.

Also as per sub sec(4) of sec 365 of the act, the commissioner can also suspend or revoke any licence or permission granted Under the provision of this Ac, if there is any violation.

## Chapter V

Handloom handled not with steam or other powers but with hand is called as machinery. The Cannanore municipal council rep by chairman Reco Sahib K Chantan-Vs-Punithiya Vasappil Kunigil Anandan. -54 MLJ 456.

(G.O. 4891, L.& M., dated 7<sup>th</sup> December 1932.)

34. The Tamilnadu Municipal Service (Discipline and Appeal) Rules 1970, Rules since superseded. New rules will be found in the supplement to the manual.

### **35. Qualifications of weaving and spinning instructors employed in municipal elementary schools.**

35.1. No person shall be appointed as a weaving or spinning instruction in an elementary or which is excepted to last for more than three months unless such person has passed the Government Technical Examination in Weaving by the Lower Grade or has obtained the certificate of the Tamil Nadu Government Textile Institute Artisan Course.

Provided that if a qualified candidate is not available for appointment in such vacancy, an unqualified person may in consultation with the Deputy Inspector or with the Sub-Assistant Inspectress of Schools, as the case may be, appointed until a qualified candidate is available.

35.2. Rule 35.1. in so far as it relates to spinning instructors, shall be deemed to have come into force on 25<sup>th</sup> November 1930 and inn so far as it relates to weaving instructions shall come into force in 1<sup>st</sup> April 1932.