

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA

In the matter of an Application for
mandates in the nature of Writs of
Certiorari, Mandamus and Prohibition in
terms of Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka

CA (Writ) Application No: 45/2013

1. Board of Directors,
Co-operative Wholesale Establishment.
2. Co-operative Wholesale Establishment.

Both at CWE Secretariat Building,
27, Vauxhall Street, Colombo 2.

PETITIONERS

- Vs -

- 1) The Colombo Municipal Council.
- 2) Hon. A.J.M. Muzammil,
His Worship the Mayor,
Colombo Municipal Council.
- 2A. Hon. Rosy Senanayake
Her Worship the Mayor,
Colombo Municipal Council.
- 3) Bhadrani Jayawardena,
Municipal Commissioner,

Colombo Municipal Council.

3A. V.K.Anura,
Municipal Commissioner,
Colombo Municipal Council.

4) K.B.Chitrapala,
Municipal Treasurer,
Colombo Municipal Council.

5) J.A.Nagasinghe,
Revenue Supervision and Distraining
Officer,
Colombo Municipal Council.

5A. Hon. Karu Jayasuriya,
Minister of Buddha Sasana, Public
Administration, Provincial Councils,
Local Government and Democratic
Governance,
Independence Square, Colombo 7.

5B. Hon. Faiszer Musthapha,
Minister of Provincial Councils and
Local Government,
330, Union Place, Colombo 7.

6) A.L.M.Athaula,
Minister of Local Government and
Provincial Councils,
330, Union Place, Colombo 7.

7) Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Arjuna Obeyesekere, J

Counsel: Sanjeeva Jayawardena, P.C., with Ms. Lakmini Warusevitana for the Petitioners

W. Dayaratne, P.C., with Hirantha Perera for the 1st – 5th Respondents

Milinda Gunatilake, Senior Deputy Solicitor General with Manohara Jayasinghe, Senior State Counsel for the 5A, 5B, 6th and 7th Respondents

Written Submissions: Tendered on behalf of the Petitioner on 26th March 2019

Tendered on behalf of the 1st – 5th Respondents on 4th July 2019 and 16th August 2019

Decided on: 17th January 2020

Arjuna Obeyesekere, J

The Petitioners have filed this application, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the seizure notice dated 11th January 2013 annexed to the petition marked 'P31a' issued by the 1st Respondent in respect of premises No. 25, Vauxhall Street, Colombo 2;¹
- b) A Writ of Certiorari to quash the seizure notice dated 11th January 2013 annexed to the petition marked 'P31b' issued by the 1st Respondent in respect of premises No. 25/1, Vauxhall Street, Colombo 2;²

¹ Paragraph (b) of the prayer to the petition.

- c) A Writ of Certiorari to quash the seizure notice dated 11th January 2013 annexed to the petition marked 'P31c' issued by the 1st Respondent in respect of premises No. 27, Vauxhall Street, Colombo 2.³

The facts of this matter very briefly are as follows.

The 2nd Petitioner is the Co-operative Wholesale Establishment, which has been established under and in terms of the Co-operative Wholesale Establishment Act No. 47 of 1949. The general objects of the 2nd Petitioner, as set out in Section 2 of the Act, are to procure and supply the requirements of co-operative societies and to carry on business as exporters and importers of, and as wholesale and retail dealers, in goods of every description.

The 2nd Petitioner has claimed that since 1993, it has been incurring heavy financial losses and that it has been operating on funds provided to it by the General Treasury as well as by the rental income earned from leasing out buildings owned by it. The 2nd Petitioner has claimed further that it functions at very low profit margins and that it has not been able to reduce its accumulated losses.

The 2nd Petitioner owns several buildings in Colombo from where it carries out its business operations. It appears from the material provided by the Petitioners that the 2nd Petitioner has had issues with the 1st Respondent since 1998 over the non-payment of rates on the buildings owned by the 2nd Petitioner.

² Paragraph (c) of the prayer to the petition.

³ Paragraph (d) of the prayer to the petition.

This application relates to the non-payment of rates in respect of three premises belonging to the 2nd Petitioner, bearing assessment Nos. 25, 25/1 and 27, Vauxhall Street, Colombo 2. The material filed by the Petitioners demonstrate that since 2003, the 2nd Petitioner has not paid the rates due on the above three premises, as and when such payment became due, even though the 2nd Petitioner had in fact made payments on a sporadic basis. The position of the Petitioners that payments have been made, although not on the due date, has been admitted by the Respondents.

By a letter dated 7th July 2012 annexed to the petition marked 'P25', the Municipal Treasurer had informed the Chairman of the 2nd Petitioner that the following sums are payable as arrears:

Premises No.	Amount outstanding as rates as at 30 th June 2012
25	Rs. 6,281,268
25/1	Rs. 1,776,544
27	Rs. 8,390,256

After 'P25' was issued, the 2nd Petitioner had made the following payments in 2012:

Date	Premises	Amount paid – Rs.	Period for which payment has been made
19.07.2012	27	750750	
	25	334950	
19.10.2012	27	750750	4 th Quarter -2012
	25	334950	4 th Quarter – 2012
26.10.2012	25/1	231000	All four quarters of 2012

In spite of the 2nd Petitioner making the aforesaid payments, the 1st Respondent had issued the three seizure notices dated 11th January 2013 marked 'P31a', 'P31b' and 'P31c' in respect of the aforementioned three premises, seeking to seize and sell the said properties in order to recover the following sums of money:

Premises No.	Amount outstanding as rates as at 30 th September 2012
25	Rs. 6,264,520
25/1	Rs. 1,845,844
27	Rs. 8,382,719

The said seizure notices, which have only been addressed to the 'owner/occupier' and not to the 2nd Petitioner, read as follows:

"It is hereby notified in terms of the Municipal Council's Ordinance that the movable or immovable property of the under-mentioned property will be seized after 14 days from the date hereof, for the recovery of arrears of rates and warrant costs as per details given below."

Aggrieved by the issuance of the said seizure notices, the Petitioners invoked the Writ jurisdiction of this Court, seeking the aforementioned relief.

The Petitioners are challenging the issuance of the said seizure notices on several grounds. The principal ground urged by the learned President's Counsel for the Petitioners is that a seizure notice must be preceded by a warrant, and that as the 1st Respondent has failed to issue a warrant as required by the

provisions of the Municipal Council Ordinance (the Ordinance), the seizure notices are bad in law, and are liable to be quashed by a Writ of Certiorari.

A consideration of the above argument requires this Court to examine Part XII of the Ordinance which contains provisions relating to the imposition of rates, and the manner of recovery of rates which are in arrears.

In terms of Section 230(1), *"every Municipal Council shall, from time to time, so often as it thinks necessary, make and assess, with the sanction of the Minister, any rate or rates on the annual value of all houses and buildings of every description, and of all lands and tenements whatsoever within the Municipality."*

In terms of Section 235(1), *"The Council shall cause to be kept a book, to be called the "Assessment Book", in which the annual value of each house, building, land, or tenement within the Municipality shall be entered every year, and shall cause to be given public notice thereof and the place where the assessment book may be inspected"*

Section 235(3) requires a notice of assessment to be served on every occupier of the building that is being assessed. Sub Sections (4)-(7) of Section 235 provides for objections to be filed against each assessment in accordance with the procedure specified therein. In terms of Section 235(8), *"Every assessment against which no objection is taken shall be final for the year"*

This Court observes that the Petitioners have not, in their petition, taken up the position that the 2nd Petitioner was not served with notices of assessment

nor have the Petitioners produced any material to establish that the 2nd Petitioner objected to the assessments that were issued to it over the years. The assessments that have been made in respect of the said three properties must therefore be considered to be final.

Section 252(1) of the Ordinance provides for the recovery of rates which are in arrears. The relevant parts of Section 252(1) are re-produced below:

*"If the amount of any rate assessed under this Ordinance or the amount of any tax imposed thereunder is not paid into the Municipal office within such time as the Council may direct, **it shall be the duty of the Commissioner to issue a warrant signed by him** to some collector or other officer of the Council named therein directing him-*

*(a) in the case of non-payment of any rate, to levy such rate and the costs of recovery **by seizure and sale** of all and singular the movable or immovable property of the proprietor or of any joint proprietor, of the premises on account of which such rate may be due, and of all movable property, to whomsoever the same may belong, which may be found in or upon any such premise;"* (emphasis added)

Section 252(2) of the Ordinance specifies that every warrant issued under subsection (1) shall be in the form contained in the Fifth Schedule, which reads as follows:

*"Whereas, the persons named in the schedule underwritten **have been rated** by the Municipal Council at the sums opposite their respective names: and whereas, the said persons have made default in the payment*

of the said several sums to the Council, and the said sums are still due and owing, although notice demanding payment of the same was served on the said persons:

*These are therefore, to order you forthwith to **seize the property** of the said persons (or the moveable property of any person whomsoever which you may find in or upon the premises in the said schedule mentioned); and if within the space of eight clear days next after the said seizures respectively, the said several sums set opposite to their respective names, together with the costs leviable under Section 255 of the said Ordinance, shall not be paid, then to **sell the property seized** by public auction, and the surplus (if any), after payments of the rate due and costs, to restore to the owner or any joint owner of the property so sold; and that you do certify to me on or before the day of what you shall have done by virtue of this warrant.” (emphasis added)*

In terms of Section 256, what can be sold by public auction is *any property seized in pursuance of any warrant issued under this Part*, thus confirming the position that the issuance of a warrant is a condition precedent to the seizure of any property.

On a plain reading of Section 252(1) of the Ordinance, it is clear to this Court that a revenue officer or collector derives the power and the authority to seize any property only upon being authorized to do so by the Municipal Commissioner. Such authority must be given by way of the warrant issued in terms of Section 252(1). The issuance of a warrant by the Municipal Commissioner is therefore a condition precedent to steps being taken to seize

any property. This position is reinforced by the provisions of Section 256 and the 5th Schedule. This Court therefore takes the view that in the absence of a warrant, no steps can be taken to seize the property for non-payment of rates.

This Court must now consider if a warrant has been issued by the Municipal Commissioner in this application, prior to the issuance of the said seizure notices. The Petitioners have specifically pleaded in paragraph 84(f) of the petition that a warrant has not been issued in terms of Section 252(1) prior to the issuance of the seizure notices marked 'P31a' – 'P31c'. Even though the 1st – 5th Respondents have denied the averments in the said paragraph, a copy of the warrant, which the 1st – 5th Respondents ought to have in their possession, has not been produced with the Statement of Objections of the said Respondents. In the written submissions filed on its behalf, the 1st – 5th Respondents have accused the 2nd Petitioner of *uttering a falsehood that no warrant has been issued by the Municipal Council*, and stated that *the warrant has been served on the occupants of the premises*. If that be so, it was open to the 1st – 5th Respondents to have produced a copy of the warrant so served, or at least tendered an affidavit of the person to whom the 1st Respondent has issued the warrant, confirming that fact. The Respondents have failed to do so, and have therefore failed to rebut the argument of the Petitioners that there has not been compliance with the mandatory provisions of Section 252(1).

In **Phoenix Fashions (Pvt) Limited vs The Municipal Council, Moratuwa and others**⁴ this Court, having considered the provisions of Section 252(1) held as follows:

⁴ CA (Writ) Application No. 2185/2004; CA Minutes of 19th September 2005; per Sisira De Abrew J, with Sripavan, J (as he then was) agreeing.

*"A close reading of the said Section reveals that if an amount of any rate assessed under the Municipal Councils Ordinance or an amount of any tax imposed under the said Ordinance is not paid to the Municipal Office, the Municipal Commissioner has the power to issue a warrant to some collector or any other officer of the Municipal Council directing him to take steps to recover such outstanding dues. These steps are stated in sub paragraphs (a) and (b) of Section 252 of the Ordinance. Thus, **the Revenue Inspector derives power only upon a warrant addressed to him signed by the Municipal Commissioner being issued.** In the present case, has the 2nd Respondent, the Municipal Commissioner issued such a warrant? The Respondents have failed to produce any warrant. Therefore, this Court has to conclude that the 2nd Respondent has not issued a warrant and the 1st Respondent has not followed the procedure laid down in Section 252 of the said Ordinance. Thus, the Revenue Inspector of the 1st Respondent Council has issued the seizure notice without having any legal power or any authority. Having considered the above matters, I hold that the 1st Respondent Council has not followed the procedure laid down in law in issuing the seizure notice 'P14'. Therefore, the seizure notice is illegal insofar as it affects the Petitioner. " (emphasis added)*

In the above circumstances, this Court is of the view that the seizure notices marked 'P31a' – 'P31c' have been issued without following the procedure laid down in the Municipal Council Ordinance. The Municipal Commissioner has acted *ultra vires* his powers by issuing the said seizure notices without complying with Section 252(1). Hence, this Court is of the view that the said seizure notices are liable to be quashed by a Writ of Certiorari.

The learned President's Counsel for the Petitioner has also submitted that there has not been a proper computation of the sums of money due as rates in respect of the said premises. In view of the above conclusion reached by this Court, the necessity for this Court to consider the said submission does not arise.

This Court however observes that the 2nd Petitioner was in arrears of rates in respect of the aforementioned three premises since 2005 – vide letters dated 8th May 2007, 7th June 2007, 20th September 2007 and 12th December 2007, annexed to the petition marked 'P15', 'P16', 'P19' and 'P19a', respectively. The Petitioners have not disputed the sums of money specified by the 1st Respondent in the said letters and had only sought a waiver of penalties and to be able to pay the said sums of money by way of instalments.

The Petitioners have produced a series of invoices, marked as 'P22' which establishes that payments have been made in respect of the said premises from 2008 – 2013. The said payments have been set off against the rates due for the quarter in which the said payments have been made, as opposed to setting it off against the arrears prevailing on the date of payment. This Court finds it difficult to understand the reason why, for example, the 1st Respondent accepted the payment made in January 2013 in respect of premises No. 27 as being the rates due for all four quarters of 2013, and even offered the 2nd Petitioner a discount of 10% which is generally offered if rates are paid for the entire year before 31st January 2013,⁵ and provided there are no arrears, if the Petitioners were in arrears for periods prior to 2013. This practice appears to have continued even with the payments that have been made after the

⁵ Vide Section 230(3) of the Municipal Council Ordinance.

institution of this application.⁶ This Court is therefore of the view that the 1st Respondent should make available to the 2nd Petitioner, a proper computation of the sums of money due as rates on the properties which are the subject matter of this application, prior to taking steps in terms of the law.

In the above circumstances, this Court issues the Writs of Certiorari prayed for in paragraphs (b) – (d) of the prayer to the petition, quashing the seizure notices marked 'P31a' – 'P31c'. This Court makes no order with regard to costs.

Website Copy

Judge of the Court of Appeal

Website Copy

⁶ Vide summary of payments annexed to the Written Submissions of the 1st – 5th Respondents.