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

In the matter of an Application for Writs of Prohibition, Certiorari and Quo Warranto under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Meegahage Nelson Shantha Perera,
313/28, Gonamaditta Estate, Kesbewa.

PETITIONER

CA (Writ) Application No: 44/2018

Vs.

1. Kushlani Tharanga Gamlath,
   Secretary,
   Kesbewa Urban Council, Kesbewa.

2. Urban Council,
   Kesbewa.

3. Hon. Faizer Mustapha,
   Minister of Sports and Provincial Councils and Local Government,
   No. 330, Union Place, Colombo 2.

4. H.T. Kamal Pathmasiri,
   Secretary,
   Ministry of Provincial Councils and Local Government.

5. Commissioner of Local Government,
   Western Province,
   Cambridge Terrance, Colombo 7.

RESPONDENTS

Before: **Arjuna Obeyesekere, J**

Counsel: Thishya Weragoda with Sanjaya Marambe for the Petitioner

Ms. Chandrika Morawaka with Ms. Hemakumari Hettige For the 1st and 2nd Respondents

Ms. Nayomi Kahawita, Senior State Counsel for the 3rd and 5th Respondents

Written Submissions: Tendered on behalf of the Petitioner on 28th May 2019

Tendered on behalf of the 1st and 2nd Respondents on 7th February 2019 and 19th June 2019

Decided on: 10th June 2020

Arjuna Obeyesekere, J

When this matter was taken up on 14th February 2020, the learned Counsel for all parties moved that this Court pronounce its judgment on the written submissions that had already been tendered.

The Petitioner states that he is resident within the administrative limits of the 2nd Respondent, the Urban Council of Kesbewa. In this application, the Petitioner, who states that he has filed this application on his own behalf as well as in the public interest, is seeking:

(a) A Writ of Certiorari to quash the decision of the 1st Respondent, Secretary, Kesbewa Urban Council from imposing; and/or

(b) A Writ of Prohibition preventing the 2nd Respondent or its officers from collecting,

the following taxes:

a) Annual rates at the rate of 6% for residential properties and 10% for commercial properties;

b) License fees for businesses carried out within the Urban Council limits of the 2nd Respondent;

c) A tax of upto 2% on the value of a land in the following instances:

(i) Bare lands which could be cultivated but which are not;

(ii) Bare lands on which buildings could be erected, and upon failure to erect any building;

(iii) Bare lands which could be developed at a reasonable cost but upon failure to develop such lands;

(iv) Where the land is covered with a building and where the area covered by the building, when compared to the whole portion of the land, does not meet with the expected ratio recommended by the Urban Council recommendations.

d) An annual charge of Rs. 500 from each Three-wheeler which is parked and available for hire within the Urban Council limits of the 2nd Respondent.

The learned Counsel for the Petitioner sought to challenge the imposition of the above taxes on two grounds. The first is that the 1st Respondent does not have the power to impose taxes and that in doing so, the 1st Respondent has acted *ultra vires* the powers conferred on the 1st Respondent by the Urban Councils Ordinance. This ground would apply to all the aforementioned taxes.

It is not in dispute that the power to determine the rates, taxes, duties, levies and all other charges as specified in the Urban Councils Ordinance for a particular area is vested with the Urban Council for that area. It is also not in dispute that the term of office of the elected members of the 2nd Respondent Urban Council including its Chairman and Vice Chairman had come to an end by 2016, and that elections to elect the new members did not take place until February 2018.

Provisions with regard to the administration of an Urban Council during an interim period where there is no Chairman, Vice Chairman or elected members are set out in Section 184A of the Urban Councils Ordinance, which reads as follows:

> "*Where an Urban Council is unable to discharge its functions by reason of the Chairman and Vice-chairman ceasing to hold office,* ***the Secretary shall****, during any period that elapses between the occurrence of the vacancies in respect of those offices and the filling of those vacancies in accordance with the provisions of the Local Authorities Elections Ordinance,* ***have, exercise, perform and discharge all the rights, privileges, powers, duties and functions vested in, or conferred or***

imposed on, <u>the Council</u>, the Chairman or Vice-chairman by this Ordinance or by any other written law."

It is therefore clear to this Court that during the interim period where a Council stands dissolved, and until a new Council is constituted subsequent to holding a general election, the Secretary of the respective Urban Council has been conferred the power to exercise, perform and discharge all the rights, privileges, powers, duties and functions vested in, or conferred or imposed by the Ordinance or by any other written law on:

(a) **the Council**;

(b) the Chairman;

(c) Vice Chairman.

This Court is therefore satisfied that the 1st Respondent has the power to exercise all powers conferred on the Council, its Chairman and Vice-Chairman, as the case may be, when the Council is dissolved. Accordingly, this Court is of the view that the 1st Respondent had the legal authority and power to impose the said levies and taxes that are sought to be challenged in this application, and that her decision is not *ultra vires* the powers conferred on the Secretary of the Urban Council by Section 184A of the Ordinance. This Court therefore does not agree with the first ground placed before this Court by the learned Counsel for the Petitioner that the 1st Respondent acted outside her powers when she made a decision to impose the said taxes.

The second ground urged by the learned Counsel for the Petitioner was that in any event, the 2nd Respondent had not followed the procedure prescribed by law for the imposition of rates. The specific complaint of the Petitioner is that the 1st Respondent did not obtain the approval of the Minister for the imposition of the said rates for the year 2018. This Court must note that the imposition of (a) rates on all premises, and (b) taxes on businesses situated within the Urban Council area, requires the approval of the Minister, but that no such approval is required in respect of (a) taxes on bare lands, and (b) the parking fee of Rs. 500 per annum on three wheelers.

A consideration of this ground requires this Court to examine the provisions in the Urban Councils Ordinance that are applicable to the imposition of rates and taxes for immovable property. There are three sections which are important to this application, namely Sections 160(1), 162 and 165C(1) of the Ordinance.

Section 160(1) reads as follows:

> "*The Urban Council of a town may, subject to such limitations, qualifications, and conditions as may be prescribed by the Council, and* ***subject to the approval of the Minister****, impose and levy a rate on the annual value of any immovable property or any species of immovable property situated within the town*."[1]

[1] The word 'Minister' mentioned in the Urban Councils Ordinance No. 61 of 1939 refers to the Minister of Local Government. However, according to Section 2 (1) of the Provincial Council (Consequential Provisions) Act No. 12 of 1989, "Where any power or function is conferred on or assigned to a Minister or to a public officer, as the case may be, by any written law made prior to November 14, 1987 on any matter set out in List I of the Ninth Schedule, such power or function may, (a) if such power or function is conferred on, or assigned to, a Minister, be exercised or discharged, in relation to a Province and unless the context otherwise requires, by the Governor of that Province or the Minister of the Board of Ministers of that Province to whom the subject has been assigned; and accordingly, references in every such written law to a Minister shall be deemed to

Section 160(3) provides that, "*Where the Council, in imposing any rates for any year, resolves to levy without alteration the same rate as was in force during the preceding year, the approval of the Minister shall not be required for the imposition and levy of such rate."*

In terms of Section 166(1), "*the assessment of any immovable property for the purpose of any rate under this Ordinance shall, with the necessary modifications, be made in the manner prescribed by section 235 of the Municipal Councils Ordinance, with respect to immovable property within Municipal limits, and all the provisions of the said section, together with those of sections 233, 242, 243, and 236 to 241, shall, with the necessary modifications, apply with respect to every such assessment made for the purposes of this Ordinance*."

The above provisions can thus be summarized as follows:

a) The imposition and levying of rates by an Urban Council must be approved by the Minister;

b) The approval of the Minister shall be required where there is to be an increase in the quantum of rates;

c) The approval of the Minister shall not be required for the annual imposition of rates if there is no increase from the previous year.

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include reference to a Governor of a Province or the Minister of the Board of Ministers of such Province to whom the function has been assigned; ..... " Therefore, the term 'Minister' set out in the Urban Councils Ordinance No. 61 of 1939 as amended, read with the Provincial Council (Consequential Provisions) Act, No. 12 of 1989, in respect of the present application, refers to the Minister of Local Government of the Western Province.

It would be relevant to consider at this stage, the background relating to the imposition of rates by the 2nd Respondent. According to '**X2**', which is a resolution moved by the Chairman of the 2nd Respondent at the Council meeting held on 20th September 2018,[2] the 2nd Respondent had been established as an Urban Council on 15th April 2006.[3] The 2nd Respondent had levied rates on all properties situated within its area for the first time in 2007, based on valuations obtained during the period 2000 – 2002.

The practice adopted by other Urban Councils had been to obtain fresh valuations every five years, and thereafter amend the assessments issued to all premises. Accordingly, the 2nd Respondent had initiated the process in 2007, by first seeking the approval of the Minister. The first letter in this process is the letter dated 4th July 2007, marked '**2R1**' sent by the 5th Respondent, the Commissioner of Local Government, to the Secretary of the Chief Minister of the Western Province, which reads as follows:

> "තක්සේරු ප්‍රතිශෝධනය සඳහා අනුමැතිය ලබා ගැනීම - කැස්බෑව නගර සභාව
>
> කැස්බෑව නගර සභා බල ප්‍රදේශය තුල මෙතෙක් වරිපනම් බදු, අයකරනු ලැබූ පිලියන්දල නාගරික ප්‍රදේශය සහ කැස්බෑව නාගරික ප්‍රදේශය අවසන් වරට තක්සේරු ප්‍රතිශෝධනයක් කර ක්‍රියාත්මක කර ඇත්තේ 2000 වර්ෂයේදී බවත් එම තක්සේරුව කර දැනට වසර 06ක කාලයක් ගත වී ඇති බැවින් නව තක්සේරු ප්‍රතිශෝධනයක් සිදු කිරීමට අනුමැතිය ඉල්ලා ඇත.
>
> මේ සඳහා 2007.01.18 දින පැවති මුදල් හා ප්‍රතිපත්ති කාරක සභාවේ අංක 05 යටතේ 2007.01.30 දින මහා සභා රැස්වීමේදී සභා සම්මුතියක් ලබා ගෙන ඇති අතර මෙම

[2] 'X2' has been annexed to the motion dated 6th December 2019 filed on behalf of the Respondents.
[3] Prior to that, Kesbewa had been a Pradeshiya Sabha Area.

ඉල්ලිම ඉටුකිරීම සුදුසු බව කොළඹ දිස්ත්‍රික් සහකාර කොමසාරිස් විසින් නිර්දේශ කර ඇත.

ඒ අනුව පිලියන්දල නාගරික ප්‍රදේශය සහ කැස්බෑව නාගරික ප්‍රදේශයේ දේපල සඳහා 2008 වසර සඳහා ක්‍රියාත්මක වන පරිදි තක්සේරු ප්‍රතිශෝධනයක් සිදු කිරීමට නගර සභා ආඥා පනතේ 166 වගන්තිය සමග අදාල කර ඇති මහා නගර සභා ආංගඳා පනතේ 238 වගන්තිය අනුව පලාත් පාලන විෂය බාර ගරු ඇමති තුමාගේ අනුමැතිය ලබාදීම නිර්දේශ කර ඉදිරි කටයුතු සඳහා ඔබ වෙත ඉදිරිපත් කරමි."

The approval of the Minister had been conveyed to the 5th Respondent, by the Secretary of the Chief Minister, by letter dated 3rd September 2007, marked '**2R2**'. The said letter reads as follows:

"තක්සේරු ප්‍රතිශෝධනය සඳහා අනුමැතිය ලබා ගැනීම - කැස්බෑව නගර සභාව

උක්ත කරුණ සම්බන්දයෙන් ඔබේ සමාංක හා 2007.07.04 දිනැති ලිපිය හා බැඳේ

ඒ අනුව පිලියන්දල නාගරික ප්‍රදේශයේ සහ කැස්බෑව නාගරික ප්‍රදේශයේ දේපල සඳහා 2008 වසර සඳහා ක්‍රියාත්මක වන පරිදි තක්සේරු ප්‍රතිශෝධනයක් කිරීමට පලාත් පාලන විෂය බාර ගරු ප්‍රධාන අමාත්‍ය තුමාගේ අනුමැතිය ලබා දී ඇති බව කාරුණිකව දන්වමි."

Even though '**2R2**' had been copied to the 2nd Respondent, the 5th Respondent, too, by his letter dated 15th October 2007 marked '**2R3**' had conveyed the approval of the Minister to the 2nd Respondent.

It appears that the 2nd Respondent did not take any steps on the above approval until 2010, when the Council passed the following resolution, marked '**2R4**':

"සභාපති පි.ඩී.එල්. ලෙනාඩ් කරුණාරත්න මහතා යෝජනා කරයි.

කැස්බෑව නගර සභා සම්පූර්ණ බල ප්‍රදේශයේ වටිපනම් බදු, අයකිරීම 2007 වර්ෂයේ සිට ආරම්භ කල නමුත් ඊට අදාල දේපල තක්සේරු කිරීම කර ඇත්තේ 2000-2004 දක්වා වර්ෂ තුලදීය.

මේ වන විට එවකට තිබූ ඉඩම් කට්ටි කර නව නිවාස බොහොමයක් ඉඳි වී ඇතඟ එමෙන්ම බල ප්‍රදේශයේ පවත්නා සේවාවන් වැඩි දියුණු වීම හේතුවෙන් දේපල වටිනාකම වැඩි වී ඇති බැවින්ද අවසන් වරට දේපල තක්සේරු කර වසර 05 කට වඩා ඉකුත් වී ඇති බැවින් ද, රජයේ තක්සේරු දෙපාර්තමෙන්තුව මගින් සම්පූර්ණ බල ප්‍රදේශයම ආවරණය වන පරිදි නව තක්සේරු ප්‍රතිශෝධනයක් කල යුතු යයි මෙම සභාවට යෝජනා කරමි."

Even though approval of the Minister had already been obtained – vide '**2R2**' – in view of the above resolution to obtain a fresh valuation, the 2nd Respondent had once again, by letter dated 20th August 2010, marked '**2R5**', sought fresh approval of the Minister. The 5th Respondent, having obtained confirmation that steps had not been taken on the approval granted by '**2R2**'[4], had informed the 2nd Respondent, by letter dated 3rd December 2010, marked '**2R9**', that approval has already been granted by '**2R2**' to obtain a fresh valuation, and that no further approval of the Minister is required.

The 2nd Respondent had thereafter requested the Chief Valuer to revise the valuation in respect of 65653 premises situated within 17 wards of the 2nd Respondent. However, owing to the marked increase in the number of residents, the valuation process had taken several years, and the approval of the Valuation Department had been given on a staggered basis in 2016 and 2017.[5] As a result of this *delay*, the revision of rates that ought to have been

[4] Vide letter dated 25th October 2010, marked '2R7'.
[5] Vide letters dated 11th June 2016, 11th October 2017, and 19th October 2017, marked '2R12' – '2R14' respectively.

effected by the 2nd Respondent in 2010 in respect of premises situated within the Urban Council limits of Kesbewa had not taken place.

It is relevant to note that all residential and commercial premises situated within the Urban Council limits of Kesbewa had paid rates from the inception of the 2nd Respondent until 2017 on valuations prepared in 2000-2002, although it is common knowledge that there has been an increase in the values of properties situated within the Urban Council limits of the 2nd Respondent.

Having received the aforementioned valuations, the 1st Respondent had taken steps to issue notices of assessments on all residential and commercial premises situated within the 2nd Respondent, including the Notice of Assessment issued to the Petitioner, annexed to the petition marked '**P8**'. The residential premises of the Petitioner, which is approximately 19 perches in extent, and which had an annual value of Rs. 7,698/- based on the valuation in 2002 had been increased to Rs. 13020/ in 2018 based on the 2017 valuation. The Petitioner who was paying a sum of Rs. 115.47 as rates per quarter in 2016 was required by '**P8**' to pay a sum of Rs. 195.30 per quarter in 2018.

This Court has very carefully considered the contents of the aforementioned letters, and especially '**2R2**' and '**2R9**', and is satisfied that the Minister has granted approval to the 2nd Respondent to obtain a fresh valuation and thereafter issue notices of assessment on all premises based on such valuations. It is the view of this Court that the 1st and 2nd Respondents have proceeded to issue '**P8**' on the approval granted by the Minister. In these circumstances, this Court does not see any merit in the second ground urged by the learned Counsel for the Petitioner in respect of rates.

When this matter was mentioned on 9th October 2019, the learned Counsel for the Petitioner informed this Court that as the 2nd Respondent was now functioning with elected members, he would be satisfied if the imposition of rates as evidenced by '**P8**' is approved by the newly elected Council. The learned Counsel for the 1st and 2nd Respondents thereafter brought to the attention of this Court, the following matters[6]:

a) By the resolution marked '**X2**', the Chairman of the 2nd Respondent had recommended that the rates for 2019, which is based on the valuation given in 2017, be reduced;

b) The said resolution had been approved by the elected members of the 2nd Respondent;

c) The Minister had however refused to approve the reduction of rates;[7]

d) At a meeting of the Council held on 8th November 2018, the elected members of the 2nd Respondent had approved the imposition of rates for 2019 at the same rates imposed for 2018. The approval so granted has been published in Gazette No. 2100 dated 30th November 2018.[8]

Thus, this Court is satisfied that the imposition of rates in respect of premises situated within the 2nd Respondent for the year 2019 has been approved by the 2nd Respondent.

[6] Vide motion dated 6th December 2019.
[7] Vide letter dated 2nd November 2018, annexed to the motion dated 6th December 2019 filed by the 1st and 2nd Respondents, marked 'X6'.
[8] Vide document marked 'X1' annexed to the motion dated 6th December 2019.

In its written submissions, the Petitioner has submitted that even if the revised assessments were issued upon obtaining the necessary approvals, the 1st and 2nd Respondents have violated Section 235(3) and (4) of the Municipal Councils Ordinance which require notices of assessment to be served on or left at the premises of every occupier in a timely manner, thereby giving an occupier an opportunity to voice any opposition to such assessment in terms of Section 235(4).[9] This Court is of the view that even if the assessment '**P8**' was served late, there was no legal impediment to the Petitioner objecting to the notice of assessment served on him. This Court must observe that according to '**X2**', over 500 residents out of the over 88100 assessments served in 2018, had in fact objected to the assessments, and that the Petitioner too, could have done so.

This Court shall now consider whether the 1st Respondent obtained the approval of the Minister in respect of the taxes imposed by '**P4**' '**P5**' and '**P6**'. The imposition of license fees and taxes, other than rates, is done in terms of Section 162, which reads as follows:

> 1) *The Urban Council of a town may, subject to such limitations, qualifications, and conditions as may be prescribed by the Council, impose and levy any of the following taxes and license duties within the town*;
>
> a. *a tax on vehicles and animals;*

[9] Section 166 of the Urban Councils Ordinance specifies that the assessment of any immovable property for the purpose of any rate under the said Ordinance shall, with the necessary modifications, be made in manner prescribed by section 235 of the Municipal Councils Ordinance, with respect to immovable property within Municipal limits, and all the provisions of the said section, together with those of sections 233, 242, 243, and 236 to 241, shall, with the necessary modifications, apply with respect to every such assessment made for the purposes of the Urban Councils Ordinance.

b. a duty in respect of licenses issued by the Council; and

c. any other form of tax approved by the Minister.

(2) *Where the Council, in imposing any tax under this section for any year,* ***resolves to levy without alteration the same tax*** *as was in force during the preceding year,* ***the approval of the Minister shall not be required*** *for the imposition and levy of such tax*.

The approval of the Minister is therefore required only if there is to be an alteration of the tax from the previous year.[10] Although the 1st and 2nd Respondents have not submitted any documents to establish that the approval of the Minister was obtained for the taxes imposed by '**P4**', '**P5**' and '**P6**', this Court observes that the Petitioner has not alleged that there has been an increase of the said taxes from the previous year. Hence, this Court is not in a position to conclude that the procedure laid down in the Ordinance has not been followed in respect of '**P4**', '**P5**' and '**P6**'.

In the above circumstances, this Court does not see any legal basis to grant the relief prayed for. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal

[10] Vide Master Wovenlanka (Private) Limited vs. Urban Council Katunayake – Seeduwa and Others [CA (Writ) 320/2015; CA Minutes of 14th September 2016][Padman Surasena, J, with Vijith Malalgoda, J, P.C., P/C.A (as he then was) agreeing] where this Court, in considering a similar provision, Section 160(3), held that, "It is thus evident that the approval of the Minister is necessary where alteration to the existing rates is to be imposed."