
**KAMBURUGAMUWE SUMANARATHANA THERO
VS.
MILTON MENDIS**

COURT OF APPEAL,
SOMAWANSA.J (P/CA)
WIMALACHANDRA. J.
CA 263/2004.
DC PANADURA 2826/SPI.
AUGUST 15, 2005.
SEPTEMBER 7, 2005.

Pradeshiya Sabha Act - Sections 214(1),214(2),- Notice on the Pradeshiya Sabha – Is it imperative ? – Civil Procedure Code – Section 461(A) - Applicability of provisions of the Civil Procedure Code ?– Failure to comply with Section 214(1) Pradeshiya Sabha Act,– Can it be cured by recourse to Section 461(A) – Civil Procedure Code ?

HELD :

- (1) Failure to send notices under section 214(1) of the Pradeshiya Sabha Act is fatal. Plaintiff cannot file action against a Pradeshiya Sabha until and unless a period of one month has lapsed from the date of the said notice in section 214(1).
- (2) The statutory requirement found in section 214(1) is mandatory; failure to give notice, is fatal.
- (3) The Pradeshiya Sabha Act, has not provided a procedure where no notice has been given under Section 241(1). The Pradeshiya Sabha is not a component or part of the State.
- (4) Section 461 of the Civil Procedure Code applies when an action is instituted against the Attorney General as representing the State or against a Minister or Deputy Minister or a public officer in respect of an act done in his official capacity.
- (5) Provisions in section 214(1) cannot be compared with section 461(A) and 461(A) cannot be confined to cure the defect where no notice has been given in terms of section 214(1).

Per Wimalachandra. J :

"It is my considered view that the learned District Judge has erred in law in holding that, provisions of section 461(A) of the Civil Procedure Code could be applied where no notice as required by section 241(1) has been given prior to the institution of the action and the defect could be rectified by allowing the plaintiff to have recourse to section 461(A)".

APPLICATION for Leave to Appeal from an order of the District Court of Panadura.

Saliya Peiris with C. Madanayaka for petitioner.

Koggala Wellala Bandara for plaintiff-respondent.

Dushyantha Samarasinghe for defendant-respondents.

Cur.adv. vult.

June 02, 2006.

WIMALACHANDRA, J.

This is an application for leave to appeal filed by the 6th defendant-petitioner from an order of the learned District Judge of Panadura dated 07.07.2004. Briefly, the facts as stated in the petition are as follows :

The plaintiff-respondent (plaintiff) filed an action bearing No. 2826/Spl in the District Court of Panadura against the 1st to 6th defendant-respondents *inter-alia* for a declaration that the 6th defendant has no legal right to effect constructions on the land described in the schedule to the plaint and a permanent injunction against the defendants from carrying out any constructions on the said land described in the schedule to the plaint. The plaintiff also sought an interim injunction preventing the defendants from constructing ten toilets on the land described in the schedule to the plaint.

When the case was taken up for trial on 06.05.2004, issues were framed by both parties and after they were accepted by Court, the parties agreed that issues 18(1), 18(2), 18(3) and 19 be taken up as

preliminary issues of law in terms of section 147 of the Civil Procedure Code. Those issues read as follows :

- Issues No. 18(I) : Have the notices under section 214(1) of the Pradeshiya Sabha Act, not been issued ?
- No. 18(II) : Has the plaint not been filed in terms of section 214(2) of the Act ?
- No. 18(III) : Is this action filed against the officers or the members of the Pradeshiya Sabha in their personal capacity and contrary to section 215(1) of the said Act ?
- No. 19 : If the answer to issues 18(1), 18(2) and 18(3) are answered in favour of the defendants should the plaint be dismissed in *limine* ?

Thereafter the parties agreed to file written submissions and invited the Court to make its order on the written submissions filed. Accordingly, the parties filed their written submissions and on 07.07.2004 the learned District Judge delivered the order.

In his order dated 07.07.2004 the learned District Judge had held that though the plaintiff had failed to give notice under section 214 of the Pradeshiya Sabha Act, the plaintiff can give notice to the defendants in terms of section 461(A) of the Civil Procedure Code and thereby the failure to give notice under section 214 of the Pradeshiya Sabha Act could be cured. Accordingly, the learned Judge had stayed further proceedings of the action and ordered the plaintiff to pay costs to the defendants.

The question that arises for determination is, whether the failure to send notices under section 214 of the Pradeshiya Sabha Act is fatal and if so whether such failure could be cured by sending the notices subsequently under section 461(A) of the Civil Procedure Code.

Section 214(1) of the Pradeshiya Sabha Act states as follows :

“No action shall be instituted against any Pradeshiya Sabha or any member or any officer of the Pradeshiya Sabha or any person acting under the direction of the Pradeshiya Sabha for anything done until the expiration of one month next after notice in writing shall have been given to the Pradeshiya Sabha or to the defendant, stating with reasonable certainty the cause of such action and the name and place of abode of the intended plaintiff and of his Attorney-at-Law or agent, if any, in such action.”

In terms of section 214(1) of the Pradeshiya Sabha Act the plaintiff cannot file action against a Pradeshiya Sabha until and unless a period of one month has lapsed from the date of such notice mentioned in the aforesaid section 214(1). It appears that the law has provided for the Pradeshiya Sabha to have one months notice of the action to be filed by a party against it, to provide sufficient time to obtain appropriate legal advice and to take whatever step the Pradeshiya Sabha considers necessary.

In these circumstances the question that arises is whether the provisions in section 214(1) of the Pradeshiya Sabha Act are imperative or only directory. In this regard “Maxwell on The Interpretation of Statutes” 12th edition at pages 314, 315 states as follows :

“It is the duty of Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. And Lord Penzance said : I believe as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter ; consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act ; and upon a

review of the case in that aspect decide whether the matter is what is called imperative or only directory.”

The object of the provisions of the section 214(1) of the Pradeshiya Sabha Act is to provide an opportunity to the person concerned, by way of written notice, to know the cause of such action and the name and address of the intended plaintiff and of his Attorney-at-Law or agent, if any, in such action. Therefore it will be seen that the provisions of section 214(1) of the Pradeshiya Sabha Act casts a specific duty to serve notice on those entitled to such notice under the provisions. This is to afford an opportunity to the person mentioned in the section to consider his position in regard to the claim made by the intended plaintiff.

In these circumstances, I am of the view that the statutory requirement found in section 214(1) of the Pradeshiya Sabha Act is mandatory. In my view the aim and object of the provisions of section 214(1) would be defeated if it is disregarded. Generally, enactments regulating the procedure are imperative.

The next question to be considered is whether the failure to give notice in terms of section 214(1) of the Pradeshiya Act is fatal and whether it could be cured by resorting to the provisions of section 461(A) of the Civil Procedure Code.

The learned District Judge held that the plaintiff can make use of the provisions of section 461(A) of the Civil Procedure Code to give notice to the defendant and stayed further proceedings of the action for a period of one month. It is to be observed that even though the Civil Procedure Code provides for such procedure, the Pradeshiya Sabha Act does not provide for such procedure.

Section 461 of the Civil Procedure Code states that no action shall be instituted against the Attorney General as representing the State, or against a Minister, Deputy Minister or Public Officer, in respect of an act purporting to be done by him in his official capacity, until the expiration of one month next after notice in writing has been delivered to such Attorney-General, Minister or Deputy Minister or Officer (as

the case may be) Section 461(A) of the Civil Procedure Code was introduced to provide for the procedure to be followed where such notice has not been given under section 461 prior to the institution of the action:

In this case the 1st and 2nd defendants are the Chairman and the Secretary of the said Pradeshiya Sabha. The 3rd and the 4th defendants are the officials of the Pradeshiya Sabha. Section 461 of the Civil Procedure Code refers to an action instituted against the Attorney General as representing the State or against a Minister etc. However, the Pradeshiya Sabha Act, No. 15 of 1987 provides a special procedure where an action is instituted against the Pradeshiya Sabha or against its officials, even though the said procedure is similar to that provided under section 461 of the Civil Procedure Code. However, the Pradeshiya Sabha Act has not provided a procedure where no notice has been given under section 214(1) of the said Act.

It appears that section 461A of the Civil Procedure Code was brought in to supplement section 461 of the Code where no notice as required by section 461 has been given prior to the institution of the action and objection is taken prior to or in the answer that no such notice has been given. It is to be noted that a Pradeshiya Sabha is not a component or part of the State. Section 461 of the Civil Procedure Code applies when an action is instituted against the Attorney-General as representing the State or against a Minister or Deputy Minister or Public Officer in respect of an act done in his official capacity. A Pradeshiya Sabha is not a component of the State and even though sometimes it may receive funds from the Government, it is independent and non-governmental. It is to be seen that section 214 of the Pradeshiya Sabha Act is not identical to section 461 of the Civil Procedure Code. The provisions in section 214(1) of the Pradeshiya Sabha Act cannot be compared with section 461A and section 461A of the Civil Procedure Code cannot be construed to cure the defect where no notice has been given in terms of section 214(1) of the Pradeshiya Sabha Act.

In these circumstances, it is my considered view that the learned District Judge has erred in law in holding that the provisions of section 461(A) of the Civil Procedure Code could be applied where no notice

as required by section 214(1) of the Pradeshiya Sabha Act has been given prior to the institution of the action and the defect could be rectified by allowing the plaintiff to have recourse to the section 461A of the Civil Procedure Code. Therefore it seems to me that the failure to comply with the provisions in section 214(1) of the Pradeshiya Sabha Act cannot be cured by recourse to section 461A of the Civil Procedure Code.

The appeal is accordingly allowed with costs fixed at Rs. 5,250.

ANDREW SOMAWANSA, J. (P/CA). – *I agree.*

Appeal allowed.
