

In re Application of CANAGARATNE for a Mandamus.

Ordinance No. 7 of 1886, s. 4—Right of householder to water service for private use—Duty of officer in charge of Waterworks to supply water on the premises—Application for a mandamus.

Under the Ordinance No. 7 of 1886 the Government is bound to supply drinking water within the Municipality of Colombo, but not on the premises of a householder for his domestic use.

Where there is a public standpipe in the neighbourhood of a house from which its owner is able to take water for his domestic use, and the officer in charge of the Waterworks is not prepared to recommend to the Government that the private supply asked for be granted.

Held that such householder is not entitled to a *mandamus* on the officer to compel him to provide such service.

MR. H. J. C. CANAGARATNE appeared in person and moved for a rule on Mr. MacBride, the Director of Public Works, to show cause why a *mandamus* should not be issued on him to provide water service to the private residence of the applicant. He submitted an affidavit and also correspondence which passed between him and the Director and others on the subject of the water service he required.

In the affidavit Mr. Canagaratne set forth that he was a resident of Colombo; that he applied to the Director of Public Works for private service of water to house No. 121, Jampettah street, Colombo, where he lived, and which belonged to him; that, not being favoured with an answer, he wrote to the Provincial Engineer, and was informed on the 23rd January last that private service could not be given him; that no reason was assigned for the refusal; that he personally interviewed him subsequently, when the Provincial Engineer promised to inspect his house, which, however, he did not do; that thereupon he complained to the Member of the Municipal Council for St. Paul's Ward, where the house in question was situate; that the reason for the refusal was then stated to be that the house in question could only be classed as B 4, being a small house, not entitled to special connection with the main pipe; that, so far as he (the applicant) knew, there was no authority for such a classification; that the Director of Public Works was, he verily believed, the only person empowered by Government to allow a private service of water under Ordinance No. 7 of 1886, section 4; that several smaller houses than the applicant's had been allowed private service of water; and that he could not ascertain upon what principle houses were allowed water service.

Their Lordships (LAWRIE, A.C.J., and WITHERS, J.) having heard Mr. Canagaratne, refused his application.

22nd March, 1895. LAWRIE, A.C.J.—

A party applying for a *mandamus* must make out a legal right and a legal obligation. In my opinion the applicant has made out neither. He incidentally states that he resides in a house, 121, Jampettah street, Colombo, of which he is the owner ; but neither residence nor ownership give him a legal right to what he says he wants, viz., a private service of water. Provision was made by Government nine or ten years ago for a good supply of water for the town of Colombo, and by the Ordinance 7 of 1886 it was provided (section 4) that the Ceylon Government may, on application by the owner or occupier of any house, allow a private service of water to such house for domestic purposes, in such quantities and under such conditions as the Government deem reasonable. This seems to me to leave to Government the duty of considering each application for a private water service supply. It may be that the supply from Labugama is insufficient (there being only one main pipe) to allow of every house having a private supply ; it may be that in some parts of the town it is more difficult to give the supply than in others. Government reserved to itself (or perhaps, strictly speaking, the Legislature expressly gave to Government) the duty of supplying the citizens with water under such conditions as the Government deemed reasonable. It did not confer on any citizen the right to have a supply of water for his private use. The wants of the public have first to be considered, and the officer addressed by the applicant says that he is not prepared to recommend that the private supply asked for be granted. It seems to me there is an end of the matter, unless, indeed, the applicant should address some higher officer of Government in the hope of the subordinate's ruling being reversed. He need not come to the Supreme Court, which is ready to issue writs of *mandamus* on all judicial officers who fail or exceed in the duties connected with the administration of justice, but which is slow to interfere in matters not judicial with which this Court can have no special knowledge, and which the Legislature has left to officers who are not judicial, over whom in the ordinary course this Court does not claim jurisdiction.

WITHERS, J.—

Under the Ordinance referred to, namely, No. 7 of 1886, the Ceylon Government is bound to supply a quantity of *drinking* water within the Municipality of Colombo ; but it is not bound to supply water on the premises for the domestic use of the owner or occupier of the house within the Municipality. It may do so on his application, in such quantities and under such conditions

as the Government deem reasonable. The power of allowing a private supply of water to a house so situate for domestic purposes has been placed in an officer called the Waterworks Engineer. No doubt there are cases in which a person who has a discretion to do or not to do something by statute has been compelled by *mandamus* to do what he refused to do capriciously. But it is quite unnecessary to consider this matter from that point of view. The applicant for a rule against this officer admits that there is a public standpipe in the neighbourhood of his house from which he is able to take water for the domestic use of himself and his household. This is, no doubt, not so convenient to him as if the water were laid into his house. But his ability to obtain what he requires, though perhaps at some considerable inconvenience, in my opinion precludes him, in the circumstances of this case, from applying for this specific remedy. For this simple reason I would refuse the application.

