

1960

Present : Sansoni, J., and H. N. G. Fernando, J.

THE URBAN COUNCIL OF WELIGAMA, Appellant, and
I. L. M. M. ASURAF and others, Respondents

S. C. 410/1959—D. C. Matara, 365/MB

Urban Council—Lease of a meat stall in a market—Rate or fee payable—Urban Councils Ordinance, No. 61 of 1939, ss. 46, 48 (e) (ii), 170 (11) (m)—Municipal Councils Ordinance, No. 29 of 1947, ss. 156, 158, 272 (8).

The only fee leviable in respect of a stall in an Urban Council market is that fixed by by-law.

APPEAL from a judgment of the District Court, Matara.

N. K. Choksy, Q.C., with *K. N. Choksy*, for substituted plaintiffs-appellants.

C. Ranganathan, for defendants-respondents.

Cur. adv. vult.

December 13, 1960. H. N. G. FERNANDO, J.—

The Weligama Urban Council as plaintiff for whom the Special Commissioner Weligama Town was duly substituted sued the defendants for the recovery of rent claimed by the plaintiff to be due from the 1st defendant upon the lease of a meat stall at Weligama. The decisive question which arose was whether the Council had power to let the meat stall, by means of calling for tenders, to the highest tenderer. If there was this power then the Council or its successor, the Special Commissioner, would clearly be entitled to judgment against the 1st defendant and his guarantors, the 2nd and 3rd defendants. The meat stall in question forms part of the public market maintained by the Urban Council. Express provision regarding the letting of stalls in a public market is contained in section 170 (11) (m), of the Urban Councils Ordinance No. 61 of 1939, which empowers a Council with the approval of the Minister to make by-laws for the following purpose :—

“ in the case of public markets, the fixing and recovery of fees or rents for the use of the market premises or any part thereof, and of the buildings and bathing-places connected therewith, and for the leasing of the right to collect any such fees or rents ”,

and in fact by-laws made under corresponding power conferred by the former Local Government Ordinance. No. 11 of 1920 are now in force as though made under the present enabling power. The relevant by-laws are the following :—

“ 3. (1) No person shall use or occupy any stall, seat or space in a public market, unless he is the holder of a licence issued by or by the authority of the Chairman, or otherwise than in accordance with these by-laws and with such conditions as may be set out in the licence issued to him.

(2) Every such licence shall be in the form set out in Schedule A hereto.

“ 4. Every holder of a licence shall pay, in respect of the stall, seat or space occupied by him, rents or fees at the rates set out in Schedule B hereto.”

According to the former Secretary of the Urban Council who was the plaintiff's witness, the rent or fee payable under these by-laws for the stall occupied by the 1st defendant would be Rs. 30 per year. Upon the basis of the enabling power and the by laws to which I have referred above, the following issues were framed at the trial on behalf of the defendants :

“ 10. Has the plaintiff-Council the power under the existing law to lease the Galbokke meat stall of Weligama as stated in para (2) of the plaint ?

“ 11. What is the fee or rent that the plaintiff-Council has fixed under the by-laws framed under section 170 (11) (m) of the Urban Councils Ordinance No. 61 of 1939 for the use of the said market premises or any part thereof ?

“ 13. What is the total amount that the plaintiff-Council is legally entitled to levy from the 1st defendant in respect of the use of the said meat stall forming part of the Galbokke public market and the issue of the Butcher's Licence ? ”

The learned District Judge has answered issue No. 10 in favour of the defendants and accordingly dismissed the plaintiff's action but since an argument has been addressed to us on appeal which does not appear to have been considered in the judgment it seems desirable now to consider it.

Prima facie the by-laws which are quite clearly *intra vires* and deal directly with the recovery of rents and fees for stalls in a public market, appear to conclude the matter in favour of the defendants for according to them the proper rent for the stall in question would be (according to the computation of the former Secretary) only Rs. 30 so that the fixation of any other rent through tender would be beyond the Council's powers, but reliance was placed on section 48 (e) (ii) which gives power to the Council to “ let any land or building belonging to the Council or vested in it otherwise than by virtue of section 44 or section 46.” Section 46 provides for the vesting in an Urban Council of certain classes of property, including *inter alia* :

“ (c) all public markets and all works, erections or structures for the benefit or convenience of the public which may be constructed, erected, or provided under this Ordinance, or which may have been constructed, provided, or erected under any Ordinance hereby repealed, or which may be otherwise transferred to the Council or to any local authority of which the Council is the successor. ”

Apparently the site on which the present market stands was acquired by the Crown on application made by the former Sanitary Board of Weligama and thereafter vested in the Board by a vesting order under

the Small Towns Sanitary Ordinance of 1892. In view of that order it is contended that the market in question was not vested in the Council under section 46; that therefore the market is not excluded from the scope of section 48 (e) (ii) and that the Council therefore had power to lease the market or a portion of it.

This contention I am unable to accept. In the first place the various classes of property enumerated in section 46 (such as public parks, and gardens, public roads, streets, canals and bridges, public markets, public buildings, lamps, sluices, dams, etc.) quite clearly comprehend property possessed by the Council for the purpose of providing public services and amenities and the nature of these classes of property is inherently such that the idea of leasing any such property to private individuals would be almost absurd. Secondly, while it is correct that the site on which the market now stands was once a bare land and might in that condition have been leased out, nevertheless that site has now been converted into a public market, the premises whereof are now within the terms of section 46 (c) “works, erections or structures for the benefit of the public which may be constructed . . . under this Ordinance . . . or under any Ordinance hereby repealed”, i.e. the Small Towns Sanitary Ordinance.

There is yet another relevant consideration, namely, that when a person is given the right to sell meat at a public market what is leased to him is not the soil and premises of the market or of a portion thereof but rather (in the language of the by-law making power) the right to “the use of the market premises or a part thereof” or (in the language of the by-law itself) the right to “use or occupy a stall, seat or space in a public market”. In fact even the tender Notice P4 invited tenders for “the lease of the Council’s meat stalls”. The actual transaction in the contemplation of the parties was not that the 1st defendant would become the lessee of a part of the public market.

It is interesting in this connection to note that section 272 (8) of the Municipal Councils Ordinance, No. 29 of 1947, is not in the same terms as section 170 (11) (m) of the Urban Councils Ordinance. Section 156 of that Ordinance confers on a Municipal Council the power to charge such rents and fees as it may seem fit for the use of, or the right to expose goods for sale in, public markets; so that a Municipal Council need not adhere to scales of rents or fees fixed by by-law. In addition section 158 empowers a Municipal Council to let on lease on such terms as it may seem fit any public market or part thereof.

No similar powers are conferred by the Urban Councils Ordinance, and accordingly the only fee leviable in respect of a stall in an Urban Council market is that fixed by by-law.

For these reasons I would affirm the judgment appealed from and dismiss the appeal with costs.

SANSONI, J.—I agree.

Appeal dismissed.