

1976 Present : Sirimane, J., Vythialingam, J. and Wanasundera, J.

S. C. G. B. JAYAWARDENA, Plaintiff-Appellant

*and*

THE URBAN COUNCIL, JA-ELA, Defendant-Respondent

*S. C. 59/72 (F)—D. C. Negombo 1006/spl.*

*Urban Councils Ordinance, section 220—Action to be filed within six months of accrual of cause of action—Whether provisions of this section applicable—Effect of non-compliance.*

The plaintiff-appellant sued the Urban Council, Ja-Ela, for a declaration that certain taxes and rates levied by the council were null and void and any recovery of them by the seizure and sale of the plaintiff's properties illegal. One of the objections raised on behalf of the defendant council was that the plaintiff had failed to comply with the provisions of section 220 of the Urban Councils Ordinance, sub-section 1 of which prohibited the institution of an action in respect of anything done or intended to be done under the powers conferred on the council by the Ordinance, until after one month's notice in writing had been given and sub-section 2 of which states that every action referred to in sub-section (1) had to be filed within six months of the accrual of the cause of action.

It was argued on behalf of the plaintiff-appellant that the learned District Judge had erred in holding with the defendant Council on this question. It is submitted that the plaintiff's action was in the nature of a *qua timet* action seeking immediate relief by way of injunction and the provisions of section 220 aforesaid could have no application when a party comes into Court to prevent a threatened wrong.

*Held*: That the learned District Judge had rightly applied the provisions of section 220 of the Urban Councils Ordinance to the present case. The plaintiff's claim for a permanent injunction was merely a consequential relief and the action itself was one for a declaration that the rates and taxes levied by the Council were null and void.

Case referred to :

*Jayasundera vs. Municipal Council, Galle, 5 S.C.C. 174.*

**A**PPEAL from a judgment of the District Court of Negombo.

*Nimal Senanayake*, with *Saliya Mathew* and *Eric Basnayake*, for the plaintiff-appellant.

*H. W. Jayawardene, Q.C.*, with *Upul Jayasooriya* and *Miss P. Senaratne*, for the defendant-respondent.

October 10, 1976. WANASUNDERA, J.—

The plaintiff-appellant sued the Urban Council of Ja-Ela, the defendant, for a declaration that the assessment taxes and rates levied by the council for the years 1964, 1965 and 1966 are null and void, and any recovery of them by the seizure and sale of the properties of the plaintiff be declared illegal.

At the trial, with the consent of the parties, three issues were tried as preliminary issues. The learned District Judge decided the issue in favour of the defendant, and the present appeal is from that order.

Issue No. 6, which is one of these issues, relates to the need to comply with the provisions of section 220 of the Urban Councils Ordinance (Cap. 255). Section 220 (1) prohibits the institution of an action in respect of an urban council for anything done or intended to be done under the powers conferred by the Ordinance until the expiration of one month next after notice in writing to the appropriate parties. Subsection (2) states that every action referred to under subsection (1) shall be commenced within six months next after the accrual of the cause of action.

The rates sought to be declared void were those which the Council, purporting to follow in the normal procedures, had passed and had published in the Government Gazette. The 1964 rates were published in Gazette D5 of 18th October, 1963, those of 1965 in Gazette D6 of 2nd November, 1964, and the 1966 rates in Gazette D7 of 26th February, 1966. Notices demanding payment were served on the plaintiff on the following dates: for 1964 by notice D2 served on the 20th of April 1964, for 1965 by notice D3 served on 20th January, 1965, and for 1966 by notice D4 served on 3rd May, 1966. The plaint in this action was filed on 1st December, 1966, more than six months after the last notice was served. On those facts the learned District Judge held that the plaintiff's action was out of time.

Mr. Nimal Senanayake who appeared for the appellant argued that the learned District Judge erred in applying the provisions of section 220 to the present case. He submitted that the plaintiff's action was in the nature of a *quia timet* action asking for immediate relief by way of injunction, and that the provisions of section 220 could have no application when one comes into court to prevent a threatened wrong. He relied on the judgment of *Jayasundera vs. The Municipal Council, Galle*—5 S.C.C. 174. I find it unnecessary to consider this legal question as the case can be decided on the facts. It would appear from the plaint that the action is one for a declaration that the assessment rates and taxes are null and void. It is true that the plaintiff has also asked for a permanent injunction, but that is consequential relief. The recovery of the rates and taxes follows automatically from the previous assessments in terms of the relevant statutory provisions. Counsel for the plaintiff had opened his case and raised the issues on the basis that this was an action for a declaration that the assessments were void. Further, it is interesting to observe that, after the trial had commenced and the issues framed, the plaintiff was compelled to file additional papers by way of petition, asking for an interim injunction. This event took place more than 2½ years after the plaint was filed. As stated earlier, it was more than six months after the last notice was served that the plaintiff stirred himself and came into court. In this context,

having regard to the pleadings and the manner in which the case was conducted, I find it difficult to hold that this was the type of action referred to by counsel. I am therefore of the view that the learned trial Judge was right in applying the provisions of section 220 to this case.

The appeal is dismissed with costs.

SIRIMANE, J.—I agree.

VYTHIALINGAM, J.—I agree.

*Appeal dismissed.*