

1965 Present : Tambiah, J., and Sri Skanda Rajah, J.

D. J. RANAWEERA, Appellant, and THE COMMISSIONER OF INLAND REVENUE, Respondent

*S. C. 3/63 Inty.—D. C. Colombo, 15467T*

*Estate duty—Recovery of it by seizure and sale of property—District Court acts only as collecting court—Application by Commissioner for writ of execution unnecessary—Power of District Court to vacate its own order—Estate Duty Ordinance ss. 46, 57—Civil Procedure Code ss. 224 to 297, 337.*

When a certificate of collection to recover estate duty is sent by the Commissioner of Inland Revenue to a District Court in terms of section 57 of the Estate Duty Ordinance, it is incumbent on the District Court to issue a writ of execution to the Fiscal without any previous application by the Commissioner for the issue of such writ. In issuing the writ the District Court acts as a collecting court, and, as it does not act in a judicial capacity, may alter or vacate an order made by it.

**A**PPEAL from an order of the District Court, Colombo.

*H. W. Jayewardene, Q.C.*, with *P. Navaratnarajah* and *S. S. Basnayake*, for the appellant.

*M. Kanagasunderam*, Crown Counsel, for the respondent.

*Cur. adv. vult.*

January 22, 1965. TAMBIAH, J.—

This appeal raises an important question regarding the procedure to be adopted when a certificate of collection to recover estate duty is sent by the Commissioner of Inland Revenue, hereinafter referred to as the Commissioner, to a District Judge. On 2nd October 1961 a "certificate of collection" was sent by the Commissioner to the District Judge of Colombo to recover the sum of Rs. 1,014,636.73, as estate duty from the appellant, who was said to be in default. Writs were issued on the same date to the Fiscals of the Western Province and Matara. On 31st October 1961 the proctor for the appellant filed an application moving that the writs be recalled and that the application made by the Commissioner be dismissed. He also moved that the writs should be stayed till 1st February, 1962. On 31st October 1961 the court issued an order staying the execution of the writs till 1st February 1962 and issued notice on the Commissioner.

On 1st February 1962 notice was reported to have been served on the Commissioner. The proxy and the objections were to be filed on 15.3.1962, but the Commissioner did not file any objections on this date. Subsequently, on 26.3.62, the court made an order that the writs issued to the Fiscals of the Western Province and Matara be recalled. It was also ordered that in the event of the Commissioner making a fresh application, it should be made with notice to the petitioner.

On 21.4.62 the proctor appearing on behalf of the Commissioner filed his appointment together with a statement of objections in which he prayed that the properties mentioned in the certificate filed under section 56 of the Estate Duty Ordinance, dated 25th September 1961, be seized and sold. He also moved that the matter be fixed for inquiry. On 14.11.62, the inquiry was held and on 28.11.62 the learned District Judge made order dismissing the petitioner's application and directed the Fiscals of the Western Province and Matara to execute the writs. The appellant has appealed from this order.

The counsel for the appellant contended that the learned District Judge had no power to vacate his own order, staying the writs and directing that a fresh application should be filed by the Commissioner. The legal basis on which this argument is based is that any order made by the District Court on such application is a judicial act and that it cannot be vacated by the judge.

On a consideration of section 57 and other relevant sections of the Estate Duty Ordinance, it seems to me that the contention of the counsel for the appellant is not tenable. Section 57 is one of the group of sections dealing with the collection of estate duty. Once the Commissioner issues to the appropriate District Court a certificate, which is referred to in the Ordinance as the "Collection Certificate", containing the particulars of the duty payable, the name and address of the person by whom it is payable and the schedule of the property by the sale of which the duty may be recovered, it is incumbent on the District Court to issue a writ to the Fiscal or the Deputy Fiscal requiring him to seize and sell the property or such part thereof as he may deem necessary without any application by the Commissioner. The provisions of sections 226 to 296 of the Civil Procedure Code, *mutatis mutandis*, are made applicable to such seizure and sale of any properties under the writ.

It is significant that section 224 of the Civil Procedure Code, which deals with the form in which applications for writs should be made, and section 225, which imposes on the Court the duty to satisfy itself whether the application is in conformity with the rules, are not made applicable. It is also significant that section 337 of the Civil Procedure Code, which deals with the re-issue of writs, has also not been made applicable when the court acts under section 57 of the Estate Duty Ordinance.

It should further be noted that sections 226 to 297 of the Civil Procedure Code are only made applicable to seizures and sales effected under the writ issued under the Estate Duty Ordinance. There is no provision for an application for the issue of a writ under section 57 of the Income Tax Ordinance when a certificate of collection is sent by the Commissioner of Inland Revenue to the appropriate District Court. Once the certificate is sent to the appropriate District Court it is imperative on the part of the District Judge to issue the writ. The District Court acts as a collecting Court. No doubt, it would make appropriate orders under the relevant provisions of sections 226 to 297 of the Civil Procedure

Code, where it is called upon to adjudicate on claims made by others when properties are seized. Acting under its inherent powers, the Court could also make appropriate orders when it becomes necessary to do so in the interests of justice. Thus, for example, if it is alleged that the certificate is a forgery, the court is not precluded from going into that matter. The court could only act under a genuine certificate, and would hold an inquiry for the purpose of finding out whether the certificate is genuine.

There is no provision in the Estate Duty Ordinance to impose conditions on the Commissioner of Inland Revenue regarding any fresh application he should make in order to execute a writ.

It was urged on the authority of *Bandahamy v. Senanayake*<sup>1</sup>, that in an application for a writ on a "certificate of collection", sent by the Commissioner, notice must be issued to the assessee. In *Bandahamy v. Senanayake*, the Divisional Court, consisting of seven judges, was dealing with the question as to whether in an application for the execution of an award made under the Co-operative Societies Ordinance and the rules made thereunder, notice should issue to the person against whom the award had been given. Four out of the seven judges took the view that such a notice is necessary while the others dissented from this view. The majority view was based on the ruling in *Jaya-singhe v. Boragodawatta Co-operative Stores*<sup>2</sup>. In that case Gratiaen J. said as follows :

"The rule (the validity of which may be assumed for the purpose of the present appeal) does not lay down the procedure for making such applications, but it is the clear duty of a Court of law whose machinery as a Court of execution is involved to satisfy itself, before allowing writ to issue, that the purported decision or award is prima facie a valid decision or award made by a person duly authorised under the Ordinance to determine a dispute which has properly arisen for the decision of an extra-judicial tribunal under the Ordinance. In that event alone would the Court be justified in holding that the decision or award is entitled to recognition and capable, under the appropriate rule, of enforcement as if it were a decree of Court. To achieve that end, a person seeking to enforce an award should be required to apply either in a regular action or at least by petition and affidavit (in proceedings by way of summary procedure) setting out facts which prove that the purported award is prima facie entitled to such recognition. The Court should, in the latter event, enter an order nisi or interlocutory order granting the application, and notice thereof should be served on the opposite party so that he may be given an opportunity of showing cause against the proposed enforcement of the award. Then, and only then, would the Court be justified in permitting execution proceedings under the Civil Procedure Code."

<sup>1</sup> (1960) 62 N.L.R. 313.

<sup>2</sup> (1955) 56 N.L.R. 462.

It must be noted that under the Co-operative Societies Ordinance, there is no right of appeal from an award made by an arbitrator. Therefore the rule enunciated by Gratiaen, J. in *Jayasinghe's case* appears to be in accordance with the principles of natural justice. In the instant case, as stated earlier, there is no provision for application of a writ and a further opportunity is given to the person who is called upon to pay estate duty to appear and be heard before the Commissioner. Such person is also given the right of appeal to the Courts against the findings of the Commissioner.

Under section 57 of the Estate Duty Ordinance on the receipt of the certificate of collection, the duty is cast on the District Court to issue the writ. There is no provision for notice to issue to the assessee. It is a well known canon of construction that the Court should only interpret the law and not introduce words into a statute when the meaning is clear.

The Estate Duty Ordinance makes provision for the speedy recovery of estate duty due to the State. Under section 46 of the Estate Duty Ordinance, estate duty should be paid notwithstanding any appeal or notice of objection, unless the Commissioner of Inland Revenue orders that payment should be held over to a date specified by him. The Commissioner is given power to grant time for the payment of estate duty. It will be a serious fetter on the powers of the Commissioner if a Court should stay the writ when there is no provision of law to do so.

There are ample provisions in the Estate Duty Ordinance for the Commissioner to give relief in various ways to a person who is liable to pay estate duty. Thus a person could make payment in instalments, with the approval of the Commissioner (vide section 46 (3)).

In the instant case, the facts disclosed show that the Commissioner had given the appellant six years to pay the estate duty imposed on him and therefore no prejudice has been caused to the appellant. The counsel for the appellant also adumbrated an argument that the court, having recalled the writ, had no power to re-issue it once again. If his contention is correct the Commissioner of Inland Revenue will not be in a position to recover the duty at all in many cases.

For the reasons stated, I hold that the District Court acts as a collecting court and has to act *ex mero motu*, under section 57 of the Estate Duty Ordinance. In issuing a writ the court does not act judicially and therefore the principle that a judge cannot alter his own order has no application. The appeal is therefore dismissed with costs.

SRI SKANDA RAJAH, J.—I agree.

*Appeal dismissed.*