

1969

Present : de Kretser, J.

A. T. DURAIAPPAH, Appellant, *and* THE MUNICIPAL
COMMISSIONER, JAFFNA, Respondent

S.C. 19/69, with Application in Revision—M.C. Jaffna, 3521

Municipal Councils Ordinance (Cap. 252)—Section 226 (6)—Recovery thereunder of a surcharge—Ministerial nature of Magistrate's function.

Where a Municipal Commissioner makes an application to a Magistrate in terms of section 226 (6) of the Municipal Councils Ordinance to recover a sum certified by an auditor to be due from a person as a surcharge, the Court acts in an administrative capacity and has no jurisdiction to hold any judicial inquiry relating to the surcharge.

APPEAL and application in revision against an order of the Magistrate's Court, Jaffna.

C. Chellappah, for the petitioner and appellant.

C. Ranganathan, Q.C., with *K. Kanaga-Iswaran*, for the respondent.

Cur. adv. vult.

December 13, 1969. DE KRETZER, J.—

The Municipal Commissioner, Jaffna, filed an Application in terms of Section 226 (6) of the Municipal Councils Ordinance, Cap. 252, Volume 9 of the Legislative Enactments in the Magistrate's Court of Jaffna.

That Application was supported by the Affidavit of the Commissioner setting out the facts which gave the Magistrate jurisdiction in the matter. Once the Magistrate accepted the correctness of those facts all that the Magistrate had to do was to make the Order necessary for the recovery of the Sum stated as due as if it were a Fine, i.e., he had to order the issue of a Distress Warrant in terms of Section 312 (2) of the Criminal Procedure Code. Probably due to inadvertence the Municipal Commissioner had asked the Magistrate (a) to have copies of the petition, affidavit, and other annexures served on the Respondent and (b) to summon the Respondent to Court and order him to pay into Court to the credit of the Municipal Commissioner, Jaffna, the Sum of Rs. 29,172.50 in addition to asking the Magistrate to recover the said sum as if it was a fine imposed by the Court on the Respondent.

The Magistrate issued the Notices asked for and the result was that there were 2 Inquiries. The first was into a preliminary objection that the Municipal Commissioner had no power to make this Application as the Municipal Commissioner had ceased to exist with the dissolution of the Municipal Council. The Magistrate in a considered order which was delivered on 7.5.67 overruled that objection and thereafter there was an Inquiry into the other matters which were urged by Counsel for the present Appellant. The Magistrate had set those matters out as follows :—

- (a) that the amount alleged to have been paid by the respondent was not an item of accounting which was contrary to law ;
- (b) that the person who filed the surcharge certificate P2A did not hold the audit, and that some person unauthorised in law had done it, and that the surcharge certificate P1A was bad in law ;
- (c) that the averment that the respondent had made no representations under Section 225 (2) is false ;
- (d) that the respondent had in fact admitted an appeal under Section 226 (3) to the Minister, and that the Hon'ble the Minister had not made any order on the appeal, and that the appeal was still pending ;
- (e) that no loss or damage had in any event been caused to the Jaffna Municipal Council, and so the surcharge certificate had been wrongly issued.

He showed a curious appreciation of the fact that he had been given the opportunity of coming before a Court by pointing out that the Municipal Commissioner had no right to ask for anything other than the issue of a Distress Warrant for the recovery of the amount alleged to be due. He apparently submitted that in as much as no Distress Warrant was prayed for no Distress Warrant could issue apparently losing sight of the fact that the Commissioner had asked for the recovery of the Sum of money as a Fine and that it is by the issue of Distress Warrants that such a recovery is made.

I entirely agree with the submission that the Commissioner should have asked the Magistrate only to recover the amount as a Fine and need not have asked for summons, etc., on the Respondent to the Application. The Magistrate following the decision in 61 N.L.R. at Page 237 in which Justice T. S. Fernando held "it is not open to the Magistrate to enter upon an Inquiry to decide the question whether an Audit has been carried out properly" and cited the dictum of Schneider J. in *The Commissioner of Stamps v. Ahamadulevai*¹ "The Magistrate's Court is only invoked for the purpose of recovering the amount already determined. It has no jurisdiction over the question that amount is rightly due or not" and Ennis J. stated in *Gunawardena v. Gunasekera*² "it seems to me that Section 54 (2) (h) of the Village Communities Ordinance merely provides administrative machinery for recovery of sums due under the Ordinance upon Certificates of the Auditor", or Bertram C. J. said in the same Case the provision "merely empowers and directs the Magistrate to do an Executive Act, viz., to execute the Order of the Authority making it" (It is necessary to note that the terms of Section 54 (2) (h) of the V.C. Ordinance is in identical terms as Section 226 (6) of the Municipal Councils Ordinance) held that the Court had no jurisdiction to hold an Inquiry into the matters urged by the Respondent (*Duraiappah*). He gave the Respondent time to pay the money and stated that if he failed to do so the machinery available would be brought into operation to recover the money.

Duraiappah the Respondent to the Application appealed from this Order. No appeal lies against such an Order (vide 24 N.L.R. 255) and the Appeal is therefore rejected. Apparently realising that there is no Appeal from the Order, Papers in Revision were filed. I see no reason to give relief to the Petitioner in Revision. The Magistrate will now take steps to recover the Sum due as provided for by Section 312 of the Criminal Procedure Code if the Petitioner has not taken the advantage of the concession given him by the Magistrate and paid the amount as a Fine.

The Appeal is rejected, the Application in Revision is refused.

Appeal and application in revision dismissed.

¹ (1922) 24 N. L. R. 255.

² (1922) 1 T. L. R. 90.