

Present: Pereira J. and Ennis J.

1913.

SEYAPPA CHETTY v. MUNICIPAL COUNCIL, KANDY

367—D. C. Kandy, 22,310

*Municipal Councils Ordinance—By-laws—Ultra vires—Cutting off water for non-payment of amount due for water supplied—Prescription.*

A by-law giving power to the Chairman of the Municipal Council of Kandy, when default is made by a householder in the payment of any money due for water supplied, to turn off the supply of water is not *ultra vires*. In any case the by-law would be valid and effectual if, in terms of sub-section (4) of section 109 of the Municipal Councils Ordinance, 1910, it is laid before the Legislative Council and not annulled by it.

The right of the Municipal Council to recover an amount due for water supplied to a private individual is not barred in three months under section 236 of the Ordinance (section 288 of old Ordinance).

*Bawa, K.C.*, for the appellant.—The District Judge is wrong in holding that the by-law in question is *ultra vires*. The by-laws in question were placed before the Legislative Council as required by section 109, sub-section (4). Their validity cannot be questioned now. Counsel cited *La Brooy v. Ismail*,<sup>1</sup> *Raman Chetty v. Municipal Council, Kandy*<sup>2</sup>, *Colombo Municipal Council v. Uduma Lebbe Markar*<sup>3</sup>. Under the new by-laws the amount due is recoverable as a tax. The Chairman has therefore the power to distrain extra-judicially.

*Jayewardene*, for the plaintiff, respondent.—The plaintiff was not in default. He could not be said to have been in default when the amount was not ascertained. The sum due can only be ascertained by a judgment of the Magistrate. It is only when he is in default the Council could cut off the water. No attempt has been made

<sup>1</sup> 1 *Leader L. R.* 9

<sup>2</sup> (1909) 12 *N. L. R.* 249; 2 *Cur. L. R.* 94.

<sup>3</sup> 1 *A. C. R.* 38.

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to recover the amount due in the manner set out in the Ordinance (sections 281 and 282 of Ordinance No. 7 of 1887). The Council could not therefore cut off the water.

No steps were taken to recover the amount due within three months after the money had become due. The right to recover the amount is therefore barred under section 283 (Ordinance No. 7 of 1887).

Bawa, K.C., in reply.

Cur. adv. vult.

December 11, 1913. PEREIRA J.—

As explained by the District Judge, the question in this case is, as to the right of the Municipal Council of Kandy to fix meters on water pipes for the purpose of regulating the supply of water to private houses, and to cut off the water supply when the householder fails to pay for water supplied in excess of a certain fixed quantity. The Council claimed the right under its by-law No. 173. The by-law gave the power to the Chairman of the Council, where default was made by a householder in the payment of any money due for water supplied, to turn off his supply of water. It has been said that this by-law is *ultra vires*, and it has been contended on behalf of the Council that, in view of the terms of section 109 of Ordinance No. 6 of 1910, no objection can be raised to a by-law duly passed on the ground of its being *ultra vires*. The District Judge has been at pains to point out that section 109 does no more than give by-laws the effect of law provided they are *intra vires*. It would seem so, if we shut our eyes to sub-section (4) of section 109 of the Ordinance. That sub-section provides for the laying of by-laws before the Legislative Council to enable that Council, by resolution, to annul them if so minded. In such a case, following the analogy of a decision by the House of Lords with reference to sub-sections (4) and (5) of section 101 of the Patents, Designs, and Trade Marks Act, 1883, which provided that any rules made by the Board of Trade in pursuance of that section should be laid before both Houses of Parliament, and that if either House "within the next forty days resolved that such rules or any of them ought to be annulled, the same should after the date of such resolution be of no effect" (see *Institute of Patent Agents v. Lockwood*<sup>1</sup>), this Court has held that the validity of by-laws that have passed through the process prescribed in sub-section (4) of section 109 cannot be questioned. (*La Brooy v. Ismail*,<sup>2</sup> *Colombo Municipal Council v. Uduma Lebbe Markar*,<sup>3</sup> *Muttu Ramen v. Municipal Council of Kandy*.<sup>4</sup>) Section 11 of Ordinance No. 21 of 1901 cited by the District Judge has no application to such by-laws. It applies to rules and by-laws ordinarily passed, and in respect of which no such special procedure as

<sup>1</sup> (1894) A. C. 347.

<sup>2</sup> 1 L. L. R. 9.

<sup>3</sup> 1 A. C. R. 38.

<sup>4</sup> Cur. L. R. 49.

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that laid down in sub-section (4) of section 109 has been provided for. Moreover, I am not prepared to say that the by-law is *ultra vires*. In view of what I have said already, it is not necessary to enter into the details of the facts in connection with the question here involved. Suffice it to say that I have examined the different enactments referred to by the District Judge, and they appear to me to vest full authority in the Municipal Council to pass such a by-law as by-law No. 173.

The next matter pressed upon us was that the right to recover the amount due from the plaintiff for excess of water consumed was barred by section 283 of Ordinance No. 7 of 1887, inasmuch as steps for such recovery under sections 281 and 282 (corresponding to sections 234 and 235 of Ordinance No. 6 of 1910) had not been taken within three months after the money had become due. But it seems to me that section 283 of Ordinance No. 7 of 1887 has no application to this case. No doubt, by-law No. 159 provides that sums due in respect of the supply of water are recoverable in the manner provided by sections 281 and 282 of Ordinance No. 7 of 1887, but there is no mention there of section 283. On the other hand, it is provided by the amending by-law that the sum is recoverable "as if it were a tax under the Municipal Councils Ordinance," but section 283 applies only to fines and penalties in respect of certain offences under the Ordinance. It has been said that the only mode of recovering the amount due was that laid down in sections 281 and 282 of Ordinance No. 7 of 1887, and that therefore it was not open to the Council to cut off the water supply; but it seems to me that the right to cut off the water supply is a right quite independent of the right to recover any amount due for water supplied. It is mainly intended to save the Council from any obligation to continue to let a householder consume water who has not paid for water already consumed.

I do not think that any of the contentions pressed or even raised by the plaintiff are tenable, and I would set aside the judgment appealed from and dismiss the plaintiff's claim with costs.

ENNIS J.—I entirely agree.

*Set aside.*