

1960

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

S. B. L. PERERA, Petitioner, *and* THE CHAIRMAN, URBAN COUNCIL, DEHIWELA-MT. LAVINIA, Respondent

S. C. 608—In the matter of an Application for a Mandate in the nature of a Writ of Mandamus under Section 42 of the Courts Ordinance (Cap. 6)

Mandamus—Urban Council—Right to compel Chairman to exercise some power which the Council has decided to exercise—Urban Councils Ordinance.

An executive officer of a Local Authority cannot be compelled, by *mandamus* sought by a private individual, to carry out a resolution of the Local Authority relative to the exercise of its powers but not to the performance of any statutory duty imposed on it.

APPPLICATION for a writ of *mandamus*.

F. A. de Silva, in support.

Cur. adv. vult.

February 2, 1960. H. N. G. FERNANDO, J.—

This was an application for a Writ of Mandamus against the respondent who is the Chairman of an Urban Council. The petitioner alleges *inter alia* that he made an application to the Urban Council for the exchange of a certain land of which he was the owner, that is to say, for the transfer

to him by the Council of land vested in the Council in exchange for the land owned by him. He alleged that the application was recommended for acceptance by the Working Committee of the Council and thereafter approved by the Council by resolution but that the respondent had declined to execute the resolution. He seeks from this Court a Writ of Mandamus directing the respondent to give effect to the recommendations by taking steps to effect the exchange of land.

I was not referred to any provision of the Urban Councils Ordinance which confers on the petitioner a statutory right to a grant of land in exchange for his own land, and I accordingly invited counsel for the petitioner to submit authorities in support of the proposition that a Chairman of an Urban Council can be compelled at the instance of a private individual to carry out a resolution of the Council relative to the exercise of its powers but not to the performance of any statutory duty imposed on the Council. After reserving judgment I have been referred to two English cases:—*Attorney General v. De Winton*¹ and *Regina v. Saunders*². In each of these cases *the Crown* successfully sued an officer of a statutory body impeaching the accounts of the body on the ground that expenses not legally chargeable to the funds of the body had been so charged. Even if it can be said (and I do not agree that it can) that similar suits would lie at the instance of a private individual to impeach the accounts of a statutory authority, these two cases certainly do not support the proposition that this Court has jurisdiction at the instance of a private individual to compel an executive officer of a Local Authority to exercise some power which the authority has decided to exercise. I refuse the application.

Application refused.

¹ (1906) 2 *Chancery* 106.

² (1854) 3 *E. & B.* 763.

