

1967

Present : T. S. Fernando, A.C.J.

K. SHANMUGAM, Appellant, and THE MUNICIPAL COMMISSIONER,
JAFFNA, Respondent

*S. C. 921/67 (with Application in Revision No. 385 of 1967)—M. C.
Jaffna, 3178*

Municipal Council—Municipal accounts—Surcharge—Non-payment of amount surcharged—Whether it is an “offence”—Recovery of surcharge—Procedure—Effect thereon of dissolution of Council—Municipal Councils Ordinance (Cap. 252), ss. 34, 172, 226 (1), 226 (3), 226 (6), 277, 286 (3), 308, 327.

Where an order of surcharge in respect of a sum of money is made against a person under section 226 (1) of the Municipal Councils Ordinance, the non-payment of the amount surcharged does not constitute an offence contemplated in section 308 of the Ordinance.

Where the Municipal Commissioner initiates proceedings in the Magistrate's Court under section 226 (6) of the Municipal Councils Ordinance for the recovery of the surcharge as a fine of court, the proceedings may be continued by the Municipal Commissioner even if the Municipal Council happens to be dissolved subsequently by reason of an Order made by the Minister in terms of section 277 of the Ordinance. It cannot be contended that, with the dissolution of the Municipal Council, the Municipal Commissioner himself ceases to function as such.

APPEAL, with application in revision, from a judgment of the Magistrate's Court, Jaffna.

C. Thiagalingam, Q.C. with *L. W. Athulathmudali*, for the appellant (petitioner).

S. Sharvananda, with *K. Kanag-Iswaran*, for the respondent.

Cur. adv. vult.

November 25, 1967. T. S. FERNANDO, A.C.J.—

The appellant who is also the petitioner on the application in revision was at one time the Municipal Commissioner of the Municipal Council of Jaffna, and there is no dispute that the Auditor-General, acting in terms of section 226 (1) of the Municipal Councils Ordinance (Cap. 252) made on 23rd March 1962 as against him an order of surcharge in respect of a sum of Rs. 3,466-05. It would appear that the appellant failed to appeal to the Minister within the time provided for by section 226 (3) of the same Ordinance, and it was stated at the argument that an application to this Court designed to obtain a hearing of the defective appeal was itself unsuccessful.

On 10th March 1966, the then Municipal Commissioner, Jaffna, instituted proceedings in the Magistrate's Court to recover the sum surcharged together with a further sum of Rs. 300 said to have been incurred by way of costs and expenses. In spite of several objections raised by the appellant before the Magistrate, the latter made order on 13th July 1967 that the sum of Rs. 3,766.05 be recovered from the appellant as if it were a fine—vide section 226 (6).

It was conceded that an appeal against the Magistrate's order of 13th July 1967 was not competent, and I therefore dismissed the appeal.

On the application presented seeking a revision of the order against which an appeal was not competent, Mr. Thiagalingam raised two points. He first sought for the petitioner a way of escape in section 308 of the Ordinance which imposes a period of limitation for the entertainment of complaints in respect of offences. I was quite unable to agree that non-payment of an amount surcharged in terms of section 226 constitutes an offence contemplated in the said section 308.

The first argument of Mr. Thiagalingam referred to in the above paragraph having failed, he then addressed his second argument which was based on the dissolution of the Municipal Council of Jaffna on 29th May 1966 by Order made by the Minister of Local Government acting in terms of section 277 of the Ordinance. Shortly put, his argument was that, with the dissolution of the Municipal Council, the Municipal Commissioner himself ceased to function as such. The dissolution having taken place after the Municipal Commissioner initiated this proceeding in Court, his submission was that there is now no complainant on the record who is competent to recover the surcharge as a fine of court. He sought to derive some support for his argument in the definition of "Commissioner" contained in the interpretation section 327 of the Ordinance, his point being that, as soon as the Council ceased to exist, the Commissioner himself loses his functionary existence. This argument ignored the effect of many sections of the Municipal Councils Ordinance. For example, section 286 (3) declares that, during the period elapsing between the dissolution of a Council under section 284 and the constitution of a new Council, the Commissioner shall exercise all the powers etc. of the dissolved Council. Again, even in the case of a dissolution by reason of an Order under section 277, between the time of dissolution and the appointment of a Special Commissioner, all the powers etc. of the Council and even of the Mayor and the Deputy-Mayor are exercisable by the Commissioner—section 277 (4). By section 34 a Municipal Council is declared a corporation with perpetual succession and a common seal which remains at all times in the custody of the Commissioner. During the periods contemplated in section 277 (4), contracts may well have to be entered into, and the Commissioner is fully competent to do so as being in the exercise of a part of the power of the Council in spite of its dissolution. Moreover,

section 172 entrusts responsibility for the custody of all books etc. of the Council solely to the Commissioner. It is unnecessary to undertake an examination of all the provisions of the Ordinance in a search for other examples. It is sufficient to state that section 226 (6) itself imposes the duty of recovering the amounts surcharged not on the Council, but on the Commissioner alone. I was unable to find any merit even in the second argument.

I have indicated shortly the reasons why at the conclusion of the argument I made order that the application in revision be also dismissed.

Appeal and application in revision dismissed.
