

1957

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

D. H. S. GUNAWARDENA, Appellant, and S. C. PATRICK
(Public Health Inspector), Respondent

S. C. 4—M. C. Gampola, 16,048

Urban Council—Dissolution of Council—Special Commissioner—Scope of his powers—Secretary of Council—Closing order obtained on his application—Validity thereof—Housing and Town Improvement Ordinance (Cap. 199), s. 76—Urban Councils Ordinance, No. 61 of 1939, s. 196.

Where an Urban Council is dissolved under section 196 of the Urban Councils Ordinance and a Special Commissioner is appointed, the power conferred on the Chairman by section 76 of the Housing and Town Improvement Ordinance to apply for a closing order in respect of an insanitary dwelling-house may be exercised by the Special Commissioner. The Secretary of the Council is not entitled to make such an application if he had not been authorised to do so by the Council, when it was in office.

APPEAL from a judgment of the Magistrate's Court, Gampola.

B. Jayasuriya, for the accused-appellant.

D. S. Jayawickreme, Q.C., with *J. V. M. Fernando*, for the complainant respondent.

Cur. adv. vult.

April 12, 1957. H. N. G. FERNANDO, J.—

The appellant has been convicted of inhabiting a dwelling-house in breach of a closing order made under the Housing and Town Improvement Ordinance (Cap. 199)—an offence punishable under section 81 of that Chapter. Several objections were taken at the argument to the validity of the closing order.

The premises in question form part of a building owned by the Urban Council of Nawalapitiya, and it is argued that the procedure of prohibiting habitation by means of a closing order has been adopted as a device to eject the appellant in evasion of the provisions of the Rent Restriction Act. Even if there be any truth in this allegation, it is not one which I can entertain at this stage. Any representation that the application was being made in bad faith and not on the ground of the "unfitness" of the premises should have been made to the Magistrate, and thereafter have been made the subject of an appeal against the closing order.

The officer who is empowered by section 76 of Chapter 199 to apply to a Magistrate for a closing order is the Chairman of the local authority—in the present instance the Chairman of the Nawalapitiya Urban Council. During the relevant period, however, the Urban Council had been dissolved under section 196 of the Urban Councils Ordinance of 1939.

and a Special Commissioner had been appointed to administer the affairs of the town. In this situation, it is contended for the appellant that the powers conferred on the Chairman by section 76 of Chapter 199 could not have been availed of, because there was no "Chairman" in office at the time. I think the answer is to be found in sub-section (41) of section 196 of the 1939 Ordinance which provides that "all the powers vested in the Urban Council shall be deemed to be vested in the Special Commissioner". No doubt there is here no *express* transfer of powers vested in the Chairman, but the express vesting of the powers of the Council is in my opinion wide enough to include all statutory powers which are conferred on a person in his capacity as Chairman of a Council. The intention of the Legislature in enacting section 196 was manifestly to secure that the Urban Council area would be administered as before, but by a Commissioner instead of a Council or its Chairman.

I have just pointed out that the power conferred by section 76 on the Chairman could have been exercised by the Special Commissioner. But the application to the Magistrate for the mandatory order was in this case made, not by the Commissioner, but by the Secretary of the Council. While it may well be that the Council, when it was in office, had authorised the Secretary to take action under section 76, and while such a delegation might well be effective despite the dissolution, the difficulty I encounter here is that the record does not contain any reference to any such delegation, and my notice has not been drawn to any such act of delegation even if it be in existence. In the circumstances, I am constrained to hold that the Magistrate has purported to act without jurisdiction, in that he entertained an application which was made by an officer who was not shown to have the right to make the application, and to hold accordingly that the closing order was invalid.

In the exercise of the powers of this Court in revision I set aside the "closing order" of 28th December 1954 and the order and sentence passed by the Magistrate on 16th December 1955, and acquit the accused.

Order set aside.
