

1952

Present : Nagalingam A.C.J.

D. A. BASNAYAKE, Petitioner, and D. L. GUNASEKERA,
Respondent

S. C. 632—Application for a Writ of Prohibition

Writ of Prohibition—Lies only in respect of a judicial act.

In an application for a writ of prohibition it is essential that the act which is sought to be prohibited should be a judicial act, even though it be that of a quasi-judicial body.

Where a writ of prohibition was applied for against the Chairman of a Village Committee for the purpose of prohibiting him from collecting certain tax imposed on landed property by virtue of a resolution which was alleged to have been passed illegally by the Village Committee—

Held, that even if it could be argued that the Village Committee was acting as a judicial or quasi-judicial tribunal in imposing the tax, there could be no doubt that no judicial character could be attributed to the action taken by the respondent to recover the tax imposed by the Village Committee. The respondent, being an executive officer, was performing only an executive or administrative act. In the circumstances, the respondent's act did not provide scope for the grant of a writ of prohibition.

APPPLICATION for a writ of prohibition.

C. V. Ranawake, with *A. Nagendra*, for the petitioner.

H. W. Jayewardene, with *D. R. P. Goonetilleke*, for the respondent.

Cur. adv. vult.

April 24, 1952. NAGALINGAM A.C.J.—

A writ of prohibition directed to the respondent, who is the Chairman of the Village Committee of Wattala, is applied for in these proceedings by the petitioner who describes himself as an inhabitant and voter of the village area of Wattala, which is within the administrative limits of the Wattala Village Committee, for the purpose of prohibiting and restraining the respondent from collecting certain tax imposed on landed property by virtue of a resolution passed by the said Village Committee.

The respondent takes a preliminary objection to the application on the ground that it is misconceived in law and that on the facts averred by the petitioner a writ of Prohibition does not lie.

The ground upon which the petitioner makes his application for the writ is that the resolution passed by the Village Committee levying the tax had not been passed after the preliminaries in that behalf required under the law had been observed and that the tax levied is therefore illegal. The petitioner further alleges that the resolution imposing the tax was subsequently rescinded by another resolution and that as there were a large number of tax-payers who had not paid taxes for the period during which the tax was in operation, by a further resolution the Village Committee resolved that the collection of so much of the taxes as were then in arrear should be discontinued, the Village Committee thereby fully recognising not merely the iniquitous nature of the tax

levied but also the irregularity and illegality attendant upon the imposition. The petitioner also makes the further complaint that the respondent, notwithstanding these subsequent resolutions of the Village Committee, is taking steps to collect the arrears, and if need be, by seizure and sale of the property of the defaulting tax-payers.

The objection raised by the respondent has perforce to be determined on the basis that the facts set out and declared by the petitioner in his petition and affidavit are true in substance and in fact. I propose to deal with the objection on this basis, but before I do so, I think it proper to place on record that while the respondent has denied the illegality of the tax imposed he has also in his counter-affidavit explained the reason why it was that notwithstanding the resolution passed by the Village Committee rescinding the imposition of the tax and discontinuing the further collection of arrears he is debarred from giving effect to the resolution and staying his hands from recovery of the taxes. Under the Village Communities Ordinance, before resolutions such as these could become effective, they have to be approved by the appropriate Minister; and while there was ministerial approval for the imposition of the tax, there was none for the rescission thereof—the Minister in fact refused to approve the rescission—by reason whereof the resolutions of rescission and discontinuance of the tax became ineffective and incapable of being given effect to. The respondent says that he, being merely an executive officer, though no doubt the chief executive officer, was doing no more than give effect to and carry out the only effective resolution of the Council in taking steps to recover the arrears of tax in accordance with law by distraining in proper cases the goods and chattels of the defaulting tax-payers. In view of what I have already stated, it would follow that it is unnecessary to determine whether the statements of the respondent are supported by proof.

I shall now proceed to a consideration of the objection raised on behalf of the respondent. It would be noticed at once that the petitioner's complaint, insofar as it affects the respondent and has a bearing on the question before me, consists in the statement that the respondent was taking steps to collect the tax either by getting his officers to make demand or by distraining of goods. The resolution imposing the tax as well as those dealing with the rescission and discontinuance of it are obviously not, and cannot possibly be stated to be, any act of the respondent himself. They are by their very nature acts of a body of persons, and, in this instance, are the acts of the Village Committee, though no doubt the respondent himself was the Chairman of that Committee at the dates the resolutions were passed.

It is perfectly clear that whatever arguments may be advanced and contentions put forward in regard to the question whether the Village Committee was acting as a judicial or quasi-judicial tribunal in imposing the tax, there cannot be the slightest doubt that to the respondent cannot be attributed any judicial character in regard to the action taken by him to recover the tax imposed not by him but by the Village Committee. His act in enforcing the levying and collecting of the tax can in no sense be regarded as a judicial act. In fact he merely carries out certain statutory functions placed upon him by the Rules framed under the Village

Communities Ordinance (vide Rule 20 of Part VII of the Rules). He is vested with no powers to decide whether the tax should be levied or not. Nor is he under any duty to adjudicate upon any such question; he cannot hear parties and arrive at a decision with regard to the legality or propriety or otherwise of the tax imposed; he cannot admit representations to him on this question; there can be no proposition or opposition before him on the correctness of which he can pronounce an opinion. In short, his act is very far removed from a judicial act, and measures up fully to an executive or administrative act.

A Writ of Prohibition is described by Short and Mellor in Practice of the Crown Office¹ as "a judicial writ issuing out of a Court of superior jurisdiction and directed to an inferior Court for the purpose of prohibiting the inferior Court from usurping a jurisdiction with which it was not legally vested or, in other words, to compel Courts entrusted with judicial duties to keep within the limits of their jurisdiction". The writ has been extended in its application even to quasi-judicial bodies, but it is essential that the act to be prohibited must be a judicial act, even though it be that of a quasi-judicial body. In other words, while an improper or illegal administrative or executive act of a quasi-judicial body may not be reached by a Writ of Prohibition, a judicial act of such a body, the illegality or impropriety of which is established, can always be prevented by means of this writ.

I think I have said sufficient to shew that the act sought to be prohibited and restrained by the petitioner cannot in any sense be deemed to be a judicial act and cannot therefore provide scope for the grant of a writ of prohibition. In this view of the matter, it is unnecessary to decide whether the action of the Village Committee in imposing the tax can form the subject of a writ of prohibition, a question that was debated at the argument.

In view of the foregoing, the application cannot succeed and is therefore dismissed with costs.

Application dismissed.
