

1898.
October 24.

ALLIAR LEVVAI v. ISMAIL et al.

D. C., Batticaloa, 12,958.

Obstructing public servant in discharge of his duty—Ordinance No. 18 of 1892, ss. 7 and 9—Recovery of sanitary rate—Ordinance No. 16 of 1865, s. 41—Special authority from Government Agent to seize and sell—Evidence necessary to support charge—Penal Code, s. 183.

An officer seizing property of a person who has failed to pay the sanitary rate leviable under the 7th section of the Ordinance No. 18 of 1892 should have the special authority of the Government Agent to effect such service, as provided in section 41 of the Ordinance No. 16 of 1865.

A general authority "to seize any property whatsoever belonging to the persons who have made default in the payment of the sanitary rate assessment tax due by them for properties situated at," &c., is insufficient to justify the seizure of property belonging to a defaulter not mentioned by name.

On the money due being demanded and not paid, it is the duty of the Government Agent to furnish his officer with a list of persons in default, and a special authority to seize and sell the property belonging to such persons.

In the absence of such a special authority, a charge of obstructing a public servant in the discharge of his duty will not lie under section 183 of the Penal Code.

THE complainant, a rural constable, professing to act under the written authority of the Government Agent of the Eastern Province, went to the house of the accused to seize movable property in default of payment of tax recoverable under Ordinance

No. 18 of 1892. The accused obstructed him, and was charged under section 183 of the Penal Code for obstructing a public servant in the discharge of his duty. The Magistrate convicted him and sentenced him to pay a fine of Rs. 5, or in default of payment to seven days' rigorous imprisonment.

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The authority of the Government Agent ran as follows :—

“ By virtue of the powers vested in me by the 41st clause of Ordinance No. 16 of 1865 and the 9th clause of Ordinance No. 18 of 1892, I, Colin Alexander Murray, Government Agent, Eastern Province, do hereby authorize Rural Constable Ahamadu Levvai of Kattankudi to seize any property whatsoever belonging to the persons who have made default in the payment of the sanitary rate assessment tax due by them for properties situated at Kattankudi, within the limits brought under the operation of Ordinance No. 18 of 1892 by Proclamation in the *Government Gazette* No. 5,459 of 19th February, 1897. I further authorize the seizure and sale of any movable property to whomsoever belonging in or upon any house or tenement for which tax may be due.

“ Any property seized by virtue of this authority is to be sold in presence of the Pattu Vanniah, either at his office or at the spot, at any time not less than ten days, and within thirty days, of seizure, unless the amount due as tax, with costs, is sooner tendered.

“ Given under my hand this 5th day of August, 1898.

“ C. A. MURRAY,
“ Government Agent, Eastern Province.”

The accused appealed against the conviction.

Bawa, for appellant.

Van Langenberg, for respondent.

24th October, 1898. BONSER, C.J.—

In this case the appellant was fined Rs. 5 “ for that he did obstruct a public servant, to wit, Ahamadu Lebbe, rural constable, in the discharge of his public functions, to wit, the seizure of property in default of payment of the tax recoverable under Ordinance No. 18 of 1892, and thereby committed an offence punishable under section 183 of the Penal Code.”

It appears that the village of Katankudiyiruppu has been brought under the Ordinance No. 18 of 1892. That was proved by the production of the *Government Gazette*.

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Now, when a village is brought under the operation of that Ordinance it is declared by section 7 that it shall be lawful for the Board of Health of the Province once a year, if it shall think necessary, to make, with the sanction of the Governor and Executive Council, any rate on the annual value of all immovable property in the village, with a proviso that such rate is not to exceed 4 per cent. per annum on such annual value. Then provision is made for a valuation and for the recovery of the tax by reference to the Police Force Ordinance of 1865 and its amending Ordinances.

Now, section 5 of Ordinance No. 7 of 1866 amending section 35 of the Police Ordinance of 1865 provides that the assessment is to be made by three assessors appointed by the Governor. When that assessment has been made it is to be reported to the Government Agent, who may revise the assessment.

The Government Agent is to cause a notice of the assessment, with a demand for payment, to be served on each person liable. Then, if the tax be not paid, the Government Agent may seize and sell any movable property of the debtor, and the Government Agent is empowered to authorize any person, specially in writing, to seize and sell such property.

In the present case it was proved, as I said before, that the village had been brought under the operation of the Ordinance. It was proved that a Board of Health had been appointed for the Province in which that village is situated. It was proved that two persons had been appointed by the Governor to act as assessors for this village, but it was not proved that three persons had been appointed as required by the 5th section of the amended Police Ordinance. It was not proved that any notice of the assessment and demand for payment had been made. It was proved that this appellant was in the assessment list for a certain amount, but it was not proved that any rate had been made by the Provincial Board of Health and sanctioned by the Governor and Executive Council. It was proved that the complainant had served a general authority to seize and sell the property of defaulters, but it was not proved that he had any special authority as required by section 41 of the Police Ordinance, 1865. Therefore, it was not proved that he was acting in the discharge of his public functions. It seems to me to be essential to prove that he had a special authority to seize the property of the appellant. It would be a most dangerous thing if a person like the complainant were entrusted with a general authority to seize and sell the property of anybody he thought fit. My opinion of what is contemplated by the Ordinance is, that on the money being

demanding and not paid the Government Agent is to furnish his officer with a list of persons in default, and give him a special authority to seize and sell their property. This was not done in this case.

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I am therefore of opinion that it was unlawful for the complainant to seize the appellant's property, and that the appellant committed no offence in obstructing him.

