

**1977 Present: Wimalaratne, J. and Tittawella, J.**

**Y. B. PUSSADENIYA (ASSISTANT COMMISSIONER OF LOCAL GOVERNMENT) Petitioner, and O. DON WILFRED (CHAIRMAN, URBAN COUNCIL, HATTON) Respondent.**

*S.C. Application 505/76 – M.C. Hatton 6042*

*Application under Section 183(1) of the Urban Councils Ordinance – Surcharge – Magistrate's Court – Collecting Authority – Sections 183(1), (2), and (5) Urban Councils Ordinance.*

**HELD:**

Where an application is made under section 183(5) of the Urban Councils Ordinance to a Magistrate to recover a surcharge imposed by the Auditor-General, the Magistrate's Court is merely a collecting authority and nothing else. Questions of prescription and the correctness of the surcharge are beyond its jurisdiction.

## APPLICATION to revise the order of the Magistrate's Court of Hatton.

*P. Naguleswaran* with *A. P. Niles* for the respondent

*Cur. adv. vult.*

December 12, 1977. TITTAWELLA, J.—

The petitioner who is an Assistant Commissioner of Local Government seeks to revise an order of the Magistrate of Hatton made on the 21st May 1976 refusing to direct the recovery of a sum of Rs. 7914.25 from the respondent, a former Chairman of the Urban Council of Hatton, which amount had been imposed on him as a surcharge by the Auditor-General on the 23rd May 1974 under section 182(1) of the Urban Councils Ordinance.

The petitioner had on the 7th November 1975 filed before the Magistrate an application against the respondent under section 183(5) of the Urban Councils Ordinance to recover the said sum of Rs. 7914.25. The respondent had objected to this application on the following grounds:—

- (a) that the surcharge was not justified on the facts;
- (b) that the surcharge had not been imposed according to law;
- (c) that the liability sought to be incurred is prescribed under the Prescription Ordinance.

At the outset the petitioner had stated that the respondent had no right to question the validity of the Auditor-General's certificate and that there was no provision for an inquiry into the above matters before the Magistrate. The Magistrate however proceeded to hold an inquiry and the respondent gave evidence and called on his behalf another witness. In the course of the evidence and also according to the certificate filed it had transpired that the alleged loss for which the respondent was surcharged had been incurred in 1964 and that no audit had been done of the accounts of the Urban Council for about seven years.

The learned Magistrate in his order accepts the position that it is not open to agitate before him all the matters that resulted in the imposition of the surcharge. On this basis he holds that grounds (a) and (b) must fail. However he states that if the certificate on the face of it is defective then any application founded on it must necessarily fail. He then proceeds to say that the certificate itself reveals that the liability of the respondent was in October 1964. The date of the certificate being the 23rd March 1974 he argues therefrom that any claim against the respondent is prescribed under the terms of the Prescription Ordinance. He therefore holds that ground (c) must succeed and has dismissed the application of the petitioner. The learned Magistrate in his order states that if regular half year audits as contemplated in section 181 of the Urban Councils Ordinance had been conducted the liability incurred in 1964 by the respondent would not have been prescribed. He further adds that a certificate issued after nearly ten years cannot resurrect

a liability that has already been prescribed. In the circumstances he describes the certificate as being "a mere lifeless, invalid and a valueless string of words". It becomes necessary to state that this reasoning of the learned Magistrate discloses a total lack of appreciation of the provisions of the Prescription Ordinance as well as that of the Urban Councils Ordinance.

The relevant sections of the Prescription Ordinance deal with the periods of limitation of a right of **action** in the various instances. They state the periods of time which the law has fixed for the **enforcement** of such a right. These provisions merely bar the remedy without extinguishing the obligation. Section 54(2) of the Village Committees Ordinance is identical with section 183(5) of the Urban Councils Ordinance under which the present application has been made. T. S. Fernando, J. in the case of *The Chairman, Village Committee of Gandahe South v. P. B. Hippola*<sup>1</sup> had the following observations to make on a similar matter—

Upon a certificate of the auditor being produced before a Magistrate, I am of opinion that it is not open to the Magistrate to enter upon an inquiry to decide the question whether the audit has been carried out properly or whether the sum represented debts irrecoverable by reason of the provisions of the Prescription Ordinance.

I would, with respect, adopt these observation in the instant case.

Section 226(6) of the Municipal Councils Ordinance is also in identical terms with section 183(5) of the Urban Councils Ordinance and in the case of *A. T. Duraiappah v. The Municipal Commissioner of Jaffna*<sup>2</sup>, it was held by de Kretser, J. that—

Where a Municipal Commissioner makes an application to a Magistrate in terms of section 226(6) of the Municipal Councils Ordinance to recover a sum certified by an auditor to be due from a person as a surcharge, the (Magistrate's) Court acts in an administrative capacity and has no jurisdiction to hold any judicial inquiry relating to the surcharge.

A plain reading of section 183(2) of the Urban Councils Ordinance also makes it clear that the Magistrate's Court is merely a collecting authority and nothing else. Questions of prescription and the correctness of the surcharge are beyond its jurisdiction. The learned Magistrate in this case is clearly wrong. Acting in revision I set aside the order of the Magistrate dated 21.5.76 dismissing the application of the petitioner. I further direct the Magistrate to recover in terms of section 183(5) of the Urban Councils Ordinance the sum of Rs. 7914.25 from the respondent, O. Don Wilfred, together with all costs and expenses incurred in connection with the enforcement thereof as if it were a fine imposed by the Magistrate on the said O. Don Wilfred.

The petitioner will be entitled to the costs of this application.

WIMALARATNE, J.— I agree

*Order of Magistrate set aside.*

<sup>1</sup>(1957) N.L.R. 236 at 239 .

<sup>2</sup>(1971) 73 N.L.R. 230.