

1924.

*Present : Jayewardene A.J.*

In the Matter of an Application for a Writ of Mandamus  
on the Rubber Controller by S. D. S. SIRIWARDENE.

*Rubber Restriction Ordinance—Controller's right to vary assesment—  
False declaration by owner—Controller's power to remove estate  
from register—Ordinance No. 24 of 1922, s. 20 (h).*

The Rubber Controller has the right under rule 6 of the rules framed under section 20 (h) of the Rubber Restriction Ordinance to vary the standard production of an estate after the expiration of twelve months.

Where the owner of an estate made a false declaration of his output for the purpose of the assessment of standard production.

*Held*, that the Rubber Controller had no power to remove the estate from the register or to withhold the certificate till excess issues are wiped out.

**A** PPLICATION for a mandamus on the Rubber Controller. The applicant was the owner of a rubber estate which has been duly registered in conformity with the provisions of the Rubber Restriction Ordinance. He declared the actual output

of rubber for the year November, 1919, to October, 1920, was 13,674 lb., and the standard production was assessed at 708 lb. a month. The applicant was issued the usual certificate for this amount until September, 1923, when the Controller for purposes of reassessment for the period 1923-24, called for the applicant's account books to prove the 1919-20 output. The applicant produced a newly prepared account book which the Controller refused to accept. The Controller accordingly reassessed the applicant's estate under rule (1) of the rules framed under section 20 of the Ordinance dated November 10, 1922. He further removed the applicant's estate from the register, and refused to issue the certificates even at the reduced rate, till the excess issues were wiped out.

*L. H. de Alwis* (with him *Jayasuriya*), for applicant.

*Ilangakoon, C.C.*, for the Rubber Controller.

September 1, 1924. JAYEWARDENE A.J.—

This is an application for a mandamus on the Rubber Controller and it raises the question whether under rule 6 of the rules framed under section 20 (*h*) of the Rubber Restriction Ordinance, No. 24 of 1922, the Rubber Controller has the right to reassess the standard of production after the expiry of twelve months. The applicant is the owner of a rubber estate called Mayilawela Group about 21 acres in extent. This estate has been duly registered in conformity with the provisions of the Ordinance. He declared that the actual output for the year November, 1919, to October, 1920, was 13,674 lb., and the standard production was assessed on this declared output by the Controller at 708 lb. a month, and the applicant was issued the usual certificate for this amount until September, 1923. In September, 1923, for the purpose of reassessing for the period 1923 to 1924, the Controller called for the applicant's account books to verify the 1919-20 actual output figures. He then produced a newly prepared account book to prove the 1919-20 output. The Controller says that declarants have often given imaginary figures for the 1919-20 output, with the object of getting increased assessment, and when called upon to produce their books, they say that the original books have been lost or destroyed and produce newly prepared books with fictitious figures.

The Controller has refused to accept these new books in place of the books originally kept, and estates, tendering such books, have been assessed according to the rules laid down in rule (1) of the rules framed under section 20 of the Ordinance and dated

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November 10, 1922. The present applicant produced a recently prepared book to support his figures for 1919-20 but no original books or other documents were produced bearing out the figures in the new book. The Controller has accordingly reassessed the applicant's estate under rule 1 (1) of November 10, 1922, and reduced the exportable amount from 708 lb. to 308 lb. He has gone further and has removed the applicant's estate from the register, and has notified to him that no certificate would be issued to him till the excess issue is wiped off. The Controller very properly says that he is prepared to submit to any order this Court may make. He appeared before this Court by counsel, and his counsel very rightly did not seek to justify the action of the Controller in removing the name of the applicant's estate from the register, or his refusal to issue certificates even at the reduced rate till the excess issue was paid off. To this extent the applicant is entitled to succeed. The Controller, in my opinion, has no power to remove an estate from the register in the circumstances we have here, neither has he the power to withhold certificates till excess issues are wiped off. If an applicant makes a false declaration in any document required by this Ordinance to be verified, he is guilty of an offence under section 26 of the Ordinance and is liable on conviction to severe penalties. This section should be enforced when false declarations are made but the issue of certificates should not be withheld.

But the applicant's main contention is that neither under this Ordinance nor under the rules framed under section 20 has the Controller the right vary his assessment. This raises an important question with regard to the powers of the Controller. Section 6 of the Ordinance requires the proprietor to furnish returns containing certain particulars for the assessment of standard production, and sub-section (3) of the same section provides that on receipt of such return and after such inquiry, if any, as may be necessary, the Controller shall assess the standard production of an estate and notify the owner or proprietor of the assessment at which the standard production of the estate has been assessed. The standard production of an estate is to be an amount equivalent to the actual output of rubber of such estate during the twelve months commencing November 1, 1919, and ending October 31, 1920. Any person dissatisfied with the assessment by the Controller can appeal to the Rubber Restriction Board constituted under the Ordinance. Section 20 of the Ordinance gives the Governor in Executive Council the power to make rules for the purpose of carrying out the provisions of the Ordinance, and one of the purposes for which rules may be made is "(h)": "Providing for the periodical revision or reassessment of the standard production of each estate, and the application of all or any of the provisions of this Ordinance to such revision or reassessment."

Under section 20 (h) the following rule has been made :—

“ Except as otherwise provided in rule 9 of these rules, standard production, when assessed, may not be varied within a period of twelve months, but on the expiration of such period of twelve months, or any subsequent period of twelve months, any *proprietor* may apply for revision of the quantity for which his estate has been assessed, on the ground that further areas have since such assessment attained the age of five years and are in a condition to be tapped, or that the trees in certain areas have increased in age.”

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It is contended that under this rule the Controller has no power to vary an assessment after a period of twelve months, and that it confers on the proprietor alone the right to ask for a revision after the expiration of the period of twelve months or of any subsequent period of twelve months on the grounds given in the rule. In support of this contention a ruling of this Court in “ *Re the Application of H. C. de Fonseka for a Writ of Mandamus on the Rubber Controller* <sup>1</sup> ” is relied upon. I am unable to accept the applicant’s construction of rule 6. It is to be noted that section 20 (h) empowers the making of rules for the purpose of providing for the periodic revision and reassessment of standard production, and rule 6 has been made with the object of enabling this to be done. As I read rule 6, it contain two provisions, one of them is the main enactment which prohibits the varying of the standard production within twelve months. This, I think, necessarily implies that the Controller has the power to vary, and that power can be exercised after the expiry of twelve months, otherwise the prohibition to do so before the expiry of a limited time is meaningless ; it also contains a subsidiary enactment or proviso in favour of the proprietor. The main enactment applies to the Controller and the proviso to the proprietor. If this were not so, the words “ standard production, when assessed may not be varied within twelve months ” would be redundant. The fixing of the period shows that prohibition was to last for that period and no longer. If it was intended to create an absolute prohibition upon the Controller, the words “ within a period of twelve months ” would have been omitted.

The assessment is made by the Controller, and the words “ when assessed ” means when assessed by the Controller.

The rule does not say by whom the assessment is not to be varied, but it must mean by the Controller who made it originally.

In the same way, rule 9 says “ the standard production so allowed may be revised,” but it does not say by whom. The revision is clearly to be by the Controller.

<sup>1</sup> S. C. M., June 25, 1924.

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That part of the rule which begins with the word "but" must be regarded as an exception or proviso. It is a well-known canon in the interpretation of Statutes that effect must be given to the whole of a clause and to every part of it, and unless the construction indicated by me is regarded as the correct one, the words "standard production may not be varied within a period of twelve months" would become nugatory.

For a period of twelve months the Controller cannot vary the assessment, but after the expiration of that period he can vary the assessment on any ground that appears to him to call for such variation, but the proprietor is restricted to the periods and to the grounds given in the rule.

Further it is to be noted that in the first part of the rule or the main enactment, the word used is "vary," but in the second part which I have said amounts to a proviso, the words used are "may apply for revision."

The right to vary is, no doubt, not expressly given by the Ordinance or by the rules to the Controller, but, in my opinion, it is a necessary implication from the words used.

Thus in another application for a writ of mandamus on the Controller,<sup>1</sup> Bertram C.J. held that the Controller had the right to correct the register whenever necessary, although such a right was not expressly given to him by the Ordinance. There the learned Chief Justice said—

"The Rubber Controller, under sections 6 and 7, is under an obligation to prepare and keep a register. This obligation to keep the register confers upon the Rubber Controller a right, from time to time, to correct the register and to bring it up to date. There is nothing sacrosanct or unalterable about the original entries. From time to time there may be changes in the ownership of the property, and the Rubber Controller may require to correct the register, so as to give effect to alienations or forced sales; to orders or decrees of Courts, or to devolution of property on death.

"I take it that the Rubber Controller is further entitled, if he finds that a mistake has been made in the register, to take means to correct that mistake."

The register must contain, among other things, the assessed standard value of production. See section 7. But in the case of assessment, he cannot vary them until after the expiration of twelve months from such assessment. In H. C. de Fonseka's application for a mandamus, this decision of Bertram C.J. was

<sup>1</sup> S. C. M., December 14, 1923.

not referred to, nor does the attention of this Court appear to have been drawn to the substantive nature of the enactment in the first part of rule 6.

I would, therefore hold that the Controller has the right to vary the assessment after the expiration of twelve months.

In this case it was submitted to me that the applicant has lost or destroyed his books or papers on which he based his 1919-20 output. That is very unfortunate, but I suspect it to be false.

There is not sufficient proof here to convict the applicant of fraud or misrepresentation. On the whole I think the Controller was justified in reassessing the applicant's land for the purpose of fixing its standard production.

Let the application for the mandamus be made absolute to the extent to which I have held the applicant is entitled to succeed, that is, for the insertion of the name of the estate on the register, and for the issue to him of certificates for the amount fixed by him after the reassessment.

I make no order as to costs.

*Rule made absolute partially.*

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