

SENEVIRATNE

v.

DISTRICT DEVELOPMENT COUNCIL, COLOMBO

COURT OF APPEAL.

JAMEEL, J. AND ABEYWIRA, J.

C.A. 371/80 (F).

D.C. COLOMBO 1829 SPECIAL

SEPTEMBER 2, 1987.

Local Government Law – Town Council Assessment Register – Amendment – Failure to file objection in time – Suit for Rectification of Register – Rating and Valuation Ordinance s. 27 and 35 –

The Scheme of the Rating and Valuation Ordinance (Cap. 266) under Section 76 of which the relevant assessments of the premises referred to in this Case have been made postulates the preparation of Quinquennial Rating Assessment Lists. Supplementary lists could also be prepared. Under s. 27 of Cap. 266 objections could be filed when draft quinquennial or supplementary lists are deposited in the Office of the

Rating Authority. This deposit has to be made before 15th July of the year (s. 27 (1)) and the occupier of the property assessed has also to be notified before this date. The Occupier can inspect the Lists and file objections on or before 05th August of that year. The objections will be inquired into and determined before the lists are finalised and certified.

The premises in suit were assessed for the first time in 1973 as a "Weaving Centre". At the instance of the tenant this had been altered in 1974 to read "Tenant Land". It was only in 1978 that the plaintiff pursued his objections. Notice of the assessment had been served on him on 23.2.1978 and the objections taken were inquired into by the Special Commissioner who replaced the statutory Rating Authority. He rejected the objections on 7.2.1979 and plaint was filed on 21.2.1979, well within the one month time limit allowed by s. 35 (1).

Each assessment is independent of the other and an assessment for a particular year binds the assessed only for that year. No rule of estoppel applies.

The action was correctly filed in the M.C. which had jurisdiction when the plaint was filed.

Section 218 (1) of the Town Councils Ordinance requires a month's notice before an action filed on a cause of action which arises out of any act done under the powers conferred by the Town Councils Ordinance or its by-laws but the present action was for an act done under the Rating and Valuation Ordinance and will not attract the prohibition under s. 218. Further under s. 35 of the Rating and Valuation Ordinance action has to be filed in one month.

Case referred to:

Weerasinghe Arachehi v. Special Commissioner, Galle Municipal Council, 69 NLR 437.

APPEAL from judgment of the District Court of Colombo.

K. Shanmugalingam for plaintiff-appellant.

Substituted Respondent absent and unrepresented.

Cur. adv. vult.

October 28, 1987

JAMEEL, J.

On building application dated 6.12.1969 marked P1, the Plaintiff obtained the permission of the Mulleriyawa Town Council to construct a hall for business purposes and as per the extract from the Assessment Register (P2) admittedly the building is described therein as 'Asbestos Roofed Weaving Centre'.

It is the Plaintiff's case that the tenant who rented the premises from him in order to run a Weaving Centre, has, since entering into possession resided therein and persuaded the Rating Authorities to alter the description of the premises in the Assessment Register to read as 'Tenement and Land'. P2 shows this amendment as from the year 1974.

The Plaintiff says that he did protest and that evidence remains uncontradicted. However, he had not taken any further steps till he was served with the Notice of Assessment for the year 1978. That was on 27.3.1978, in respect of the 1978 assessment.

On this occasion his protest dated 5.4.1978 had been inquired into on 4.10.1978 and dismissed. The dismissal was notified to the Plaintiff by the document dated 7.2.1984, and is now produced marked P7. Thereon, the Plaintiff filed this case.

After trial the Learned Additional District Judge dismissed the Plaintiff's action for the following reasons as stated in the judgment, namely:

- (a) The objections of the Plaintiff to the Rating Assessment had not been filed in due time.
- (b) This action is not filed in due time.
- (c) This action was not instituted in the proper court, and
- (d) Plaintiff had not given one month's notice to the Town Council as required by Section 218 of the Town Councils Ordinance (Cap. 265 (1956) L.E.C.)

It is from that judgment that this appeal has been lodged. The only oral evidence led at the trial was that of the Plaintiff.

What the Plaintiff seeks in this case is a rectification of the entry in the Assessment Register giving the description of the premises and not the Rate or Quantum of the Rating Assessment. He desires that the Register should read 'Weaving Centre' and not 'Tenament'. That is; that it should be 'Business Premises' and not 'Residential Premises'. In the context of our Rent Laws and the Ceiling on Housing Law this misdescription can have far reaching effects and so does have great importance.

The Learned District Judge rejected the Plaintiff's case on the ground that the Plaintiff should have taken steps when the wrong entry was first made in 1974. He has held that the Plaintiff is therefore precluded from filing this action now. That is to say, on receipt of the notice for the 1978 assessment on 5.4.1978. Section 165 of the Town Councils Ordinance (Cap. 256) provides for the assessment of properties for the purpose of rates if the property is situated within the

limits of the council. But by the later Ordinance No. 30 of 1946 (Cap. 266) the sections of the Municipal Councils Ordinance made applicable to Town Councils by the above mentioned Section 165 of Cap. 256 were made inapplicable and as has been admitted in the answer the assessments relevant to this case have been under the provisions of Cap. 256 and Cap. 266. *Vide*:— Section 76 of Cap. 266.

While under the provisions of the Municipal Councils Ordinance a Municipal Council can revise its Assessment Registers ever so often, the Scheme of the Rating and Valuation Ordinance Cap. 266 postulates the preparation of Quinquennial Rating Assessment Lists. There is of course provision for the preparation of Supplementary Lists, during the intervening 2nd, 3rd, and 4th years. Under Section 27 of Cap. 266 objections could be filed when draft quinquennial or supplementary lists are deposited in the offices of the Rating Authority. Under Section 27 (1) this deposit has to be made before the 15th of July of that year. The Occupier of the property assessed has also to be notified before this same date and he can inspect the lists and file objections on or before the 5th of August of that year.

Objections duly taken will then be inquired into and determined before the lists are finalised and certified.

The evidence does not make it clear as to whether the notice referred to in Issue 1 was a notice pertaining to a Quinquennial List or a Supplementary List.

The uncontradicted evidence of the Plaintiff is that the premises in suit was assessed for the first time in 1973. In that year's register the description used was 'WEAVING CENTRE'. It is common ground that the Plaintiff had not filed action when this was altered to read 'TENAMENT & LAND' in 1974 nor thereafter till 1978. However, the notice in question was served on 23.2.1978 and the objections taken have been inquired into by the Special Commissioner who replaced the statutory Rating Authority. He rejected these objections on 7.2.1979. Since this plaint has been filed on 21.2.1979 this action has been filed well within the time contemplated in section 35 (1).

Each assessment is independent of the next. For each year a separate assessment has to be made although it means merely repeating the figures for the previous year in case, no supplementary list is compiled. An Assessee may not make or be able to make in time

his objections to the assessment for a particular year. That would only bind him to accept that assessment for that year. When the next assessment is made in the following year, even if it is a mere repetition of the previous year's figures he cannot be shut out from objecting merely on the ground that he had not done so in respect of it in the previous year. The figures in both years may be similar but they are certainly not one and the same. It is the notice given to the occupier that gives him an indication that a new list is deposited and available for inspection. He can and must then object or else the assessment becomes confirmed and operative for that year. There is no rule of estoppel that applies in such a case. Section 218 (2) provides a time bar of 6 months from the date of accrual of the cause of action to the filing of actions against a Town Council. In this case the cause of action is not based on the assessment made nor yet on the notice issued thereon but on the rejection of the objections taken thereto. Accordingly, the Plaintiff's action is not out of time.

At the time this plaint was filed the law in force was the Civil Procedure Code (Amendment) Act No. 20 of 1977, which came into operation on 15.12.1977 by Gazette Notification No. 293/7 of 1.12.1977. Concurrently, and by the same notification the Civil Procedure Code (Special Provisions) Act No. 19 of 1977 was brought

Under these enactments Magistrate's Courts were vested with civil jurisdiction in respect of matters valued upto Rs. 500/-. This civil jurisdiction was withdrawn by the Judicature Act No. 2 of 1978 which was brought into operation on 2.7.1979 by Gazette No. 40/16 of 15.6.1979. This plaint was filed on 21.02.1979 and accordingly correctly filed in the Magistrate's Court of Colombo as the annual value as stated in P2 is Rs. 462/-.

Section 218(1) requires a month's notice to be given to a Town Council. Section 218(1) requires that the Town Council should be given notice of an action that is proposed to be filed against it. But that subsection refers to actions that arise out of any act done under the powers conferred by the Town Councils Ordinance, Cap. 256 or any by-laws made thereunder. In this case the Act complained of was one done under the provisions of the Rating and Valuation Ordinance, Cap. 266, and accordingly, that will not attract the prohibition in Section 218 referred to above. *Vide: Weerasinghe Aratchi v. Special Commissioner, Galle Municipal Council (1)*. That case refers to

Section 307(10) of the Municipal Councils Ordinance, Cap. 252. That section is in the same terms as section 218 now under discussion in this case. In that case it was an act done by the Municipality but it was under the powers vested in it by the Electricity Act. Further, section 35 of Cap. 266 requires action to be filed within one month of the rejection of the objection.

For these reasons we set aside the judgment of the learned Additional District Judge and direct that judgment be entered for the Plaintiff as prayed for with costs.

ABEYWIRA, J. – I agree.

Appeal allowed.

Judgment for plaintiff entered.
