

1938

Present : Poyser S.P.J.

PELPOLA v. GOONESINGHE.

500—M. C. Colombo, No. 3.

Colombo Municipal Council (Constitution) Ordinance, No. 14 of 1938—Qualification of voter—Residence in ward—Interpretation Ordinance, s. 5 (3).

The appellant, a voter whose name was on the list of voters for the Colpetty Ward of the Colombo Municipality, was resident in that ward and later moved to a house in the Cinnamon Gardens Ward. Objection was taken to his name being on the list for the Colpetty Ward on the ground that he was not resident there. It was claimed on his behalf that in view of the amending Municipal Council (Constitution) Ordinance, No. 14 of 1938, he was entitled to have his name inserted in Colpetty Ward by virtue of his income qualification alone, apart from his residence.

Held, that a person claiming to be registered as a voter under section 14(2) of the Municipal Council (Constitution) Ordinance must be registered as a voter for the ward in which he resides (except the owners of qualifying property who are not resident within the Municipality).

The words "action, proceeding, or thing pending" in section 5 (3) (c) of the Interpretation Ordinance must mean something in the nature of proceedings, which are of a judicial or quasi-judicial nature.

A notification by the Municipal Commissioner in terms of section 21 (1) (e) of the Municipal Council (Constitution) Ordinance intimating the commencement of the revision of the voters' list on a particular day is not an "action, proceeding, or thing" within the meaning of section 5 (3) of the Interpretation Ordinance.

Held, further, the Supreme Court has power to order the transfer of a name from one list to another under section 25 of the Ordinance only where there is a claim for transfer.

THIS was an application by the respondent to expunge the appellant's name from the list of voters for the Colpetty Ward in the Colombo Municipality on the following grounds: (1) that he was not resident in the ward on May 1, 1938; (2) that he was not the tenant of qualifying property situated within the ward.

The Municipal Magistrate on a reference by the Commissioner directed that the appellant's name be expunged from the list of voters for Colpetty Ward.

Hayley, K.C. (with him *C. V. Ranawake, D. D. Athulathmudali, and V. F. Gooneratne*), for appellant.—Change of residence from one ward to another does not disqualify a voter so long as his name appears in the list of voters—section 14 refers to a "list" and not "lists", and therefore contemplates one list of all the voters.

The law applicable for the determination of the question is the law as amended by Ordinance No. 14 of 1938, which came into operation before the revision of voters' lists started on May 1, 1938. This is the date specially provided for in section 21 (1) (b).

The learned Magistrate was wrong in holding that the law which applied was the Ordinance as it stood before the amendment of 1938 inasmuch as there had been a notice intimating the commencement of the revision of voters' lists which notice was published before the amending Ordinance came into force.

The revision of voters' lists is not an "action, proceeding, or thing" within the meaning of section 5 (3) of the Interpretation Ordinance. Counsel referred to *Stroud and Hood-Barrs v. Cathcart*¹.

If the law as amended applies then the appellant has the right to have his name on the list of voters by reason alone of the income qualification of Rs. 15 a month. See section 3 (1) (b) (3). The question of residence is immaterial.

In any event under section 25 of the Ordinance the Supreme Court can upon the ascertained facts direct the transfer of the appellant's name to the appropriate list.

H. V. Perera, K.C. (with him *J. E. M. Obeyesekere* and *M. M. I. Kariapper*), for respondent.—The amending Ordinance cannot apply as section 5 (3) of the Interpretation Ordinance suspends its operation. The Ordinance provides for a notice which sets in motion the work of revision of voters' lists and from that time the matter must be deemed to be pending. Our Ordinance is wider in its application than the English Statute dealt with in *Hood-Barrs v. Cathcart* (*supra*). Even if the amending Ordinance applies still under section 14 (6) it is necessary for the appellant to have his name entered in the list prepared for the ward in which he is resident, for the Ordinance contemplates a separate list for each ward. (*Naha Kannu v. Lebbe Marikar*².) The new law has not repealed this section. Under section 25 the Supreme Court can direct the transfer to the appropriate ward of the name of only a claimant. The appellant is not a claimant.

Cur. adv. vult.

October 7, 1938. POYSER S.P.J.—

The respondent, a registered voter in the Colpetty Ward of the Colombo Municipality, objected to the appellant being included in the list of voters for the said ward on the following grounds: (a) that he was not resident at 324, Colpetty road; (b) that he was not the tenant of qualifying property situated within the said ward; (c) that he was not resident in Colpetty Ward on May 1, 1938. The Commissioner referred this objection to the Municipal Magistrate and the latter held that the objection was sound and entitled to succeed and directed that the appellant's name be expunged from the list of voters for Colpetty Ward. It is against that order that this appeal is lodged.

The following are the facts: The appellant, on May 22, 1936, applied for registration as a voter (O 1) by virtue of his tenancy of "Shanklin", Colpetty, house No. 324. He was duly registered as a voter and has remained so registered up to the date of the Magistrate's order. At the end of June, 1936, the appellant left "Shanklin", Colpetty, and went to reside at "Fern Lodge", Rosmead Place, which is in the Cinnamon Gardens Ward. The appellant did not, prior to May 31, 1938, apply to have his name transferred to another list in accordance with the provisions of section 21 (1) (f) of the Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935. He did on July 2 of this year make an application for the alteration of his address, but such application was refused by the Commissioner on the ground that it was out of time. Whether the Commissioner was correct in his decision or not did not arise on this appeal but was the subject of another application to this Court, namely,

¹ (1894) 63 L. J. Ch. 793.

² 7 C. L. W. 71.

Application by A. E. Goonesinghe for a Writ of Mandamus on the Municipal Commissioner, Colombo. Such application has been granted by de Kretser J. and under these circumstances, it would be unnecessary to deal with all the points that have been raised, but for the fact that similar points arose in another appeal, and it was agreed that such appeal should be determined in accordance with my finding in this appeal.

At the hearing of the objection the appellant, while admitting that he no longer resided in Colpetty Ward, contended that he was entitled to be registered as a voter in such ward, not by virtue of residence therein, but by virtue of the amendment to section 14 of the principal Ordinance effected by Ordinance No. 14 of 1938, which came into force on April 12, 1938. The amendment which he relied on is contained in section 3 (1) (b) (3) and the effect is that a person possessing an income of not less than Rs. 15 a month is entitled to be registered as a voter. It is admitted that the appellant had an income of over Rs. 15 a month, but the Magistrate rejected this contention on the ground that the publication of the notice (O 6) on April 8, 1938, in accordance with the terms of section 21 (1) (e) of the Ordinance was a step in the matter of the revision of the lists, that such revision was pending at the date when the amending Ordinance came into force and that in view of the provisions of section 5 (3) of the Interpretation Ordinance only the provisions of the principal Ordinance could be considered in dealing with this objection.

The material part of section 5 (3) is as follows:—“Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected:—

(a)

(b)

(c) Any action, proceeding, or thing pending or incompleated when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal”.

In view of this finding and as it was admitted that the appellant had no residential qualification, the Magistrate upheld the objection.

On appeal Mr. Hayley argued as follows: (1) that the Magistrate was wrong in holding that the amending Ordinance was inapplicable to the case as the notice (O 6) was not an “action, proceeding, or thing pending”; (2) that as the appellant had an income qualification, his name should have remained on the Colpetty Ward list and his place of residence was immaterial; (3) in the alternative, that the Magistrate should, on ascertaining the facts, have transferred his name to the Cinnamon Gardens list; (4) that the Supreme Court under the provisions of section 25 of the Ordinance should direct such a transfer.

I am in agreement with Mr. Hayley’s argument on the first point as I do not consider the notice (O 6) is an “action, proceeding, or thing pending” when Ordinance No. 14 of 1938 came into operation. The words “action, proceeding, or thing pending” must mean something in the nature of proceedings which are of a judicial or a quasi-judicial nature.

The notice in question was only a notification that the revision of the lists of persons qualified to vote and to be elected as Councillors would commence on May 1, 1938. The action, proceeding, or thing that we are now dealing with was the objection lodged by the respondent on July 1, 1938. I think it is unnecessary to deal with all the arguments that were adduced on this point for I have come to the conclusion that the appellant's name should be erased from the list of voters for Colpetty Ward, whether the amendments effected by Ordinance No. 14 of 1938 are taken into account or not.

It is interesting, however, to note that my brother, de Kretser, in *Application by A. E. Goonesinghe for a Writ of Mandamus on the Municipal Commissioner, Colombo*, came to a similar conclusion on this point. I will therefore decide this appeal as if the provisions of Ordinance No. 14 of 1938 applied.

To deal with the other points that Mr. Hayley raised, the amendment to section 14 (2) of the Ordinance providing for an income qualification does not specifically lay down anything in regard to residence. Section 14 (6) of the principal Ordinance, however, is as follows:—"The name of any person who in any year is qualified to vote under the provisions of this Ordinance shall be entered in the new or revised list of persons qualified to vote prepared for the ward in which that person is resident on the date of the preparation or revision, as the case may be, of such list for that year". The amendment to this sub-section effected by the amending Ordinance does not in any way modify these clear directions. I think therefore that a person who is entitled to be registered as a voter by virtue of his income qualification must be entered in the list prepared for the ward in which he is resident. In the case of *Mahakannu Meeranpillai v. Asby Lebbe Marikar*, the Chief Justice held that the person who can object that a voter is disqualified must be a voter in the same ward.

I respectfully agree with that finding, and *a fortiori*, a person claiming to be registered as a voter under the provisions of section 14 of the Ordinance (except the owners of qualifying property who are not resident in the Municipality, section 14 (2) (g) (iv)) must be registered as a voter for the ward in which he resides.

In regard to the other points raised by Mr. Hayley, I do not consider that this Court can under section 25 of the Ordinance direct the transfer of the appellant's name to the list for the Cinnamon Gardens Ward. Section 25 only gives the Court power to make such an order where there is a claim for a transfer.

In this matter there was no such claim. I do not either think the Magistrate had the power to effect such a transfer under section 21 (1) (i). The matter before him was the respondent's objection not the preparation or revision of lists.

The appeal will accordingly be dismissed. The respondent is entitled to the costs of the inquiry and of the appeal.

Appeal dismissed.