

1930

Present : Dalton J. and Jayewardene A.J.
SANGARAPILLAI v. CHAIRMAN,
MUNICIPAL COUNCIL,
COLOMBO.

142—D. C. (Inty.) Colombo, 1,706

*Housing and Town Improvement Ordinance—
Decision of District Court—No case
stated—Right of Appeal to Supreme
Court—Ordinance No. 19 of 1915,
ss. 84 and 92 (1).*

There is no right of appeal to the Supreme Court from the decision of a District Court acting as a tribunal of appeal in terms of section 84 of the Housing and Town Improvement Ordinance, No. 19 of 1915.

A person aggrieved by such a decision may apply to the District Court to state a case on a matter of law for the opinion of the Supreme Court, and if it refuses, may apply to the Supreme Court for an order requiring the District Court to state such a case.

A PPEAL from an order of the District Judge of Colombo, sitting as a tribunal of appeal under section 84 of the Housing and Town Improvement Ordinance, No. 19 of 1915.

Soertsz, for appellant.

Keuneman, for respondent.

October 21, 1930. DALTON J.—

This is an appeal from the order of the District Judge, Colombo. The respondent

is the Chairman of the Municipal Council who has refused the appellant a certificate of conformity under section 15 of the Housing of the People and Improvement of Towns Ordinance, No. 19 of 1915. The District Judge has in effect dismissed the appeal with costs.

It is objected for the respondent, the Chairman, that there is no right of appeal to this Court, apart from a case being stated under section 92 of the Ordinance, and in my opinion this objection must be upheld.

Section 16 of the Ordinance provides that any person, who is aggrieved by the refusal of a certificate by the Chairman may appeal to the "tribunal of appeal". Section 83 provides for the constitution of these tribunals of appeal by the Governor, and section 94 provides for regulations for the procedure to be followed by these tribunals to be made by the Governor in Council. In the event of no such tribunal being constituted, section 84 provides that the District Court shall be deemed to be the tribunal.

Section 92 provides that any person aggrieved may apply to the tribunal to state a case, and empowers the tribunal to state a case on any question of law involved in any appeal or other matter before it for the opinion of the Supreme Court. There is no other right of appeal provided in the Ordinance.

For the appellant, Mr. Soertsz has argued that where the District Court is the tribunal of appeal, any party has the ordinary right of appeal against all errors in fact or in law that may be committed by any District Court under the provisions of section 39 of the Courts Ordinance. He further urges that when the District Court is the tribunal section 84 (2) of the Housing Ordinance provides for the procedure prescribed by law regulating the determination of actions in District Courts, including the question of appeals, to be followed in cases coming before the tribunal of appeal under the Housing Ordinance. If, however, there is that general right of appeal, then there is no

explanation for the presence of section 92 in the Ordinance.

In several Ordinances where the District Court is given a special jurisdiction such as the Stamp Ordinance, Land Acquisition Ordinance, and Waste Lands Ordinance, it will be found that special provision is made for appeals from the District Court to the Supreme Court. When the tribunal of appeal is the District Court, that Court has only the powers given it by this Ordinance, and appeals from that Court in its capacity as the tribunal of appeal are governed by the Ordinance itself. The only method of appeal from the tribunal of appeal provided for is by way of a case stated on a question of law.

English legislation, upon which this Ordinance is in great part based, provides for the Local Government Board to exercise a controlling authority over local authorities, and appeals in many cases go to the Board and not to the ordinary Courts. The "tribunal of appeal" in the London Building Act, 1894 (private Act, 57 & 58 Vic. c. 213), from which this provision seems to have been adapted, provides for a tribunal of a professional character, and such would also appear to be the intention of the local Ordinance, with a tribunal appointed by the Governor, governed by rules made by him in Council. The assessors provided for would, no doubt, as a rule, be professional men.

In the case of *Soerts v. Colombo Municipal Council*¹ (April 11, 1930), this Court refused the latter party leave to appeal to the Privy Council on the ground that a decision of the Supreme Court on a case stated under section 92 of the Housing Ordinance was not a judgment or order in "a civil suit or action". Fisher C.J. points out, *inter alia*, that the District Court, as the tribunal of appeal, was not acting in the exercise of any jurisdiction vested in it by the Courts Ordinance. It was performing a function vested in it because the alternative tribunal under section 82 of the Housing

Ordinance has not been brought into existence. He adds that in the performance of that function, it is a final tribunal except where a question of law is involved, and the provisions of section 92 are put into operation With that last expressed opinion I am in agreement.

The objection must, therefore, be upheld, and the appeal must be dismissed with costs.

JAYEWARDENE A.J.—

The appellant in terms of section 15 of Ordinance No. 19 of 1915 applied to the Chairman of the Municipal Council of Colombo for a certificate of conformity in respect of a building constructed by him. His application was refused, and under section 16 he appealed to the tribunal of appeal. No special tribunal of appeal having been constituted for Colombo under this Ordinance, the District Court of Colombo is the tribunal of appeal under section 84 of the Ordinance. The learned District Judge made an order in the case from which the appellant has appealed to the Supreme Court. Counsel for the respondent has taken the objection that no appeal lies to this Court from the judgment of the tribunal of appeal.

The principles embodied in this Ordinance have been derived from the London Building Act, 1894 (57 & 58 Vic. c. 213), among other Acts and the idea of a tribunal of appeal was taken from that Act as shown in the statement of objects and reasons appended to the Ordinance No. 19 of 1915. In introducing the Ordinance in the Legislative Council, Sir Anton Bertram, Attorney-General, stated that in London they had professional surveyors or architects on the tribunal, and when a question arises it is referred to this body, which deals with it expeditiously with the help of legal assistance, an appeal lying to the Law Courts on any point of law. (Ceylon Legislative Debates, 1913-1916, pages 105 to 111.)

Section 92 (1) of the Ordinance enacts that it shall be lawful for the tribunal at any time to state, and the tribunal

¹ 256 D. C., Colombo, 1,654 ; S. C. Min., April 11, 1930.

if ordered by the Supreme Court on the application of any party aggrieved, shall state, a case for the opinion of the Supreme Court on any question of law involved in any appeal or in any other matter submitted. The Supreme Court is given the power to hear and determine any question of law arising on a case stated by the tribunal of appeal and to reverse, affirm, or amend or make such order as the circumstances of the case may require. The Supreme Court is thus given the power to order the tribunal to state a case on any matter of law. A similar procedure is provided by the English Summary Jurisdiction Act, 1875 (42 & 43 Vic. c. 49), which enacts that a person aggrieved who desires to question a conviction or order on the ground that it is "erroneous in law" may apply to the Courts to state a special case, and if the Court declines may apply to the High Court of Justice for an order requiring the case to be stated. (Section 33.) In my view the Supreme Court is only empowered to hear a case which has been stated either by the tribunal itself or on an order of the Supreme Court on any question of law, and there is no general right of appeal to the Supreme Court. Under section 21 of the Courts Ordinance, No. 1 of 1839, the Supreme Court is vested with an appellate jurisdiction for the correction of all errors committed by an original Court, and with the authority to take sole and exclusive cognizance by way of appeal and revision of all causes, suits, actions, and matters of which such original Court may have taken cognizance. In *Soertsz v. Chairman, Colombo Municipal Council (supra)*, it was held however that in a matter under the Ordinance No. 19 of 1915 the Supreme Court was not acting in exercise of its appellate jurisdiction vested in it by the Courts Ordinance, nor was the District Court acting in the exercise of any jurisdiction vested in it by that Ordinance. The District Court was not in fact acting as a Court of law at all but was performing a function vested in it because the alter-

native tribunal under section 83 of the Ordinance No. 19 of 1915 had not been brought into existence, and in the performance of that function it was a final tribunal except when a question of law was involved and the provisions of section 92 were put into operation.

In my opinion it was open to the appellant, if so advised, to apply to the Supreme Court to order the tribunal of appeal to state a case on any question of law that may have been involved, but no appeal lies. I would dismiss the appeal with costs.

Appeal dismissed.