

Present : Drieberg J.

1928.

DE SILVA v. GOVERNMENT AGENT, WESTERN PROVINCE.

53—C. R. Kalutara, 11,055.

*Police tax—Assessment of premises—Annual value—Objection to assessment—Regularity of tax—Action under section 40—Ordinance No. 16 of 1865, s. 34.*

An action brought under section 40A (1) of the Police Ordinance by a person, aggrieved by the decision of the Government Agent with regard to an assessment, must be limited to the question of the annual value of the premises concerned.

It is not open to the plaintiff in such an action to question the regularity of the police tax on the ground that the provisions of section 34 of the Ordinance have not been complied with.

**A** PPEAL from a judgment of the Commissioner of Requests Kalutara.

*F. de Zoysa, K.C.* (with *Navaratnam*), for plaintiff, appellant.

*J. E. M. Obeyesekere, C.C.*, for defendant, respondent.

September 25, 1928. DRIEBERG J.—

The appellant is the owner of a house in Kalutara and he was served with a notice in the form C under section 40 of the Police Ordinance of 1865 that the annual value of his house had been assessed at Rs. 215 and that the police tax due for it was Rs. 9.12 a year.

The appellant stated in his plaint that on receipt of the notice he objected to this demand on the following grounds :—

- (a) The percentage payable on the *bona fide* annual value of the property in question has not been duly proclaimed as required by section 34 of Ordinance No. 16 of 1865.
- (b) The tax as assessed will in the aggregate exceed the sum necessary for the maintenance of the Police Force set apart for the protection of the persons and property of the inhabitants of Kalutara town.
- (c) No Committee of assessors has been appointed according to the provisions of sections 5 and 6 of Ordinance No. 7 of 1866 (as amended by Ordinance No. 19 of 1921) and no assessment has been made as required by sections 27 and 28 of the Police Ordinance.

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(d) As the requirements of the law relating to the assessment and levy of the police tax have not been complied with the present assessment of it and its levy will be illegal.

(e) The assessment is excessive.

He also says that the Government Agent inquired into these objections and on April 2, 1927, overruled them. He then proceeds to allege that "by reason of the above premises an action has accrued to the plaintiff under section 40A of the Police Ordinance to sue the defendant for a declaration that the said tax is illegal and that the plaintiff is not liable to pay same." His prayer is for a declaration that on the grounds set out in his objections the police tax is illegal and that he is not liable to pay the same.

Many issues have been framed in this case and evidence led on them, but in my opinion the action should have been dismissed on the objection taken in the answer that the action was not maintainable against the defendant-respondent. I take this to mean that this being an action brought for the purpose of having it declared that the levy of the police tax is illegal on the ground alleged, namely, that the Governor in Executive Council has not complied with the requirements of section 34, it must necessarily be an action against the Crown and the party defendant must be the Attorney-General.

The only ground alleged for suing the Government Agent is that this is a statutory action allowed against him under section 40A (1).

Section 37 of the Ordinance provides that a committee of assessors should proceed to inquire into and determine the *bona fide* annual value of all houses, buildings, lands and tenements in a town, and "the tax hereby imposed on or payable for the same." After this assessment a notice in the form C is served on the owner in which he is informed what the annual value has been assessed at and what the amount of the tax payable quarterly amounts to. Section 40 (2) requires that the notice should state that "written objections to the assessment" will be received within a certain time and at a certain place stated in the notice. Section 40 (4) empowers the Government Agent to inquire into any objections so made and to make orders thereon.

Section 40A (1) provides that "If any person is aggrieved by the decision of the Government Agent with regard to the assessment of any house, building, land, or tenement, he may within one month of receiving the notification of the Government Agent's decision under the last preceding section institute an action objecting to such decision in the Court of Requests having jurisdiction in the place where such house, building, land, or tenement is situate, if the amount of the rate or rates on the annual value of such house, building, land, or tenement does not exceed

three hundred rupees, and in the District Court having such jurisdiction where such amount exceeds the sum of three hundred rupees.”

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Further provision is made in section 40A for the trial of this action, which is limited, except with special leave of the Court, to the written objections tendered to the Government Agent.

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It is not easy to see how the present action can possibly be regarded as one brought under section 40A (1). It is true that one of the grounds of objection was that the assessment was excessive, but this was a pure formality. There is no averment of what the appellant says is the true annual value, no claim that the assessment be reduced to it, but on the other hand the claim is that the levy of the tax itself is illegal.

The ground on which it is sought to enlarge the scope of the statutory action is that as the notice C issued under section 40 states not merely the assessment of the annual value but also the actual amount payable by way of tax, the objections allowed by section 40 (2) can extend not merely to the assessment of the annual value but also to any objection which can be taken to the payment of the sum mentioned. It is sufficient to say that section 40 (2) in express words limits the objections to the assessment and that section 40A (1) allows an action to any one aggrieved by the assessment.

The notice in form C states the annual value and gives the arithmetical result of the amount due on that value at the rate authorized, but the Government Agent and the assessors have nothing to do with the rate which is fixed by the Governor with the advice of the Executive Council.

The real grounds on which the appellant desires a declaration that the tax is illegal are as follows :—Section 34 of the Ordinance enacts that the tax should be levied at a rate which the Governor, with the advice and consent of the Executive Council, shall by proclamation “from time to time appoint.” This rate was last fixed at 4½ per cent. and proclaimed on August 3, 1886, and is still in force. It is contended that the provision for determining from time to time implies that it should be revised. No further proclamation, however, of the rate would be necessary unless the rate was altered, and this has not been done.

The other ground arises from the fact that the Police Force in Kalutara town is maintained for the joint purposes of the town and the adjoining district. In such a case the Governor in the Executive Council is required by section 34 to determine from time to time what proportion of the expenditure on the police has to be met by the tax. The appellant says that this has not been done and that the levy is therefore illegal.

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It appears that the cost of the Police Force at Kalutara in 1927 was Rs. 20,574·84 and that the amount of the police tax for that year could not exceed Rs. 14,547·08. It follows therefore that the cost of maintaining the force does not fall solely on Kalutara town and that part of the cost is paid out of another fund which, I take it, is the general revenue of the Colony, and there is thus an apportionment of the liability. Whether the apportionment is fair or whether, if it is not, any relief can be obtained in a Court of law are questions which cannot be considered in such an action as this.

It will thus be seen that this action is in no way concerned with the assessment of the annual value of premises, but is brought for the purpose of questioning the legality of certain acts of the Governor in Executive Council.

The issue suggested by respondent's counsel on the objection taken in the answer to the action being against the Government Agent was not included in the issues subsequently framed and accepted by both sides, but the Commissioner appears to have had it in his mind in referring to the case of *Horsfall v. The Queen's Advocate*.<sup>1</sup> I should, however, have been obliged to pass the same judgment even if no reference to this point had been made by the respondent, for the Court cannot allow a statutory action for any other than the purpose for which it was created. The appellant was unable to justify this action being brought against the Government Agent except as an action under section 40A (1).

The appeal is dismissed with costs.

*Appeal dismissed.*