

1940

Present : Howard C.J.

## THE MUNICIPAL COMMISSIONER v. PERERA.

658—M. M. C. Colombo, 60.

*Municipal Council (Constitution) Ordinance, s. 108 (2) (Cap. 194)—Qualification of voter—Residence within limits—Having or using a sleeping apartment—Question of fact.*

A labourer, who sleeps on a mat in the premises of the Labour headquarters, after office hours, cannot be regarded as having or using a sleeping apartment in the building so as to constitute residence within the meaning of section 108 (2) of the Municipal Council (Constitution) Ordinance.

It is open to the Municipal Magistrate to consider the grounds of opposition of those who opposed the application under section 23 (6).

**A** PPEAL from an order of the Municipal Magistrate of Colombo.

Labourers who work in the Harbour and who belong to the Labour Party were in the habit of sleeping at the Labour Headquarters at Canal Row, Fort. They slept on mats in the open verandahs and office premises at night after the office work was over. They claimed that they were residents in Fort and entitled to a vote. The sitting member opposed the application and called himself an objector. He asserted they were not residents and not entitled to a vote in the Fort Ward. The Municipal Magistrate upheld the objection.

*C. V. Ranawake* (with him *Dodwell Goonewardena*), for appellant.—The sitting member is not an objector, and he has no status in this proceeding. Section 23, sub-section (2), defines an objector. He is merely an opposer. Section 24, sub-section (1), gives a right of appeal only to an objector or an opposer.

Section 108 (2) of the Ordinance defines residence: "A person is resident if from time to time he uses a sleeping apartment in any building". Absence from it sometimes provided there is *animus revertendi* does not deprive the privileges of residence. A man may have several residences. In *Fernando v. Grero*<sup>1</sup>, a person may have a residence for the specific purpose of qualifying for a vote.

*H. V. Perera, K.C.* (with him *M. Tiruchelvam*), for respondent.—Under section 23 (5) (b) any person may oppose a person from getting a vote. Such persons are called opposers. Under section 23 (6) the Municipal Magistrate is empowered to adjudicate on the application. It would be dangerous to allow artificial ideas of residence to apply to business areas like Fort. These are questions of fact and not of law. The case *Fernando v. Grero* (*supra*) could be distinguished. There a doctor had two residences, one his dispensary and the other his home, and he was entitled to have a vote in the ward in which he had his dispensary.

*Cur. adv. vult.*

<sup>1</sup> 40 N. L. R. 275.

September 2, 1940. HOWARD C.J.—

This is an appeal under section 24 (1) of the Colombo Municipal Council (Constitution) Ordinance, Chapter 194, from a decision of the Municipal Magistrate refusing to put the appellant's name on the electoral roll. A preliminary objection was taken by Mr. H. V. Perera that no appeal lay inasmuch as an appeal to the Supreme Court can only be made on a question of law involved in the adjudication of the Municipal Magistrate. He argued that this was an appeal on a question of fact only.

Before the Municipal Magistrate could place the name of the appellant on the electoral roll he had to be satisfied by the appellant that the latter was in receipt of a monthly income of Rs. 15 and also was resident within the limits of the particular ward of the Municipality and had for a continuous period of at least six months from a period of eighteen months immediately prior to the said date resided within the limits of this ward of the Municipality. A definition of "residence" is given in section 108 (2) of the Ordinance. This sub-section provides that a person shall be deemed to reside in or to be a resident of any place if he has and from time to time used a sleeping apartment in any building therein. In my opinion it was a question of fact for the Municipal Magistrate to decide as to whether the appellant was resident within this particular ward of the Municipality. It could have been a question of law if the Municipal Magistrate had given some definition to the word "residence" which was not warranted by law, but I cannot find anywhere in the judgment that he has given the word "residence" such an unwarranted definition. Before he could place the appellant on the roll of electors he had to be satisfied that the latter had a sleeping apartment in a building in the ward. He has carefully considered the evidence of such a sleeping apartment and has come to the conclusion for the reasons that he has given, that the appellant was not resident within the limits of the particular ward of the Municipality. Quite apart as to whether this is a question of law or a question of fact, I have come to the conclusion that he was right in his decision.

A further objection was taken by Counsel for the appellant to the decision of the Municipal Magistrate on the ground that two persons who objected to the name of the appellant being placed on the electoral roll had no status. They were described in the proceedings as "objectors" but it is obvious that they were not "objectors", but persons who opposed, under section 23 (5) (b) and it was open to the Municipal Magistrate to consider the grounds on which they opposed the application under section 23 (6). Section 24 which provides for the appeal to the Supreme Court does not contemplate their appearing in the Supreme Court as respondents. In these circumstances, although, they have been made respondents to this appeal, the objection to their appearance and raising opposition before the Municipal Magistrate is immaterial.

For the reasons I have given, the appeal is dismissed. The 1st respondent is entitled to his costs of the appeal.

*Appeal dismissed.*