

1945

Present: Wijewardene J.

DE ZOYSA *v.* KULATILEKE.

In re Writ of Quo Warranto against S. S. Kulatileke.

Writ of quo warranto—Election to Municipal Council—Respondent not in office de facto—Regularity of writ.

An application for a writ of *quo warranto* will not be granted to set aside an election to a municipal council when, at the time the *rule nisi* was issued, the respondent had not attended any meeting of the council or done any other act showing that he had acted in or accepted the office of municipal councillor.

¹ (1914) 4 *Balasingham's notes of cases* 31 at p. 32.

A PPLICATION for a mandate in the nature of writ of *quo warranto*.

The petitioner appeared in person.

C. S. Barr Kumarakulasingham (with him Vernon Wijetunga) for the respondent.

Cur. adv. vult.

March 13, 1945. WIJEYWARDENE J.—

This is an application for a mandate in the nature of a writ of *quo warranto*. The petitioner seeks to have it declared that the election of the respondent as member for the Kuppiyawatta Ward in the Colombo Municipal Council is null and void.

The respondent on whom a *rule nisi* was served has taken a preliminary objection that the petitioner is not entitled to the writ as the respondent was not in office *de facto* either at the time the petitioner made his application or the Court issued the *rule nisi*.

The only material allegation in the petitioner's affidavit relevant to this objection is in paragraph 13 which reads—

“The Returning Officer declared the respondent elected, and the respondent was by *Gazette* No. 9,311 of September 15, 1944, declared elected as Councillor for the Kuppiyawatta Ward by the Municipal Commissioner”.

It was conceded by the petitioner that, even at the time the *rule nisi* was issued, the respondent had not attended any meeting of the Council or done any other act showing that he had acted in or accepted the office of Municipal Councillor.

In these circumstances I am compelled to uphold the preliminary objection (*vide The Queen v. Slatter*¹ and *The Queen v. Quayle*².)

I discharge the rule with costs.

Rule discharged.

¹ (1840) 113 *English Reports* 507.

² (1840) 113 *English Reports* 508.