

1946

Present : Nagalingam A.J.

JAMES PERERA, Petitioner and GODWIN PERERA, respondent.

APPLICATION FOR A WRIT OF *mandamus* ON THE CHAIRMAN, VILLAGE COMMITTEE, OF GODAKAHA PALATA.

Writ of mandamus—Necessary party not made respondent to application for writ—Fatal irregularity.

Where an application was made for a writ of *mandamus* to compel a local authority to issue a bakery licence in favour of the petitioner in circumstances prejudicial to the rights of the person who was already holding the licence—

Held, that the failure to make the holder of the licence a party respondent was a fatal irregularity.

A PPLICATION for a writ of *mandamus* on the Chairman of the Village Committee of Godakaha Palata.

E. B. Wikramanayake (with him *E. O. F. de Silva*), for the petitioner.

H. W. Jayewardene, for the respondent.

November 25, 1946. NAGALINGAM A.J.—

This is an application for a writ of *mandamus* on the Chairman of the Village Committee of Godakaha Palata for the issue of a bakery licence in favour of the petitioner for the year 1946. The application itself is quite belated, the application having been filed in this court only on August 12, 1946. It is said that the petitioner made attempts to get

relief by applying to other authorities. In this he was misguided and had misconceived the proper procedure to be followed in seeking his remedy. But be that as it may, Counsel for the respondent takes the objection that a necessary party has not been made a respondent to the petitioner's application. The petitioner avers in his petition that the Chairman failed to issue the licence to him but issued it to one Jayasinghe. The licence is both personal and local, that is to say a particular person is granted a licence to carry on business as a baker at a particular premises and by by-law 2 of the By-laws made severally by the Village Committees of the Village areas of the Colombo District including the Village Committee of Godakaha Palata it is expressly provided that no person shall be entitled to a licence unless the building to be used as a bakery is in conformity with certain requirements, clearly indicating that unless and until the premises at which the business is to be carried on is identified and approved by the authority as suitable for the business no licence can be claimed by any individual. It is common ground that in this case the petitioner had been carrying on the business of a baker for a number of years at certain premises belonging to one Jayasinghe. Towards the end of last year, after the petitioner had made his application for the renewal of his licence in respect of the premises, Jayasinghe would appear to have made an application himself in respect of the same premises. The Chairman, depending upon a certain settlement arrived at between the petitioner and Jayasinghe, appears to have issued the licence in favour of the petitioner till March this year and granted the licence to Jayasinghe from April 1. Counsel for the respondent points out that in these circumstances the issue of a writ would affect prejudicially the rights of Jayasinghe who is not before the Court.

I find that in two earlier cases a similar objection was sustained. In the case of *Carron v. The Government Agent, Western Province*¹ Wijeyewardene J. expressed himself as follows:—"The petitioner wants to have the election declared void but has failed to make Mr. Jayasinghe a party respondent. The petitioner's counsel did not at any stage move to have him added as a party. The application must fail on that ground also". In the case of *Goonetilleke v. The Government Agent, Galle*² Keuneman J. followed this authority in like circumstances.

Counsel for the petitioner contends that that principle should be limited to election cases and should not be extended to cases where an application is made to compel the issue of a trade licence by a local authority. If the principle underlying election cases is that where an order would affect adversely a party who is not before the Court that party must be deemed to be a necessary party and consequently the failure to make the necessary party a respondent to the proceedings must be regarded fatal to the application, it must apply equally even in regard to an application for a licence as applied for in these present proceedings.

It would manifestly be unsatisfactory to have two persons licensed to run the business of a baker at one and the same place of business where the two parties are at arm's length. The issue of a licence to the

¹ (1945) 46 N. L. R. 237.

² (1946) 47 N. L. R. 549.

petitioner must necessarily involve the cancellation of the licence issued in favour of Jayasinghe. I am therefore of the view that the objection is sound and that the failure to make Jayasinghe a party respondent must be held to be a fatal irregularity.

Mr. Wikramanayake applies to be permitted even at this stage, on payment of costs, to make Jayasinghe a party respondent. As I have already indicated, the application itself was made very late and to accede to this application now when practically the year is dying out would serve little purpose and does not commend itself to me. In these circumstances I refuse the application to add Jayasinghe as a party.

The application fails and is dismissed with costs.

Application dismissed.

