

1957

Present : T. S. Fernando, J.

THE CHAIRMAN, VILLAGE COMMITTEE OF GANDAHE SOUTH,
Appellant, and P. B. HIPPOLA, Respondent

S. C. 264—M. C. Kandy, 9,722

Village Communities Ordinance—Section 54 (2) (h)— Order made thereunder—Right of Supreme Court to revise it—Audit of accounts—Recovery of money certified to be due—Jurisdiction of Magistrate to question accuracy of audit.

Although no appeal lies from an order made by a Magistrate in proceedings under section 54 (2) (h) of the Village Communities Ordinance, the Supreme Court may intervene by way of revision.

When a certificate of the auditor is produced before a Magistrate in proceedings under section 54 (2) (h) of the Village Communities Ordinance, it is not open to the Magistrate to enter upon an inquiry to decide the question whether the audit has been carried out properly or whether the sum represents debts irrecoverable by reason of the provisions of the Prescription Ordinance.

¹ (1911) A. C. 179 at 182.

² (1915) A. C. 120 at 132.

APPEAL from an order of the Magistrate's Court, Kandy.

L. G. Weeramantry, with *N. R. M. Daluwatte*, for appellant.

Mackenzie Pereira, for respondent.

T. A. de S. Wijesundera, Crown Counsel, for the Attorney-General, as *amicus curiae*.

Cur. adv. vult.

August 26, 1957. T. S. FERNANDO, J.—

The appellant who is the Chairman of the Village Committee of Gandahe South made an application to the Magistrate of Kandy in terms of section 54 (2) (b) of the Village Communities Ordinance for the recovery from the respondent who was a former Chairman of the same Village Committee of a sum of Rs. 2,800/27 certified by the Auditor-General as being due from the said respondent. To the application was annexed a certificate of the Auditor-General which stated on its face that the sum of Rs. 2,800/27 was part of the collections made by the respondent as Chairman of the Village Committee of Gandahe South during the period 1st June 1942 to 16th July 1948 and which ought to have been, but was not, deposited at the Kandy Kachcheri to the credit of the Communal Fund of the Gandahe South Village Committee, and that the said sum was due from the respondent to the Village Committee.

The matter came up for inquiry on 18th February 1957 on which occasion the appellant and the respondent were both represented by counsel. No evidence was led on this day, but counsel for the respondent made certain submissions to the Magistrate to which counsel for the appellant replied. The respondent's counsel, in the words of the learned Magistrate, "took a preliminary objection to the case proceeding to trial". This objection appears to have been two-fold:—

- (1) that the accounts of this Village Committee had not been audited annually as required by section 54 (2) (a) of the Ordinance ;
- (2) that the party aggrieved by any surcharge made against him by the Auditor-General has a right of appeal to the Minister.

Another objection that appears to have been taken by respondent's counsel was that, if the respondent had failed to pay over any money received by him on behalf of the Village Committee, such money would be in the nature of a book debt and would be prescribed in one year.

The learned Magistrate, apparently taken up by these objections, made order “discharging” the respondent, observing that, if the annual audits of 1942 to 1943 had been correctly carried out, the audit carried out in the course of 1955 must have been wrong and also expressing as his opinion that the Village Committee would be barred by the provisions of the Prescription Ordinance from recovering any deficit.

When the appeal came on for hearing before me, counsel for the respondent urged by way of a preliminary objection that no right of appeal lay from the Magistrate’s order. He relied on the case of *The Commissioner of Stamps v. Ahamadulevvai*¹, where Schneider J. in considering an appeal from an order made by the Magistrate under section 50 of the Stamp Ordinance held that no appeal lay. A similar decision had been reached by a Divisional Court of three Judges in *Gunawardena v. Gunasekera*². The provisions of section 50 of the Stamp Ordinance and of section 54 (2) (b) of the Village Communities Ordinance are similar on the points relevant to the question in issue in this case, and counsel for the appellant did not attempt to argue seriously that an appeal lay in this case. He however strongly urged that the course the proceedings took before the Magistrate and the order made by the latter have resulted in a total denial of the Village Committee’s legal rights and invited the intervention of this Court by an exercise of its powers of revision. After examining the proceedings had before the learned Magistrate, I am quite satisfied that this is a case in which the order made by the Magistrate must be revised, and in deciding to exercise the powers of revision of this Court in this instance I am fortified by the following observations made by Bertram C.J. in *Gunawardena v. Gunasekera (supra)* in respect of an order made by a Magistrate in a proceeding under section 50 of the Stamp Ordinance :—

“The position appears to be that the Magistrate himself cannot go into the merits of the matter. He can only deal with certain limited questions. His decision is, in any case, final and without appeal. If he errs on any question which he is competent to entertain, the only method of dealing with the matter would be by recourse to our own special powers of revision.”

In cutting short the recovery proceedings initiated by the appellant the learned Magistrate has completely misunderstood the nature of his functions under section 54 of the Village Communities Ordinance. I fail to understand the relevance to the reference to the Prescription Ordinance, and I may say that learned counsel who appeared for the respondent before me who was the same counsel who appeared before the Magistrate made no attempt to enlighten me on the point.

I fail also to understand the reason why it was urged before the Magistrate that a party against whom an order of surcharge is made has a right of appeal to the Minister. The existence of such a right was never disputed, and counsel for the appellant had even intimated to the Magistrate that that right had in fact been exercised by the respondent without success.

¹ (1922) 24 N. L. R. 255.

² (1922) 1 T. L. R. 90.

Learned counsel for the respondent did attempt to suggest before me that the accounts of this particular Village Committee had not been audited annually as required by section 54 (2) (a) of the Ordinance. I was not prepared to entertain any argument on the basis of an absence of annual audits as no evidence had been led on the point before the Magistrate. Moreover, I fail to see what authority there is for a Magistrate in proceedings under this Ordinance to enter upon an inquiry as to whether the Village Committee's accounts have been duly audited.

Section 54 (2) of the Village Communities Ordinance provides for the auditing of the accounts of a Village Committee ; for the disallowance by the auditor of every item of the accounts contrary to law ; for the surcharging of the sum of money represented in that item on the person responsible for the making of the illegal payment ; for charging against any person the amount of any deficiency or loss incurred by the negligence or misconduct of that person and also any sum which ought to have been but is not brought into account by that person. The auditor is required to certify the amount due and the name of the person from whom it is due. Provision is also made for an appeal by any person aggrieved by any surcharge or disallowance. Every sum certified by the auditor to be due is required to be paid to the Village Committee by the person whose name appears on the certificate within 14 days after the decision of the auditor is communicated to such person subject, of course, to any revision or reversal of the auditor's decision by the Minister upon appeal preferred. Where an appeal has been unsuccessful, it becomes the duty of the Village Committee to recover the sum certified by the auditor by application made to the Magistrate having "local jurisdiction". The sum so certified is to be recovered in the same manner as a fine imposed by the Magistrate is recovered.

Upon a certificate of the auditor being produced before a Magistrate, I am of opinion that it is not open to the Magistrate to enter upon an inquiry to decide the question whether the audit has been carried out properly or whether the sum represents debts irrecoverable by reason of the provisions of the Prescription Ordinance. It is unnecessary to go into the question whether a certificate of an auditor can under no circumstances be questioned. It is sufficient to say that no argument or contention worthy of the name was placed before the Magistrate to stay what were in reality recovery proceedings. As Schneider J. said in *The Commissioner of Stamps v. Ahamadulevvai (supra)* of proceedings under section 50 of the Stamp Ordinance, "the (Magistrate's) Court is only invoked for the purpose of recovering the amount already determined. It has no jurisdiction over the question whether that amount is rightly due or not" ; or as Ennis J. stated in *Gunawardena v. Gunasekera (supra)*, also of proceedings under the Stamp Ordinance, it seems to me that section 54 (2) (h) of the Village Communities Ordinance merely provides administrative machinery for the recovery of sums *due* under the Ordinance upon certificates of the auditor ; or as Bertram C. J. said in the same case, the provision of the statute "merely empowers and directs the Magistrate to do an *executive* act, namely, to execute the order of the authority making it".

It is impossible to justify the order of "discharge" made by the learned Magistrate. It seems to me that the objections urged before him at the inquiry already held by him were frivolous, and any justification for raising objections of that nature has to be sought only in the circumstance that they did succeed before the Magistrate.

I set aside the order of "discharge" entered by the learned Magistrate and direct that the record of the case be remitted to the Magistrate so that he may now proceed as required by law in the matter of the recovery of the sum certified by the auditor.

Order set aside.

