

1936

Present : Fernando A.J.

## ABDUL WAHAB v. ISMAIL.

790—M. C. Colombo, No. 2,113.

*Colombo Municipal Council (Constitution) Ordinance—Objection to person in voters' list—Status of objector not raised—Right to raise it in appeal—Question of law—Ordinance No. 60 of 1935, s. 23.*

Where an objection was raised to a person whose name appeared in the voters list of a ward in the Municipality by a party who had no status to raise it but whose status was not questioned before the Municipal Magistrate,—

*Held*, that the question of status was a question of law that may be raised in appeal under section 24 of the Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935.

THE respondent, whose name appeared in the list for New Bazaar East Ward, objected to the appellant's name, which appeared in the list of voters for the Maradana South Ward on the ground that he was not a tenant of the qualifying property within the terms of section 14 of the Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935. The Municipal Magistrate upheld the objection and the present appellant appealed from that order.

*H. V. Perera* (with him *Mahroof*), for the appellant.—The objector is a person registered as a voter for New Bazaar East Ward. The appellant was registered for Maradana North. The first objection is that the only person who can object must be voters for the same Ward. That point had been taken in a number of cases but over-ruled.

[*Rajapakse*, for respondent.—This point cannot be taken under sections 23 and 24.]

Section 24 gives the procedure in the event of an appeal. The Judge in the lower Court had to adjudicate on the matter before him. It is a point involved in the adjudication, and if no facts are necessarily involved, then a point can be raised for the first time. See *The Owners of the Ship "Tasmania" v. Smith*<sup>1</sup>. Now in this case the objector says that he was registered for one ward, while the appellant was for another ward. Paragraph (d) of the petition of appeal raises it.

The only qualification that an objector need have is that his name must be on the register. That is the one and only qualification. Hence there is no ambiguity. We take that point in the petition of appeal.

A broader meaning must be given to the word "involved in the adjudication", especially as the Supreme Court has held that an objector must be in the same ward. (*Mohamed Junaid v. Meeram Pillai*<sup>2</sup>.)

There are no set forms to be followed in the procedure. The only point to be considered is whether the necessary facts are here. There is no provision for the Chairman to strike off the name in a list.

Now with regard to the rent, the owner sets it off in respect of the repairs to be done by the appellant. The learned Judge has accepted

<sup>1</sup> (1890) 15 A. C. 224.

<sup>2</sup> (1936) 38 N. L. R. 364.

these facts. He may be a tenant for service. Rent need not be payable in money. Actual payment is not necessary. Section 14 (3) (c) defines tenant.

*L. A. Rajapakse* (with him *N. M. de Silva*), for the objector, respondent.—One should draw a distinction between an “order” and an “adjudication”. The former is a wider term than a judgment or adjudication. It is a decision given on matter brought to his notice. Issues are raised to focus the attention of the Judge.

Such a matter was not involved in the adjudication. Under summary procedure, however good the objections may be, they must not be considered. The other side must have notice of the objections either *ex mero motu* or brought to his notice. See Special Procedure for Courts of Requests, C. LXVI. Civil Procedure Code; Criminal Procedure Code, section 338.

[FERNANDO A.J.—In the present Ordinance, it does not state that the grounds need be stated. Suppose he merely says that he appeals against the order.]

He cannot do so. Under section 13 of 12 of 1895, though it does not say that the point of law should be stated, it had been held that it must be stated.

As long as the objector's name was in the list it is sufficient. See *Pease v. Town Clerk of Middlesbrough*<sup>1</sup>.

According to the definition of “tenant” in *Wille's Landlord and Tenant*, p. 1, a price or rental must be paid. If he does not, he said not a tenant under section 14 (2) of the Ordinance 60 of 1935. It was held that a house surgeon living in rent free quarters is not a tenant—*Dobson v. Jones*<sup>2</sup>.

*H. V. Perera*, in reply.—The right of the applicant is involved in the adjudication.

*Cur. adv. vult.*

December 21, 1936. FERNANDO A.J.—

The appellant's name appeared in the new list of voters of the Maradana South Ward. The respondent filed an objection to that name appearing in the list on the ground that the appellant was not a tenant of the qualifying property within the terms of section 14 of Ordinance 60 of 1935. The name of the respondent, the objector, appeared in the list of voters for New Bazaar East Ward, and not for the Maradana South Ward.

The Municipal Magistrate, before whom the objection came for inquiry, held that the appellant was not a tenant within the meaning of section 14, and ordered that his name be expunged from the register. The appellant appeals against that order, and one of the grounds stated in his petition of appeal is that the respondent, the objector, is not qualified to raise any objection to the voters in the list for Maradana South Ward in terms of section 23 (2) of the Ordinance, and Counsel in support of this contention argued on the authority of *Mohamed Junaid v. Meeram Pillai*<sup>3</sup>, that

<sup>1</sup> (1893) 1 Q. B. 127.

<sup>3</sup> 38 N. L. R. 364.

<sup>2</sup> (1844) 5 M. & G. 112.

a person whose name appeared in the list of voters for one ward had no status to raise an objection to a person whose name appears in the list for another ward.

Counsel for the respondent did not question this decision, but argued that this was not a question of law involved in the adjudication of the Municipal Magistrate. He contended that the adjudication referred to in section 24 means, the decision by the Court on matters brought to his notice by the parties, and that the question whether the respondent was himself entitled to raise an objection to the names of persons appearing in the list of voters for another ward had not been raised before the Municipal Magistrate, or considered by him in his order. The words of the section, however, in my opinion, while they prevent a person appealing from the order of the Municipal Magistrate on a question of fact does not in any way restrict his right to appeal on a question of law. The expression used, "on any question involved in the adjudication", does not, in my view, restrict the appeal, provided that appeal is on a question of law. It is conceded by Counsel for respondent that the Magistrate himself might have raised the question with regard to the status of the objector, although that status was not questioned by the appellant, and the appellant cannot be prejudiced by reason of the fact that the Magistrate perhaps through inadvertence did not direct his attention to this point. It was clearly open to the appellant to take objection to the status of the objector, and his failure to raise it before the Magistrate does not prevent that question being a question involved in the adjudication. The Ordinance provides that an objector must be qualified in a certain way, and it was the duty of the Municipal Magistrate to consider the question of his status, whether it was specifically challenged by the appellant or not. He no doubt assumed that the objector was duly qualified to object, and in view of the fact that that qualification was not challenged, he was no doubt justified in treating the objector as a person with the necessary status, but if the words of section 23, and the proper interpretation of those words, had been in his mind, then he would himself undoubtedly have considered the question whether the respondent had a status to object. The omission on the part of the appellant, and of the Municipal Magistrate to consider that question does not prove that that question is not a question involved in the adjudication. In my opinion, the words of section 24 are wide enough to allow an appellant in a case of this kind to raise by way of appeal any question of law, that must necessarily be implied in the adjudication or the order that is made against him under section 23.

It would follow, therefore, that the appellant is entitled to question the status of the objector, and on this question the necessary material was before the Municipal Magistrate. The objector himself in his objection dated August 20, 1936, declares that he has been registered as a voter for the New Bazaar East Ward, and it is as such registered voter that he objected to the name of the appellant appearing in the list for the Maradana South Ward, and in the evidence which he gave before the Municipal Magistrate he stated that he was on the list of voters for the New Bazaar East Ward. Following the decision in *Mohamed Junaid v. Meeram*

*Pillai* (*supra*), I would hold that the objector had no status to raise this objection. I would, therefore, allow the appeal and direct that the appellant's name be inserted as a duly qualified voter on the list of voters for Maradana South Ward. The respondent will pay to the appellant his costs of this appeal, and of the inquiry before the Municipal Magistrate.

*Appeal allowed.*

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