1944 *Present:* **Moseley S.P.J. and Wijeyewardene J.**

MULLER, Appellant, *and* MUNICIPAL COMMISSIONER, COLOMBO, Respondent.

10—D. C. (Inty.) Colombo, 68.

Housing and Town Improvement Ordinance (Cap. 199)—Petition of appeal by aggrieved party to Tribunal of Appeal—Time within which the petition should be lodged—Section 27.

The petitioner was requested by the Municipal Council to pay a sum of money alleged to be the amount apportioned to him as his share of the cost of constructing a private road. In November, 1941, the petitioner paid the amount under protest and in December, 1942, filed a petition under section 27 of the Housing and Town Improvement Ordinance asking for a refund of the money.

[1] *27 C. L. W. 73.*
[2] *11 E. R. 1200.*
[3] *106 E. R. 1027.*
[4] *112 E. R. 892.*
[5] *32 N. L. R. 92.*

Held (on a preliminary objection taken by the respondent, the Commissioner of the Municipal Council in the District Court, the Tribunal of Appeal referred to in section 27) that the petition of appeal was filed in time.

THIS was a case stated for the opinion of the Supreme Court, under section 94 of the Housing and Town Improvement Ordinance.

No appearance for appellant.

J. E. M. Obeyesekere, for respondent.

Cur. adv. vult.

May 30, 1944. WIJEYEWARDENE J.—

The Municipal Council of Colombo took action under the Housing and Town Improvement Ordinance for metalling or otherwise "constructing" a private street known as Anderson road, Colombo, and requested the petitioner in October, 1941, to pay Rs. 424.44 alleged to be the amount apportioned to him as his share of the cost. In November, 1941, the petitioner paid that sum to the Municipal Council "under protest and without prejudice to his legal rights". In December, 1942, the petitioner filed a petition under section 27 of the Ordinance against the respondent, the Commissioner of the Municipal Council, and asked for a refund of the sum of Rs. 424.44 paid by him. The respondent filed a statement disputing the plaintiff's claim.

When the matter came up for inquiry in the District Court—the Tribunal of Appeal referred to in section 27—the respondent took a preliminary objection that the petition was not filed in time. The objection was upheld and the District Judge stated a case under section 94 for the opinion of the Supreme Court on that question of law.

Now section 27 of the Ordinance which creates the right of appeal does not mention any period of time within which the appeal should be filed. Section 96 enables the Governor to make regulations regarding the matter, but, so far, no such regulations have been made. Under these circumstances could it be said that the petitioner has not appealed to the Tribunal of Appeal in time? The District Judge has answered the question in the affirmative, as he thought that the petition should have been filed within a reasonable time and that a period of one year could not be considered a reasonable interval of time.

At the argument before us the Counsel for the respondent sought to support the order of the District Judge on the authority of *Ran Menika v. Mudalihamy*[1] referred to by the District Judge. That was a decision with regard to appeals under the Maintenance Ordinance, before it was amended by Ordinance No. 13 of 1925. The earliest case on this question of appeals under the Maintenance Ordinance was *Fernando v. Fernando*[2]. In that case Bertram C.J., Ennis and de Sampayo JJ. held that there was no time limit to the right of appeal under the Maintenance Ordinance. There was not the slightest suggestion made in that case that though there was no such time limit, the appeals should be filed within a reasonable time. In 1922, Schneider J. followed that authority

[1] *(1923) 25 N. L. R. 254.*

[2] *(1921) 23 N. L. R. 31.*

in S. C. 240 P. C. Kegalla, 22,493 (S. C. Minutes of May 31, 1922) and entertained an appeal filed two years after the order appealed against was made. The next case was *Ran Menika v. Mudalihamy* (*supra*) where Jayewardene A.J. observed that the appellant in that case was trying to take full advantage of the judgment in *Fernando v. Fernando* (*supra*) and said—" I think that appeals in maintenance cases must be brought within a reasonable time ". No authority was cited by the learned Judge in support of that view and he expressed that view without any discussion of the recognised canons of interpretation.

Now section 27 of the Housing and Town Improvement Ordinance reads—

> " Any person aggrieved by any order of the Chairman under this Chapter in respect of which an appeal is not otherwise provided, may appeal to the Tribunal of Appeal . . . . ".

There is no reference to a reasonable period of time in this section. The language of the section is clear and unambiguous and a Court should not attempt to construe it according to its own notions of what ought to have been enacted. " To depart from the meaning on account of such views is, in truth, not to construe the Act, but to alter it. But the business of the interpreter is not to improve the statute; it is to expound it " (Maxwell on the *Interpretation of Statutes, 7th Edition, page 5.*) in *Bradley v. The Board of Works for the Greenwich District*[1], the Court had to consider whether an apportionment was made within time under section 53 of the Metropolis Management Amendment Act (25 & 26 Vict., c. 102.) In that case the Board constructed in 1868 a sewer in a new street, but no apportionment of its cost of construction, to be borne by the owners of the houses in that street, was made until 1876. In 1878 Bradley was charged before a Magistrate for failing to pay the amount due by him as his share of the cost and ordered to pay that amount. On a case stated by the Magistrate the Court held in favour of the apportionment and Cockburn C.J. said—

> " The only question we have to consider is whether the apportionment of the amount payable by the appellant was made within proper time. Now, turning to section 53 (of 25 & 26 Vict., c. 102.) we seek in vain for any limitation of the time within which the apportionment is to be completed. And as the Legislature have fixed no limit it is impossible for us to introduce one . . . . at all events we cannot amend the Act by inserting in it a provision which we do not find there."

Even if it is conceded that the appeal to the Tribunal of Appeal should have been filed within a reasonable time, could it be said that a period of one year is not reasonable? This appeal is for all practical purposes an action to recover money paid under protest. A regular action for enforcing such a claim could be filed within three years. Why should it then be regarded as unreasonable for a petitioner to delay for one year before presenting his petition to the Tribunal of Appeal?

I set aside the order of the District Judge and remit the proceedings to the District Court for inquiry. The respondent will pay in any event

[1] *(1878) 3 Q. B. D. 384.*

the costs of the petitioner in respect of the proceedings up to date in the District Court. The appellant will not be entitled to any costs in this Court as he was not represented at the argument before us. All future costs will be in the discretion of the District Judge.

MOSELEY S.P.J.—I agree.

Appeal allowed.