

1954

*Present : Swan J.*

E. NAVARATNAM, Appellant, and VILLAGE COMMITTEE OF  
KANDUKARA IHALA KORALE, Respondents.

*S. C. 5—C. R. Gampola, 8,774*

*Village Communities Ordinance (Cap. 198)—Section 45 (3) (b)—Acreage tax—“ Land which is situated outside a built-up locality ”.*

The passing of a resolution declaring a particular area to be a built-up locality is not a condition precedent to the imposition of an acreage tax under section 45 (3) (b) of the Village Communities Ordinance.

## APPEAL from a judgment of the Court of Requests, Gampola.

*H. V. Perera, Q.C.*, with *A. J. M. Canjemanaden*, for the plaintiff appellant.

*Cyril E. S. Perera, Q.C.*, with *S. W. Jayasuriya* and *Joseph Nalliah*, for the defendants respondents.

*Cur. adv. vult.*

January 13, 1954. SWAN J.—

The appellant is a resident co-owner of a plantation in Pussellawa called Peragollawatte Estate situated within the administrative limits of the Village Committee of Kandukara Ihala Korale. His complaint is that he was illegally called upon to pay an acreage tax of 50 cents per acre on his holding. He claimed in this action a refund of Rs. 18.48 which according to him was the unlawful levy for the year 1949 and the first two quarters of 1950 on the ground that he had paid the amount under protest.

The case went to trial on the following issues :—

- (1) Has the defendant failed to declare the "built up" localities as provided for in section 45 (3) (a) of the Village Communities Ordinance?
- (2) Has the defendant failed to comply with the provisions of the Village Communities Ordinance and/or the rules framed thereunder in imposing and levying the Acreage Tax?
- (3) Has the defendant imposed and levied a *Land Tax* in the form of an Acreage Tax only?
- (4) If issues 1, 2 and 3 or any one or more of these are answered in the affirmative is the imposition and levy of the Acreage Tax on Peragollawatta illegal?
- (5) Has the defendant failed to give the notice proscribed by law in respect of the increase of Acreage Tax?
- (6) If issue No. 5 is answered in the affirmative is the imposition and levy of such increase illegal?
- (7) Has the defendant wrongfully and unlawfully levied from the plaintiff a sum of Rs. 18.48 or part thereof?
- (8) Has the defendant imposed and levied the land Tax in the form of an Assessment Tax on all buildings and all lands of the extent of five acres and less within the *said Village area*?
- (9) If the answer to issue No. 8 is in the negative is such discrimination illegal?

The learned Commissioner answered issues 1, 2, 3, 5 and 7 in the negative and issue 8 in the affirmative. In view of his answers to issues 2 and 3 it was not necessary to answer issue 4; likewise with regard to issues 6 and 9 an answer was unnecessary in view of his answers to issues 5 and 8. In the result the appellant's action was dismissed with costs.

Several points have been taken in the petition of appeal some of which cannot be entertained inasmuch as they involve questions of fact and no leave to appeal on the facts was granted by the Commissioner of Requests or obtained from this Court. Learned Counsel for the appellant has pressed the appeal on only one point, namely that there was no resolution declaring any particular area to be a built-up locality, that such a declaration is a condition precedent to the imposition of an acreage tax.

Section 44 of the Village Communities Ordinance (Cap. 198) (9 of 1924 as amended by 60 of 1938, 61 of 1938, 11 of 1940 and 9 of 1940) provides for the imposition of a capitation tax. This I am given to understand has been abolished. Section 45 (1) provides for the imposition of a land tax in addition to the capitation tax. This must be on a resolution duly passed by the Committee and must receive the approval of the Minister and be duly published in the *Gazette*. Section 45 (3) sets out that the land tax shall consist of *either or both* of the following :—

- “ (a) an assessment tax not exceeding four per centum of the annual value of all buildings and all lands situated in localities within the village area which are declared by the Village Committee with the approval of the Government Agent to be built-up localities ; and
- (b) an acreage tax not exceeding fifty cents a year on each acre of land which is situated outside a built-up locality and is under permanent cultivation or regular cultivation of any kind other than paddy and chena cultivation ; ”

There are certain provisos which are not relevant to the point in issue.

Mr. Perera's contention is that before an acreage tax can be imposed there must be a resolution passed by the Committee after due notice thereof has been given according to the regulations declaring a certain area to be a built-up locality ; until there is such a declaration it is not possible to say that any land to be subjected to the acreage tax is *situated outside a built-up locality* within the meaning and contemplation of section 45 (3) (b). With this contention I am unable to agree. It seems fallacious. The two taxes are independent of each other and not interdependent. If Mr. Perera's contention is to be upheld a Village Committee can in no circumstances levy an acreage tax in a locality in which there are no buildings. This would nullify the intention of the legislature when it gave Village Committees the right to impose either an assessment tax or an acreage tax, or where it seemed necessary both an assessment tax and an acreage tax.

The appeal is dismissed with costs.

*Appeal dismissed.*