

1951

*Present : de Silva J.*

THOMAS, Petitioner, and WANIGASEKERA, Respondent

*S. C. 932—Appeal under Local Authorities Elections Ordinance**Local Authorities Elections Ordinance, No. 53 of 1946—Sections 7 and 21—Decision of Elections Officer—Need not state reasons—Meaning of "residence".*

The Local Authorities Elections Ordinance does not require the Elections Officer to give reasons for his decision on any claim or objection relating to the electoral lists of the wards of any area.

The "residence" contemplated in Section 7 (1) of the Ordinance can be either actual or constructive.

**A**PPPEAL from a decision of the Elections Officer under the Local Authorities Elections Ordinance.

*H. V. Perera, K.C.*, with *N. E. Weerasooria, K.C.*, and *H. W. Jayewardene*, for the petitioner.

*S. Nadesan*, with *C. Manohara*, for the respondent.

*Cur. adv. vult.*

May 11, 1951. DE SILVA J.—

This is an appeal from the decision of the Elections Officer, on an objection taken by the appellant to the inclusion of the respondent's name in the electoral list for the Urban Council of Talawakele, Lindula.

An objection is taken to the appeal being entertained on the ground that no appeal lies inasmuch as only questions of fact are involved and not questions of law, in the decisions of the Elections Officer. The appeal is preferred under the provisions of section 21 of Ordinance No. 53 of 1946 (Local Authorities Elections). Section 21 (1) is as follows:—

“ If any claimant or objector or person in regard to whom an objection has been made is dissatisfied with the decision of any Elections Officer on any claim or objection, relating to the electoral lists of the wards of any electoral area, he may, not later than ten days from the date of such decision, appeal therefrom to the Supreme Court on any question of law involved in such decision, but not on any other grounds.”

The question that was raised and decided by the Elections Officer was whether or not the respondent had the requisite residential qualification to have his name entered in the electoral list for this Urban Council area.

Section 7 of the said Ordinance lays down the qualification necessary for a person to be included in the electoral list. Section 7 (1) (a) provides that a person shall be entitled to have his name entered in the list if such person on that date—(a) is resident within the limits of the ward to which the list relates and has been resident within the limits of that or any other ward of the area for a continuous period of at least six months in the period of eighteen months immediately preceding that date, being either . . . , &c.

The objector who is the appellant contended that the respondent was not resident within the area as contemplated in the said section. Sections 18, 19 and 20 prescribe the procedure to be followed by the Elections Officer in the disposal of claims to have a person's name entered in the list, and, in the disposal of objections made to the inclusion of such person in the list, &c. It is the duty of the Elections Officer to decide each claim or objection after such summary inquiry as he may deem necessary.

The Elections Officer held the summary inquiry into the objections made by the appellant in the presence of the objector and the respondent. Witnesses gave evidence besides the appellant and the respondent. He made his decision disallowing the objection. It is from that order that this appeal is taken.

It is argued by learned Counsel for the appellant that questions of law are involved in this decision and that an appeal lies. He submits that in this matter questions of law are involved in addition to facts in the determination of the elements constituting residence and, as the Elections Officer has misdirected himself in the application of the principles applicable, an appeal lies. He further contends that the Elections Officer has not given his reasons for the decision he made.

Dias J. in *Francis de Silva v. Wijenathan*<sup>1</sup> has observed thus:—“The word ‘decision’ as used in the Ordinance has not been defined. Stroud points out that ‘decision’ is a popular and not a technical term, and means little more than a concluded opinion. I would hold that the word ‘decision’ as used in section 21 means the determination of or the verdict on the questions at issue raised at the summary inquiry before the Elections Officer, and which he has reached after considering the evidence and the arguments before him”.

In the case under consideration the Elections Officer gave no reasons for his decision. His decision conveyed to the parties immediately after the inquiry is “I disallow the objection”. The Ordinance does not anywhere require the Elections Officer to give reasons on which his decision is based.

I therefore hold that the Ordinance does not require the Elections Officer to give reasons for his decision.

The next question to be considered is whether an appeal lies from the decision of the Elections Officer. I hold that an appeal lies from the decision inasmuch as questions of law are involved in it, namely, what constitutes in law “residence”.

Dias J. in *Francis de Silva v. Wijenathan*<sup>1</sup> has followed *Soysa v. Perera*<sup>2</sup> and *Ford v. Drew*<sup>3</sup>. The principles laid down in these two cases have been approved and followed by Dias J. who has observed thus—“The ‘residence’ contemplated in Section 7 (1) can be either actual or constructive. In order to constitute constructive residence two elements must co-exist, viz., (a) intention to reside at a particular house or place, and (b) unfettered power or ability at one’s own will and pleasure, without committing a breach of any legal obligation, to go to that house or place and take up residence there at any time”.

The record of the proceedings taken by the Elections Officer has been forwarded to this Court, and I am of opinion that the Elections Officer has not misdirected himself in the applications of the legal principles to the facts proved in the case.

The appeal therefore fails.

The appeal is dismissed with costs.

*Appeal dismissed.*

<sup>1</sup> (1948) 51 N. L. R. 49.

<sup>2</sup> (1921) 22 N. L. R. 464.

<sup>3</sup> (1879) 49 L. J. C. P. (N.S.) 172