

1956 *Present* : K. D. de Silva, J., and Sansoni, J.

THE URBAN COUNCIL OF DEHIWELA-MOUNT LAVINIA *et al.*,
Appellants, and P. ANDY SILVA *et al.*, Respondents

S. C. 263-264—D. C. Colombo, 5,838/L

Appeal—Notice of tendering security—Signed by appellant's proctor and served on respondent's proctor—Validity—Civil Procedure Code, ss. 24, 29, 756 (1).

A notice of tendering security issued under section 756 (1) of the Civil Procedure Code is not invalid if it is signed by the appellant's proctor and addressed to, and served on, the respondent's proctor.

Urban Council—Recovery of rates—Seizure of property—Purchase of the property by Council in 1938—Prior sanction of Local Government Board not necessary—Transfer of the property by Council in 1942—Approval of Executive Committee.

¹ (1946) 47 N. L. R. 361.

not necessary—Municipal Councils Ordinance (Cap. 193), ss. 143, 145, 146 (1)—Local Government Ordinance (Cap. 195), ss. 46, 47 (c), 182—Urban Councils Ordinance, No. 61 of 1939, ss. 48 (c) (1), 183 (1).

Where property seized by an Urban Council for the recovery of rates was purchased by the Council in the year 1938 in terms of section 182 of the Local Government Ordinance (Cap. 195), read with section 143 of the Municipal Councils Ordinance (Cap. 193)—

Held, that the prior sanction of the Local Government Board was not necessary. The provisions of section 47 (c) of the Local Government Ordinance were not applicable to such purchase.

Held further, that section 48 (c) (1) of the Urban Councils Ordinance, No. 61 of 1939, does not impose on an Urban Council any duty to obtain the prior approval of the Executive Committee in order to sell property purchased by it in the course of recovering rates and taxes.

APPEAL from a judgment of the District Court, Colombo.

S. J. Kadirgamar, with *P. Somatilakam*, for the 1st defendant appellant.

H. V. Perera, Q.C., with *S. J. Kadirgamar* and *John de Saram*, for the 3rd defendant appellant.

Stanley Perera, with *Vernon Martyn*, for the plaintiff respondent.

Cur. adv. vult.

July 3, 1956. K. D. DE SILVA, J.—

The land called Madatiyagahawatte bearing assessment No. 132, situate within the limits of Dehiwela-Mt. Lavinia Urban District Council was seized by the said Council and sold by public auction on 28.9.'38 for the recovery of a sum of Rs. 6/72 due as arrears of assessment rates. At this sale the Urban Council who is the 1st defendant in this case purchased the property and the chairman of the Council in terms of section 145 of the Municipal Councils Ordinance (Cap. 193) entered the certificate P21 on 20.12.'39 vesting the land absolutely in the Council free from all encumbrances. On 20.12.'41 the Council put up the land for sale by public auction and it was purchased by the 2nd defendant for a sum of Rs. 1,005/-. The Council having confirmed the sale executed the deed of conveyance P22 dated 22.5.'42 in favour of the 2nd defendant who by deed P23 dated 12.4.'49 sold the land to the 3rd defendant.

Admittedly the plaintiff was a co-owner of this land prior to the sale held on 28.9.'38 at which the Council purchased it. The plaintiff in his amended plaint prayed that the vesting certificate P21 and the deed of conveyance P22 be declared null and void as being *ultra vires* of the powers of the 1st defendant under the Local Government Ordinance (Cap. 195) and Ordinance No. 61 of 1939. The plaintiff also contended that P21 and P22 being null and void no title passed to the 3rd defendant on deed P23. He prayed that he be declared entitled to an undivided 19/45 shares of the land and also claimed the ejection of the 3rd defendant and sought to recover damages from him. In the amended plaint

no relief was claimed as against the 1st and 2nd defendants but they were made parties to enable the Court to effectively and completely adjudicate upon the questions involved in this action.

The learned District Judge held that the purchase of the land by the 1st defendant on 28.9.'38 was void inasmuch as the Council had failed to obtain the prior sanction of the Local Government Board as contemplated by section 47 (c) of the Local Government Ordinance (Cap. 195) and that therefore no title passed on P21. He further held that even if certificate P21 vested the property absolutely in the Council the sale by the latter on P23 to the 3rd defendant was ineffectual because there was a contravention of the provisions of section 48 (e) (1) of the Urban Councils Ordinance, No. 61 of 1939, in that the Council had failed to obtain the prior approval of the Executive Committee before the sale took place. Accordingly he entered judgment for plaintiff. The 1st and 3rd defendants have appealed from that judgment.

I would first deal with the purchase by the Council. The learned District Judge held that the vesting certificate P21 was null and void for failure of compliance with the provisions of section 47(c) (Cap. 195) which reads as follows:—

47. "For the purpose of the discharge of its duties under this Ordinance, a District Council (without prejudice to any other powers specially conferred upon it) shall have the following powers:—

(c) with the sanction of the Local Government Board, to purchase or sell any land or buildings: "

The learned District Judge was of the view that in no circumstances is an Urban Council entitled to purchase or sell lands without the sanction of the Local Government Board. The Counsel for the appellants contended that section 47 (c) had no application whatsoever to the purchase of a land by the Council at a sale held for the recovery of rates and taxes in terms of section 182. The learned Counsel for the plaintiff respondent conceded that if that view was right his submission that no rights passed on P21 was untenable. Section 47 provides that an Urban Council shall have the powers set out in clauses (a) to (j) "for the purpose of the discharge of its duties under this Ordinance". The preceding section, i.e., section 46, enumerates the duties of the Urban Council. The collection of rates and taxes is not one of those duties. So that the powers of the Urban Council under section 47, among which is the right to purchase or sell land, are conferred on it for the purpose of discharging the duties set out in section 46. It would appear that the recovery of rates and taxes is a right and not a duty as contemplated by section 46. Therefore it would be necessary to obtain the prior sanction of the Local Government Board to purchase the land only if that purchase is made for the purpose of carrying out the duties imposed by the Council by section 46. It cannot be contended that the purchase of this particular land was made for carrying out the duties enumerated in section 46. Hence the provisions of section 47 (c) would not apply to this purchase. Apart from that, section 47 specifically provides that the powers

conferred on an Urban Council by that section are “without prejudice to any other powers specially conferred upon it”. Section 182 of this Ordinance (Cap. 185) is one of a group of sections which deal with “assessment and recovery of rates and taxes”. Section 182 reads:—

“All rates and taxes levied or imposed under this Ordinance, in respect of which no other method of recovery is specifically provided under this or any other Ordinance, or under any regulations made thereunder, shall be recoverable in the same manner as rates and taxes are recoverable under the Municipal Councils Ordinance, and all the provisions of sections 135 to 147 of that Ordinance shall with the necessary modifications apply accordingly.”

This section provides a special scheme for the recovery of rates and taxes and that scheme is the one set out in sections 135–147 of the Municipal Councils Ordinance (Cap. 193). The powers conferred by section 182 would fall within “any other special powers” of an Urban Council saved by section 47. I am unable to agree with the learned District Judge that the powers arising from section 182 are subject to the provisions of section 47 (c). I am of the view that the scheme set out in sections 135–147 of the Municipal Councils Ordinance (Cap. 193) operates independently of section 47 of the Local Government Ordinance (Cap. 195). Section 143 of the Municipal Councils Ordinance provides that whenever land or other immovable property is seized and sold for non-payment of rates or taxes it shall be lawful for the chairman or any other person authorised by him in that behalf to purchase the same. According to section 145 of that ordinance a certificate signed by the chairman in respect of the property purchased shall vest the property sold absolutely in the Council free from all encumbrances and such certificate is conclusive evidence of the title of the Council to such property. It is not suggested that the certificate P21 is not in the form contemplated by section 145. As I observed earlier no prior sanction of the Local Government Board is necessary before the chairman purchases a property in terms of section 143. Therefore on P21 the land in question vested absolutely in the Urban Council.

I would now deal with the sale of the land on P22 by the Urban Council to the 2nd defendant. The sale took place on 22.5.42. By that time the Urban Councils Ordinance, No. 61 of 1939, had come into operation. By section 240 (1) of that Ordinance the Local Government Ordinance (Cap. 195) was repealed. But section 183 (1) of the new Ordinance substantially re-enacted section 182 of the repealed Ordinance. The learned District Judge held that according to section 48 (e) (1) of the new Ordinance the Urban Council required the prior approval of the Executive Committee before it could sell or exchange immovable property. The same observations I made on sections 46 and 47 of the Local Government Ordinance would apply to sections 47 and 48 of the Urban Councils Ordinance. Section 47 of the latter Ordinance sets out the duties of an Urban Council. Section 48 enacts “for the purposes of the discharge of its duties under this Ordinance an Urban Council (without prejudice to any other powers specially conferred upon it) shall have the following

powers". One of those powers is to sell or exchange immovable property subject to the prior approval of the Executive Committee. The sale of this land was not effected for the purpose of discharging the duties enumerated under section 47. Besides that, section 48 was enacted without prejudice to any other powers specially conferred upon an Urban Council. Section 183 (1) of the Urban Councils Ordinance read with section 146 (1) of the Municipal Councils Ordinance (Cap. 193) in my view confers a special power on an Urban Council to sell property purchased by it in the course of recovering rates and taxes. This special power has nothing to do with Section 48 (e) (1). That being so the sale of this land by the Urban Council on P22 to the 2nd defendant is good. Therefore on P23 the 3rd defendant acquired a valid title to the land from the 2nd defendant. The learned District Judge held that the plaintiff had failed to establish a prescriptive title to this land. That finding was not canvassed in appeal. The plaintiff's action therefore fails. I would accordingly allow the appeal and dismiss the plaintiff's action with costs in both Courts payable to the 1st and 3rd defendants appellants.

The Counsel for the plaintiff-respondent raised a preliminary objection to the hearing of this appeal on the ground that the notice of tendering security issued under section 756 (1) C. P. C. was not in order. This notice was addressed to the proctor for plaintiff and signed by the 3rd defendant appellant's proctor and served on the plaintiff's proctor. In support of this objection Counsel relied on *Sivagurunathan v. Doresamy*¹. In the course of his judgment in that case Basnayake J. stated:—

"In regard to forms themselves the rule is that they are to be followed implicitly so far as the circumstances of each case may admit. Section 756 and form 126 not being in conflict, the notice required by the section should be in the prescribed form and no other."

The notice of security issued in this case is identical with form 126 except that it was signed by the appellant's proctor and addressed to the respondent's proctor. Section 24 C. P. C. states that any act required to be done by a party in an action or an appeal may be done by his proctor unless otherwise expressly provided. So that the appellant's proctor could have validly signed the notice of tendering security. In my opinion it is sufficient if the notice of tendering security is served on the respondent's proctor in view of the provisions of section 29 C. P. C. The facts in the case reported in *52 N. L. R. 207* can clearly be distinguished from those in the present case. In that case, in the notice of security served on the 7th defendant, there was a complete failure to mention that security for costs was being tendered for the 7th defendant. There is no such fundamental defect in the notice under consideration. For these reasons we overruled the preliminary objection.

SANSONI, J.—I agree.

Appeals allowed.

¹ (1951) 52 N. L. R. 207.