IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Ameeta Dilshan Moosh
No. 26, De Vos Avenue,
Colombo 4.

PETITIONER

C.A. No. 473/2010

Vs.

Colombo Municipal Council
Town Hall
Colombo 7.

RESPONDENT

BEFORE: Anil Gooneratne J. &
W.M.M. Malinie Gunaratne J.

COUNSEL: Faiz Mustapha P.C. for Petitioner
C. Nilanduwa for Respondent

ARGUED ON: 22.10.2013

DECIDED ON: 10.02.2014

GOONERATNE J.

This is a Writ Application to quash Notices of Assessment dated 11.01.2008 & 21.12.2009 marked P3 & P9 respectively and to quash letter of 16.10.2009 (P8) with respect to a revised Municipal Assessment for the year 2009. P3 is dated 11.1.2008 and P9 dated 21.12.2009. Writ of Certiorari is sought as above against the Respondents namely, the Colombo Municipal Council and Special Commissioner of the said Municipal Council. In the same Writ Application Petitioner also seeks to quash the seizure notices marked and produced as P7 & P11, along with interim relief to prevent the seizure notices being put into effect by the Respondents.

Petitioner states that the premises in dispute is a two storied house and not situated adjacent or facing a main road, and a small portion (700 sq. feet) of the house in the ground floor had been rented, and the tenancy agreement is produced marked P2. Notice P3 is for the year 2008. Its annual value assessed at Rs. 158,400/- with rates payable per quarter being Rs. 13860/-. The above premises, the Petitioner's claim, was not rented since January 2007. In the latter part of 2008 Petitioner along with her husband left the Island for Dubai. Petitioner

had objected to the assessment notice by her letter of 13.1.2009 and requested for an inquiry. Objection based on the grounds referred to in paragraph 9 of the objections. Briefly the grounds urged by the Petitioner are that assessment is excessive and arbitrary and premises used for residential purposes, and solely depends on rents. Further that no reasons are given for the assessment. By letter P4 of 18.2.2009 an inquiry was to be held regarding the above objection by the Municipal Assessor. By P5, Petitioner had moved for a date since they were not in the Island. P5 is an e- mail message sent on 22.2.2009. Subsequently, Petitioner received demand notice P6 of 31.12.2008 demanding a sum of Rs. 169763/65.

I would for purpose of clarity and to demonstrate the submissions of learned President's Counsel for Petitioner, refer to paragraphs 13 to 17 of the petition as follows:

1. The petitioner was thereafter not called for a meeting but the petitioner's husband met the said Assistant Municipal Assessor K. Rajagopal and the Municipal Assessor Mr. Mohideen at the Municipal Council and made representations. He made representations and stated that the said assessment was arbitrary and unreasonable for the reasons, inter alia –

(a) That no reasons have been set out for the imposition of high rates from 2007; and
(b) The assessment was excessive in any event, given that the house was used mainly for residential purposes and that the tenant who was occupying the premises had left the premises in January 2007.

2. The petitioner states that she received another seizure notice dated 10.07.2009. A true copy of the said notice is annexed hereto marked P7.
3. After the said meeting, the petitioner received a letter dated 16.10.2009 signed by the Municipal Assessor stating that the assessment for the said premises was fixed at an annual value of Rs. 132,000/- and the rates payable per quarter at Rs. 11550/-. The letter also acknowledged the objection which the petitioner has made with regard to the assessment of the said premises previously. A true copy of the said letter is annexed hereto marked P8.
4. The petitioner states that she received a Notice of Assessment for 2010 dated 21.12.2009, in which the rates payable per quarter was Rs. 13860/- and the annual value was assessed at Rs. 158,400/- for the year 2010. A true copy of the said assessment is annexed hereto marked P9.
5. The petitioner addressed a letter to the Assessor of the Respondent Council on the 19th of January 2010, stating inter alia;

   (a) objecting and seeking reasons for assessing the said premises at a rate of Rs. 13860 a quarter;
   (b) That the house was mainly used for residential purposes and that they have been living there for over 50 years;
   (c) That only a small portion amounting to 700 sq. feet has been given on rent to a company selling used computer parts, for the past 2 years (vide p2).
   (d) That the jewellery company which was previously present at the said premises had left the same in January 2008; and
   (e) That he had written in protest to the assessments made on the said premises previously as well and that on making representations to the officers of the respondent only a brief reduction was made after nearly 8 months.

The Petitioner attempt to make out a case that the petitioner did not receive an acknowledgment to her protest letter of 19.01.2010 stated above and the attempt to meet officials of the 1st Respondent was denied. It is also pleaded that surprisingly Petitioner received seizure notice P11 with respect to the rates due, fixed at Rs. 225,203/65. By P12 Petitioner explains her position. It is averred in the petition that the notice of assessment, seizure notices issued are all illegal, excessive and made arbitrary without due reasons to do so. It is also pleaded that the above notices offend the principles of proportionality.

The Respondents on the other hand reject the position of the Petitioner and rely on certain statutory provisions contained in the Municipal Council Ordinance. (Sections 235, 236). There is emphasis on delay and non compliance with available statutory provisions. I note the following points submitted to this court by way of submission and based on the material contained in the pleadings of the Respondents.

(a) Property in dispute situated between R.A De Mel Mawatha and Galle Road. Assessed as commercial cum residence since 01.03.2000, based on mode of occupation.

(b) By P2 (Petitioner's document) property has been leased to one Anwer Ahamed as from 01.01.2008. for 2 years for 40,000/- per month, with a returnable advance of Rs. 1,50,000/-. 1st Respondent assessment based on

a monthly rent of Rs. 15,000/-. The area taken as a jewellery shop for revision of assessment is 828 sq. feet.

(c) Letter of Petitioner dated 13.02.2008 (R A) against the assessment for 2008 reached the 1st Respondent on 13.2.2008 and it is time barred. Another letter (RB) of the same date 13.12.2008 was received by the 1st Respondent on 13.1.2009 and said objections considered for the Year of Assessment 2009, and annual value revised at Rs. 132,000/-.

(d) Petitioner's own admission indicate the premises used for show room and residence.

(e) Petitioner informed by letter Rc of 21.05.2008 that Petitioner's objections are time barred.

(f) Annual value reduced from 158,400/- to Rs. 132,000/- and intimation made to the objector on 16.10.2009.

(g) It is also stated that before finalization of the objections inquiry into annual statutory notice had been served on the premises. Subsequently due amendments made - proceedings of the statutory inquiry dated 19.6.2009 (R1) has been produced.

(h) P10 letter of Petitioner treated as a letter of objection for year 2010. Objector was requested to appear at an inquiry. Objector did not attend the inquiry and the annual value of Rs. 132,800/- remained undisturbed.

This court has considered all the available material placed and filed of record as well as the submission of both counsel and the matters contained in the counter affidavit of the Petitioner. It is our view that the Petitioner had been

given ample opportunities to place her side of the case before the 1st Respondent. There is no total denial of an hearing afforded to the Petitioner, according to the material placed before court. 1st Respondent had considered the case of the petitioner and had given an opportunity to contest the assessment notice. But the Petitioner had not attended the inquiry when summoned and made excuses as being out of the country etc. Perusal of R1 indicates that the matter had been inquired (Petitioner represented). It contains the objector's version and the recommendations. R2 & R3 gives the assessment details.

I would initially consider the question of laches. I would incorporate the method adopted by the Respondents as regards delay as follows:

Date of petition 06.07.2010

Notice of assessment –	11.01.2008 (P3) delay of 2 years & 7 months
Notice of Assessment –	21.02.2009 (P9) delay of 1 year & 4 months
Decision of 1st Respondent –	21.5.2008 delay of 2 years & 2 months (R)
Decisions of 1st Respondent –	16.10.2009 delay of 9 months (P9)
Seizure notice -	10.7.2009 delay of 1 year (P7)
Seizure notice -	14.06.2010 delay 1 month (P11)

This is a Writ Application and a discretionary remedy of court. In the absence of an explanation court is entitled to reject the application. I do consider that having regard to above, the petitioner is guilty of laches, and this application

need to be rejected on that ground alone. There is no doubt based on a long line of decided cases and the principle, is to reject these sort of application on the grounds of unexplained delay, except where the decision itself is a nullity. The facts of this case does not favour the Petitioner, to rely on nullity or that the delay had been explained. Delay defeats equity . 78 NLR 510, 514; some of the cases on undue delay and the period of delay are considered in the cases reported in 51 NLR 167, 168, 71 NLR 356, 73 NLR 262. Undue delay and its explanation is a matter for court and left at the discretion of court 56 NLR 293, 298.

There is another aspect emphasized by the learned counsel for Respondents. That is the failure to produce Ra, Rb & Rc by the Petitioner. Ra & Rb being the objection of petitioner. This is taken to be suppression of material facts. This court do consider same to be a material fact, and the case of Alponsu Appuhamy Vs. Hettiarachchi 77 NLR 131 and Dahanayake Vs. Sri Lanka Insurance 2005(1) SLR 97 certainly fortify my views.

It is apparent that the Petitioner has failed to exercise the available statutory provisions. One has to resort and exhaust the available statutory procedure which is more effective in a case of this nature. This view should not be understood to mean that in every case one need to exhaust the available statutory provisions. But this case would require the adherence to such a rule in

the interest of justice. The following provisions of the Municipal Council Ordinance need to be noted and considered. Sections 235 & 236.

Section 235 reads thus

Section 235:

1. The Council shall cause to be kept a book, to be called the "Assessment Book", in which the annual value of each house, building, land or tenement within the Municipality shall be entered every year, and shall cause to be given public notice thereof and the place where the assessment book may be inspected.
2. Every owner or occupier of any house, building, land or tenement, or his authorized agent, shall be permitted free of charge, to inspect any portion of the said assessment book which related to his premises.
3. The Council shall cause a notice of assessment in Sinhala, Tamil and English to be served on or left at the premises of every occupier, whether he be proprietor, joint proprietor, or tenant of the house, building, land or tenement assessed, the said notice shall be substantially in the form set out in the Third Schedule, and there shall be appended thereto a demand of payment of the rate or rates leviable within such time and in such proportions as the Council may deem reasonable.
4. Such notice shall further intimate that written objections to be assessment will be received at the Municipal office within one month from the date of service of the notice.
5. The Council shall cause to be kept a book to be called the "Book of Objections", and cause every objection to an assessment to be registered therein. The Council shall cause to be given notice in writing to each objector of the day on which and the place and the time at which his objections will be investigated.
6. At the time and place so fixed the Council shall cause to be investigated the objections, in the presence of the objector (or an agent authorized by him in writing) if each objector or agent appears or in his absence if such objector or agent does not appear. Such investigation may be adjourned from time for reasonable cause.

7. When any objection to an assessment is disposed of, the Council shall cause the decision thereon to be notified to the objector, and such decision shall be noted in the book of objections, and any necessary amendment shall be made int eh assessment book.
8. Every assessment against which no objection is taken shall be final for the year.

Section 236

1. Every person who is aggrieved by the decision under section 235 with regard to the assessment of any house, building, land or tenement, may, within thirty days of receiving the notification of the decision, institute and action objecting to such decision in the Primary Court having jurisdiction in the place where such house, building, land, or tenement is situated, if the amount of the rate or rates, on the annual value of the such houses, building, land or tenement or in the case of a consolidation, on the annual value of the houses, buildings lands or tenements, so consolidated does nto exceed one thousand five hundred rupees, and in the District Court having such jurisdiction where such amount exceeds Court the sum of one thousand five hundred rupees.
2. Upon the trial of any action under section, the Plaintiff shall not be allowed to adduce evidence of any ground of objection which is not stated in his written objection to the assessment.
3. Every such court shall hear and determine such action according to the procedure prescribed for such court by the law for the time being in force regulating the hearing and determination of actions brought in such court and the decision of such court shall in all cases be subject to appeal to the court of appeal.
4. Every such appeal shall be governed by the provisions of chapter LVIII of the Civil Procedure Code, or by any enactment hereafter enacted regulating the making of appeals to the Court of Appeal from any judgment, decree, or order of a Primary Court or a District Court.

5. Neither the institution of such action nor any appeal therein shall stay the levying of the whole or any part of such rate or rates, and the excess, if any, collected shall be returned according to the decision of such Primary Court or District Court if there be no appeal, or according to the final decisions of the Court of Appeal in case of appeal.

Petitioner has failed and neglected to resort to the available adequate statutory remedies, provided as above. As such decided cases on point would be the cases of Tennakoon Vs. Director General of Customs 2004 (1) SLR 53; 57. Rodrigo Vs. Municipal Council Galle 1947 NLR 89. 51 NLR 227; 72 NLR 320.

It is however arguable as to whether the Assessor as far as the case in hand is concerned should give reasons. The Municipal Council Ordinance does not require the Commissioner to give reasons, for a decision regarding annual assessment. This position could be argued either way. Position in the U.K may differ with our courts. But having considered all the facts and circumstances and having analyzed the case of each party there are other grounds to reject this application, and some of which are discussed in this judgment. Totality of facts

and circumstances does not favour the Petitioner. This court is not inclined to grant any relief to the Petitioner. As such we dismiss this application without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Malini Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL