

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

*In the matter of an Application for  
mandates in the nature of Writ of  
Certiorari in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka*

C A (Writ) Application No. 320 / 2015

Master Wovenlanka (Private) Limited,  
[formerly known as Brilliant Master  
Lanka Label (Private) Limited],  
No. 17,  
Condrad Premathiratne Mawatha,  
Seeduwa.

**PETITIONER**

-Vs-

1. Urban Council Katunayake -  
Seeduwa.
2. K A C G Pushpakumara,  
Secretary,  
Urban Council Katunayake - Seeduwa.

3. M L Suresha Tharanga  
Regional Valuer,  
Western North Regional Office,  
Valuation Department,  
No. 19,  
Queen Mary Road,  
Gampaha.
  
4. Chief Government Valuer  
Valuation House,  
No.748,  
Maradana Road,  
Colombo 10.

**Respondents**

**Before: Vijith K. Malalgoda PC J (P/CA)**

**P. Padman Surasena J**

Counsel: Senany Dayaratne with Ms. Eshanthi Mendis for the Petitioner  
Manohara Jayasinghe, SC for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents

Argued on: 2016-07-04

Written submissions on behalf of the petitioner filed on: 2016-07-29

Decided on: 2016-09-14

### JUDGMENT

#### **P Padman Surasena J**

The Petitioner is a company engaged in designing and manufacturing woven and printed labels for direct and indirect export. In order to carry out its business activities it has established a factory building in the property bearing assessment No. 17 Condrad Premathiratne Mawatha, Seeduwa. The Petitioner company is also a company engaged in an enterprise which the Board of Investment of Sri Lanka (BOI) has approved.

The Petitioner has paid all rates as prescribed by the 1<sup>st</sup> Respondent (Urban Council, Katunayake - Seeduwa) from the year 2005 till the year 2013. During this period the 1<sup>st</sup> Respondent had assessed the annual value of the said property to be Rs. 315,570.00 Thus the amount of tax payable by the Petitioner per quarter was Rs. 11,833.88 Copies of these notices of assessment for the years 2009, 2010, 2011, 2012 have been marked and produced as **P 07(a)**, **P 9(a)**, **P 10(a)** while the receipts relating to those payments have been marked and produced as **P 07(b)**, **P 08(b)** and **P 10(b)**. It is the complaint made by the Petitioner that the 1<sup>st</sup> Respondent

has assessed this property for the year 2014 to be of annual value of Rs. 6459868.00 (20 times the annual value of the previous year) to make the amount of tax payable per quarter by the Petitioner to be Rs. 193796.04 (over 16 times the tax payable in the year 2013). This notice of assessment for the year 2014 has been marked and produced as **P 12**.

Upon objection raised by the Petitioner against this move, the 2<sup>nd</sup> Respondent who is the secretary of the Katunayake - Seeduwa Urban Council had held an inquiry.

Subsequent to the said inquiry the 2<sup>nd</sup> Respondent by letter marked and produced as **P 18** had informed the petitioner that the annual value of the property had been amended to be Rs. 5580865.00 and that the quarterly tax was assessed to be Rs. 167425.95

It was the submission of the petitioner that this annual value of the premises was still almost 18 times the figure of year 2013.

The Petitioner had re-agitated this by the letter marked and produced as **P 19**.

The chairman of the 1<sup>st</sup> Respondent Council, responding to this objection of the Petitioner has addressed the letter marked and produced as **P 20** to the chief valuer of the valuation department who is the 4<sup>th</sup> Respondent.

In the meantime the petitioner had addressed letters on the same matter to the 3<sup>rd</sup> Respondent who is the regional valuer. The 3<sup>rd</sup> Respondent, replying to these letters had stated that the impugned assessment will not be changed.

The 2<sup>nd</sup> Respondent by letter dated 2015-06-25 had requested the Petitioner to attend an inquiry pertaining to his objection for the year 2015. The inquiry was to be held on 2015-07-09. This letter has been marked and produced as **P 28**.

Thereafter the petitioner has received a seizure notice marked and produced as **P 29**.

It is the submission of the learned counsel for the Petitioner that the decisions to increase the annual value of the said property and the resultant rates of taxation as well as the seizure notice are not based upon *bona fide* due and proper exercise of powers by the 1<sup>st</sup> Respondent council vested in it by the Ordinance, and that no valid or conscionable reason has been given. He further submitted that therefore these determinations and actions are ultra vires, arbitrary and therefore illegal.

The Urban Council is vested with powers and duties including the power to impose rates and taxes, by virtue of Urban Councils Ordinance, No. 61 of 1939 as amended. Portions of the relevant sections of the said Act are as follows.

**Section 160 (1)**

*"The Urban Council of a town may, subject to such limitations, qualifications, and conditions as may be prescribed by the Council, and subject to the approval of the Minister, impose and levy a rate on the annual value of any immovable property or any species of immovable property situated within the town."*

**Section 160 (3)**

"Where the Council, in imposing any rates for any year, resolves to levy without alteration the same rate as was in force during the preceding year, the approval of the Minister shall not be required for the imposition and levy of such rate."

It is thus evident that the approval of the Minister is necessary where alteration to the existing rates is to be imposed.

**Section 166**

"The assessment of any immovable property for the purpose of any rate under this Ordinance shall, with the necessary modifications, be made in manner prescribed by section 235 of the Municipal Councils Ordinance, with respect to immovable property within Municipal limits, and all the provisions of the said section, together with those of sections 233, 242, 243, and 236 to 241, shall, with the necessary modifications, apply with respect to every such assessment made for the purposes of this Ordinance:

Provided that, pending the making of any such assessment, any valuation of any immovable property made for the purposes of the assessment tax under the Police Ordinance, or any enactment passed in amendment thereof, shall be deemed to be the valuation of such property for the purpose of any rate on the annual value thereof under this Ordinance."

It is relevant at this stage to refer to **Section 238** *of the Municipal Councils Ordinance which is as follows,*

1) *"Municipal Council shall prepare a new assessment only when so directed by the Minister, generally or specially. The Minister may direct the preparation of a new assessment in respect of any class or species of immovable property or all immovable property in any Municipal Council area having regard to the provision of new services or the improvement of existing services in such Municipal Council area. Except when a new assessment is carried out on the directions of the Minister, the Council shall adopt the valuation or assessment for the preceding year with such alterations as may, in particular cases, be deemed necessary, as the valuation or assessment for the year following:*

*Provided always that notice of such valuation and assessment shall be given in the prescribed manner.*

2) *The Minister may on representations made or of his own volition direct the revision of the assessment of the annual values in respect of any past year in such manner as he may deem fit having regard to the services that had been provided at the time.*

3) *Where there has been a reduction of the rates as a result of the revision of assessments on a direction of the Minister under subsection (2), the Council shall,*

*(a) where such rates have been paid, set off the amount of such rates and any costs incurred for the purpose of recovering those*

*rates so reduced, against future rates due on the property in respect of which such rates have been paid, or*  
*(b) where such rates have not been paid, waive the amount of such rates and any costs incurred."*

The word 'Minister' mentioned in the Urban Councils Ordinance, No. 61 of 1939 refers to the Minister of Local Government.

However, according to Section 2 (1) of the Provincial Council (Consequential Provisions) Act, No. 12 of 1989,

"Where any power or function is conferred on or assigned to a Minister or to a public officer, as the case may be, by any written law made prior to November 14, 1987 on any matter set out in List I of the Ninth Schedule, such power or function may,

(a) if such power or function is conferred on, or assigned to, a Minister, be exercised or discharged, in relation to a Province and unless the context otherwise requires, by the Governor of that Province or the Minister of the Board of Ministers of that Province to whom the subject has been assigned; and accordingly, references in every such written law to a Minister shall be deemed to include reference to a Governor of a Province or the Minister of the Board of Ministers of such Province to whom the function has been assigned; ....."

Therefore, the term 'Minister' set out in the Urban Councils Ordinance, No. 61 of 1939 as amended, read with the Provincial Council (Consequential



Provisions) Act, No. 12 of 1989, in respect of the present application, refers to the Minister of Local Government of the Western Province.

What is apparent from the above provisions is that an assessment cannot be prepared without the direction of the Minister. The Respondents have failed to establish before this Court that there has been such a direction by the Minister. In these circumstances this Court has no alternative but to hold that the 1<sup>st</sup> Respondent has acted outside his powers.

Mr. Ariyaratne, Attorney-at-Law had appeared for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in this court when it had come up for objections on 2015-10-13 and had moved for time to file objections. Since then, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had not taken any steps to file any pleadings on their behalf.

This court had granted an interim relief in this case. Since then, this court had also been extending the said interim relief namely the stay order it had granted every time it had come up as a case to be mentioned in court. That satisfies this court that there has been ample opportunity for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to become aware of the pendency of this matter, as these orders have been communicated to them from time to time.

When this matter was taken up for argument on 2016-07-04, there was no appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. This court then kept it down as a case marked ready to be taken up for argument. Thereafter when it was taken up for submissions by the learned counsel for the Petitioner, Mr. Ariyaratne, Attorney-at-Law appeared and moved for a postponement. Said Mr. Ariyaratne further submitted to court that he had also informed the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that this matter has been fixed for argument

today but submitted that he had not received any instructions from the said Respondents.

In these circumstances this court took the view that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are well aware of the ongoing proceedings of this case and the fact that the argument of this case has been fixed for that date. Those Respondents had however not taken any interest either to file their pleadings or to present their positions to court through a counsel.

Indeed there was no counsel to make submissions on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as said Mr. Ariyaratne also, though he stated that he appears for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, had left court consequent to the refusal of the application to move for a postponement by this court.

The absence of said counsel in court at least at the argument stage resulted in not even presenting an application to this Court at least to file written submissions on points of law which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents would have been desirous of placing before this court. Thus, at the end of the day this court was only left with the written submissions filed by the Petitioner.

In these circumstances and for the foregoing reasons we decide that,

- (a) a mandate in the nature of a Writ of Certiorari to quash the decision and/or determination to issue a new assessment on the annual value of the property bearing Assessment No. 17, Conrad Premathirathne Mawatha, Seeduwa for the year 2014,

and the resultant increased rate of taxation, as reflected in **P 12**;

- (b) a mandate in the nature of a Writ of Certiorari to quash the said decision and/or determination to issue a new assessment on the annual value of the property bearing Assessment No. 17, Condrad Premathirathne Mawatha, Seeduwa for the year 2014, and the resultant increased rate of taxation, as reflected in **P 18**;
- (c) a mandate in the nature of a Writ of Certiorari to quash the said decision and/or determination of the 3<sup>rd</sup> Respondent that the new assessment of the annual value of the property bearing Assessment No. 17, Condrad Premathirathne Mawatha, Seeduwa for the year 2014, and the resultant increased rate of taxation, as reflected in **P 23**;
- (d) a mandate in the nature of a Writ of Certiorari to quash the said decision and/or determination to issue a new assessment on the annual value of the property bearing Assessment No. 17, Condrad Premathirathne Mawatha, Seeduwa for the year 2015, and the resultant increased rate of taxation, as reflected in **P 24**;

- (e) a mandate in the nature of a Writ of Certiorari to quash the said Seizure Notice in respect of the property bearing Assessment No. 17, Condrad Premathirathne Mawatha, Seeduwa, marked as **P 29**;

be issued.

We make no order for costs.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**